

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARINGS

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8

BEFORE: G. MURRELL SMITH, JR., CHAIRMAN

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SENATOR LUKE A. RANKIN

10

SENATOR RONNIE A. SABB

11

SENATOR TOM YOUNG, JR.

12

ROBERT W. HAYES, JR.

13

REPRESENTATIVE J. TODD RUTHERFORD

14

REPRESENTATIVE CHRIS MURPHY

15

MICHAEL HITCHCOCK

16

JOSHUA HOWARD

17

ANDREW N. SAFRAN

18

ERIN B. CRAWFORD, CHIEF COUNSEL

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* * * * *

20

DATE: November 27th, 2017

21

TIME: 10:00 a.m.

22

LOCATION: Gressette Building

23

1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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Court Reporter's Legend:

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

1 CHAIRMAN SMITH: All right. We're back on
2 the record. And right now, Mr. Safran moves that we go
3 into executive session. All in favor say "aye."

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

5 CHAIRMAN SMITH: All opposed?

6 (Hearing none.)

7 CHAIRMAN SMITH: The ayes have it. We're in
8 executive session. So turn off your mics, please.

9 (Off the record from 10 a.m. to 11:19 a.m.)

10 CHAIRMAN SMITH: Good morning, Judge.

11 JUDGE HUGHSTON: Good morning.

12 CHAIRMAN SMITH: First, Representative
13 Murphy moves that we come out of executive session. All in
14 favor say "aye."

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

16 CHAIRMAN SMITH: Opposed?

17 (Hearing none.)

18 CHAIRMAN SMITH: The ayes have it. I just
19 want to state for the record, that while we've been in
20 executive session there's been -- no decisions were made
21 and no votes were taken during executive session.

22 Judge Hughston, how are you doing today?

23 JUDGE HUGHSTON: Fine, thank you.

24 CHAIRMAN SMITH: Judge Hughston, will you
25 please raise your right hand.

1 WHEREUPON,

2 THE HONORABLE THOMAS LESLIE HUGHSTON, JR.,
3 being duly sworn and cautioned to speak the truth, the
4 whole truth and nothing but the truth, testifies as
5 follows:

6 CHAIRMAN SMITH: Judge Hughston, are the
7 personal -- the data questionnaire and the sworn statement
8 that are before you, documents that you have submitted to
9 this commission?

10 JUDGE HUGHSTON: Yes.

11 CHAIRMAN SMITH: Are they both correct?

12 JUDGE HUGHSTON: Yes.

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

15 JUDGE HUGHSTON: No.

16 CHAIRMAN SMITH: All right. Do you object -
17 - if you'll hand those to Lindi for us. Do you have any
18 objection to us making those documents and any amendments
19 as a part of the record of your sworn testimony?

20 JUDGE HUGHSTON: No.

21 CHAIRMAN SMITH: All right. We'll make that
22 a part of the record.

23 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
24 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
25 HONORABLE THOMAS LESLIE HUGHSTON, JR.)

1 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
2 COMMISSION SWORN STATEMENT OF THE HONORABLE
3 THOMAS LESLIE HUGHSTON, JR.)

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

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

17 JUDGE HUGHSTON: No, I just appreciate the
18 consideration and courtesies extended to me.

19 CHAIRMAN SMITH: All right. If you'll
20 answer the questions of Counsel, please, sir.

21 EXAMINATION BY MR. DAVIDSON:

22 Q. Good morning, Judge Hughston.

23 A. Good morning.

24 Q. You're being screened for reappointment as a
25 retired judge on the circuit court. Would you explain to

1 **the Commission, please, why you'd like to continue to serve**
2 **in that capacity.**

3 A. Well, I learn something new every day. You know,
4 particularly focusing in on the last three weeks that I've
5 held court, and I've done three civil jury trials in the
6 last three weeks that I've held court, and each one was
7 unique.

8 As I said, I learn something new every time I go
9 to -- I go to court. And so I enjoy that. I enjoy
10 continuing to learn. And as long as I feel like that I'm
11 doing a decent job at it, I'd like to continue doing it.

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

14 A. Well, I hold when I'm -- when I'm working, I hold
15 court three weeks out of every month. And so you could say
16 that I work at least that amount of time. And the weeks
17 that I'm off, I go to the office.

18 I'm fortunate in that Julie Armstrong, the Clerk
19 of Court in Charleston, has provided me with an office, in
20 the suite of offices with Judge Roger Young. So I go to
21 the office, even during the weeks that I'm off in the
22 morning.

23 And I always find something to do. I'm kind of
24 like an extra spare tire, or whatever you want to call it,
25 as far as the judges in the judicial business in Charleston

1 is concerned.

2 Q. Would you wish to alter this workload if you were
3 reappointed?

4 A. No.

5 Q. What do you think your reputation is among
6 attorneys that you practice -- that practice before you?
7 Excuse me.

8 A. That's a hard question to answer. I hope it's
9 that I'm a fair judge.

10 Q. Thank you. The Commission received 343 ballot
11 box surveys regarding your candidacy, with 34 additional
12 comments. The ballot box survey, for example, contained
13 the following positive comments, among many others:

14 "Judge Hughston is always fair, picks up on
15 complicated issues quickly, and focuses in on what matters.
16 He's a practical judge. And I'm always pleased with the
17 cases assigned to him, knowing we'll get a fair result."

18 Four of the written comments expressed concerns.
19 One comment stated, "He tends to make up the law as he sees
20 it." How would you respond to this comment?

21 A. Well, I hope that I don't do it very often.
22 Sometimes you -- sometimes you think that this is the way
23 the law is trending, or going, and you think that this
24 should be a case that you should maybe stick your neck out
25 a little bit and try to, you know, move the law along in

1 the direction that you think it should be going. You know,
2 I hope I don't do that very often.

3 **Q. Thank you. The others said, "Interjects his**
4 **thoughts and opinions of witnesses in front of the jury**
5 **panel."**

6 A. I don't do that.

7 **Q. Thank you.**

8 MR. DAVIDSON: At this time, Mr. Chairman, I
9 request that we go into executive session.

10 CHAIRMAN SMITH: Representative Murphy moves
11 that we go into executive 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. We stand
16 in executive session.

17 (Off the record from 11:48 a.m. to 11:54 a.m.)

18 CHAIRMAN SMITH: We've just come out of
19 executive session. And just let me -- we're back on the
20 record. Let me say for the record, that there's been --
21 while we were in executive session, no decisions were made
22 and no votes were taken. Thank you. Continue, Mr.
23 Davidson.

24 MR. DAVIDSON: Thank you. The Low Country
25 Citizens Committee found Judge Hughston to be well

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

7 I'd also note for the record, that any
8 concerns raised during the investigation regarding Judge
9 Hughston, were incorporated into my questioning today.
10 Mr. Chairman, I have no further questions. Thank you,
11 Judge Hughston.

12 CHAIRMAN SMITH: All right. And thank you.
13 Any questions for Judge Hughston?

14 (Hearing none.)

15 CHAIRMAN SMITH: Judge Hughston, this will
16 conclude your portion -- oh, I'm sorry. Representative
17 Murphy.

18 REPRESENTATIVE MURPHY: I don't really have
19 a question. But I've known Judge Hughston for a long time,
20 and I want to say that he is one of the most active, active
21 retired judges that we have. He holds court a lot in
22 Charleston. I had the pleasure of -- when I was a young
23 prosecutor in Orangeburg, Judge Hughston held court there a
24 lot. And his daughter and son-in-law live in Summerville,
25 and they are fine, outstanding people. And I consider him

1 to be a friend. And he is an asset to the judiciary. I
2 just want to make that known.

3 JUDGE HUGHSTON: Thank you.

4 CHAIRMAN SMITH: All right. Senator Young.

5 SENATOR YOUNG: Thank you, Mr. Chairman.

6 Judge, I just want to thank you for your interest in
7 continuing to serve the state in your capacity as a circuit
8 judge. And I also want to compliment you on the number of
9 ballot box comments that were extremely complimentary, and
10 recognized your judicial acumen and your demeanor on the
11 bench. I wanted to thank you for that.

12 JUDGE HUGHSTON: Thank you.

13 CHAIRMAN SMITH: Any further questions?

14 (Hearing none.)

15 CHAIRMAN SMITH: Judge Hughston, this will
16 conclude your portion of it. And I appreciate your
17 service. Thank you for what you do. I want to kind of say
18 the same thing, if you're holding court three weeks out of
19 the year, I think you're probably the most active, active
20 retired judge that we've seen so far.

21 JUDGE HUGHSTON: Well, I have been doing
22 that -- I have been doing that for ten or 15 years, however
23 long it's been now. But actually, the last couple of years
24 I'm now on a three-month-on, three-month-off situation
25 where I work three months and I'm off three months, I work

1 three months and I'm off three months. So I am slowing
2 down a little bit.

3 CHAIRMAN SMITH: Well, I hope they give you
4 the summers off.

5 JUDGE HUGHSTON: That is right. That's
6 right. That's correct. Thank you.

7 CHAIRMAN SMITH: All right. Thank you,
8 Judge. I appreciate you coming.

9 (Candidate excused.)

10 CHAIRMAN SMITH: Ms. Cofield, how are you
11 doing today?

12 MS. COFIELD: I'm good. How are you?

13 CHAIRMAN SMITH: I'm well. Will you raise
14 your right hand, please, ma'am.

15 MS. COFIELD: Yes, sir.

16 WHEREUPON,

17 AMY VIRGINIA COFIELD, being duly sworn and
18 cautioned to speak the truth, the whole truth and nothing
19 but the truth, testifies as follows:

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

24 MS. COFIELD: Yes, sir.

25 CHAIRMAN SMITH: And are they correct?

1 MS. COFIELD: They are correct. I do need
2 to add one thing to my PDQ. Number 36 lists any claims or
3 cases that have been filed against me. There was an
4 initial case called "Glenda Couram v. Lora Shortt," in
5 magistrates court a few months ago, where Shortt was an
6 associate at my office. It was dismissed. And then the
7 pro se claimant filed an appeal to the court -- to the
8 circuit court, and at the appeal level she added my name to
9 the caption.

10 CHAIRMAN SMITH: Okay. All right. And so
11 we're going to make an oral amendment to your -- to your
12 responses, then, to add that case. Is that okay?

13 MS. COFIELD: That's great. Thank you.

14 CHAIRMAN SMITH: All right. So any other
15 changes or amendments that need to be made?

16 MS. COFIELD: No, sir.

17 CHAIRMAN SMITH: All right. And so do you
18 have any objection to making these documents, or any
19 amendments, as part of the record of your sworn testimony?

20 MS. COFIELD: No, sir, that's great.

21 CHAIRMAN SMITH: If you'll hand that to
22 Lindi, please, ma'am.

23 MS. COFIELD: I sure will.

24 CHAIRMAN SMITH: And we will make that a
25 part of the record.

1 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
2 COMMISSION PERSONAL DATA QUESTIONNAIRE OF AMY
3 VIRGINIA COFIELD)

4 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION
5 COMMISSION SWORN STATEMENT OF AMY VIRGINIA
6 COFIELD)

7 (EXHIBIT NO. 5 - AMENDMENT TO THE PERSONAL
8 DATA QUESTIONNAIRE OF AMY VIRGINIA COFIELD)

9 CHAIRMAN SMITH: I see you've got some
10 people here with you today.

11 MS. COFIELD: I do.

12 CHAIRMAN SMITH: Would you like to introduce
13 them to the Commission?

14 MS. COFIELD: I would love to. I have, I
15 say, my two partners in the world. The first is my
16 husband, Jimmy Terrapin. Jimmy is an IT manager at
17 Colonial Life. And we'll be celebrating our tenth
18 anniversary next month. And my other partner is my work
19 partner. And that would be my brother, Tommy Cofield.

20 CHAIRMAN SMITH: Welcome, Tommy.

21 MS. COFIELD: He's been my partner for 16
22 years now. They're my cheerleaders.

23 CHAIRMAN SMITH: Well, good. Good. Glad to
24 have y'all. Ms. Cofield, the Judicial Merit Selection
25 Commission has thoroughly investigated your qualifications

1 for the bench. Our inquiry has focused on nine evaluative
2 criteria, and has included a ballot box survey, a thorough
3 study of your application materials, verification of your
4 compliance with state ethics laws, a search of nine
5 evaluative criteria in which your name appears, and a study
6 of previous screenings, as well as conflicts -- checks for
7 conflicts of interest.

8 We have received no affidavits, today, filed
9 in opposition to your candidacy, and there are no witnesses
10 here to testify. Do you wish to make a brief opening
11 statement to the Commission?

12 MS. COFIELD: I just -- I just thank you for
13 having me here. I'm humbled by the process, and I look
14 forward to answering your questions.

15 CHAIRMAN SMITH: Thank you very much. Will
16 you answer any questions that Ms. Benson may have for you.

17 MS. COFIELD: Sure.

18 MS. BENSON: Thank you, Mr. Chairman.

19 EXAMINATION BY MS. BENSON:

20 **Q. Mrs. Cofield, will you tell us how that you feel**
21 **your legal and professional experience thus far renders you**
22 **qualified and will assist you to be an effective circuit**
23 **court judge?**

24 A. Yes, ma'am. I have a very varied background. I
25 have three degrees. In education, I received a bachelor's

1 and a master's degree. I actually taught elementary school
2 for several years before going to law school. Having an
3 education background, in and of itself, provides you with a
4 lot of good information to take over to the legal field
5 that you would never imagine you could use again. But you
6 certainly do.

7 In my years of practice, I have been practicing
8 for 26 years. In the first half of my career, I practiced
9 in Anderson, South Carolina, for many years with my dad, a
10 few years before he passed. And after he passed away, I
11 went solo for about seven years before coming to Lexington,
12 South Carolina, and then going into practice with my
13 brother.

14 My work has been very widespread over my history.
15 I'm very proud that I have uniquely been able to represent
16 both plaintiffs and defendants on both sides. Not all
17 people were able to do that. In addition, because I have
18 been a small practice law firm, I've had the unique
19 opportunity to work in a lot of different areas.

20 I've actually practiced before ten different
21 tribunals or court systems. And I don't think you can find
22 many lawyers who've actually appeared before ten. I think
23 that's a good experience. So you've got good things to
24 compare and contrast, and always the -- similar legal
25 things that you can take from one to another.

1 But I think it gives me a widespread background
2 and ability to serve at the circuit court.

3 **Q. Mrs. Cofield, the Commission received 103 ballot**
4 **box surveys regarding you, including 14 with additional**
5 **comments. Six of those 14 were negative. There were many**
6 **favorable comments, commending you as being a zealous**
7 **advocate, having impeccable character, being intelligent**
8 **and hardworking, and being well qualified.**

9 **Two of the negative comments expressed concern**
10 **about your limited experience. What response would you**
11 **offer to these concerns?**

12 A. I think a lot of people are not aware of my
13 experience. People in the local area are not aware, for
14 instance, that my first 16 years of practice in Anderson
15 County consisted of a whole lot more circuit court work, in
16 varied areas of practice, than maybe they have in the past
17 few years.

18 But in fact I have done those, maybe, that they
19 just aren't aware of those. More frequently in the past
20 few years, my areas of practice have been primarily in the
21 areas of workers' comp and some probate litigation. And I
22 do still have circuit court cases now.

23 I think, presently, I have three pending in the
24 circuit court, two settled just in the past couple of
25 weeks. So circuit court work is something I have always

1 done, just not probably most known for that work.

2 **Q. Thank you. The other negative comments**
3 **questioned, first, your biased conduct toward others;**
4 **second, motives for seeking the judgeship; third, knowledge**
5 **of the civil procedure rules; and fourth, having a tenuous**
6 **relationship with the truth. How would you respond to**
7 **these concerns?**

8 A. Well, you know, 26 years of practice -- I think
9 one of the comments said I was difficult. I think I'm okay
10 with that in 26 years. I think we've all had moments where
11 we've had to be difficult. Now, I've never been, that I
12 know, biased towards anybody. I've been -- gone out of my
13 way, really, to see both sides, to represent both claimants
14 and defense -- you know, clients in the workers' comp arena
15 as well as in the circuit court.

16 So, you know, I think we have to take it with a
17 grain of salt. I don't feel that they're legitimate. But
18 in 26 years, I'm very proud of my history. I'm proud of my
19 record and my reputation. And I feel very comfortable with
20 it, going forward.

21 **Q. Mrs. Cofield, you've indicated in your PDQ that**
22 **you were a defendant in a foreclosure lawsuit in 2010. And**
23 **would you please explain the disposition of that lawsuit?**

24 A. Yes, ma'am. I was an investor in a -- in a
25 company who had bought a piece of property. And the

1 investment company kind of went belly-up during the real
2 estate financial crisis, and it ended up going to
3 foreclosure. It eventually was not foreclosed. I think
4 they came up with a seller. But that's what that was.

5 Q. Thank you.

6 A. Sure.

7 Q. Your SLED report also indicated ten other civil
8 suits that we spoke about in our conference. And would you
9 please just explain, briefly, the nature and the
10 disposition of these lawsuits that came back on the SLED
11 report?

12 A. Absolutely. You know, it's funny, when we met I
13 couldn't even remember a lot of these things. And I guess
14 that's what happens over 26 years. It also shows some of
15 my experience, though. I've not only experienced the court
16 system as an attorney, I have been in litigation, myself,
17 and have also been a victim in a criminal case. It does
18 give me a bigger variety.

19 However, to address these cases as I research
20 back, I think four or five, maybe six, of them were
21 eviction actions. When I was in Anderson, in what I call
22 my first life, I had some rental properties and had some
23 evictions with those.

24 I'm trying to remember the other couple on the
25 list. There were a couple of actions, that I was involved

1 with, for fee recovery from a law firm. And then the
2 foreclosure you mentioned, is that it? Okay. Good.

3 **Q. And also our research revealed that you were a**
4 **plaintiff in an action before the State Ethics Commission,**
5 **that involved Commissioner Huffstetler. And will you**
6 **please tell the Commission a little bit about that**
7 **particular action?**

8 A. Yes, ma'am. A very difficult situation arose
9 when I was at a workers' comp hearing, where the
10 commissioner committed some ethical violations. After the
11 hearing, there happened to be about six attorneys involved
12 in this case when we were in Charleston. And we all knew,
13 after it was over, that we had the duty to report this
14 commissioner to the Ethics Commission.

15 Ultimately, we did. I had to go through a lot of
16 process, really very difficult, with the workers' comp
17 commission with recusals. And then eventually had to
18 appear at the -- at the ethics hearing. He was dismissed
19 from the workers' comp commission as a result of that.

20 **Q. Thank you, Ms. Cofield.**

21 MS. BENSON: Mr. Chairman, at this point I
22 would request that we now go into executive session.

23 CHAIRMAN SMITH: Senator Rankin moves that
24 we go into executive session. All in favor say "aye."

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

1 CHAIRMAN SMITH: All opposed say "no."

2 (Hearing none.)

3 CHAIRMAN SMITH: The ayes have it. We're
4 going into executive session. We'll clear the room.

5 (Off the record from 12:10 p.m. to 12:15 p.m.)

6 CHAIRMAN SMITH: We're going back on the
7 record. And let me state that while we've been in
8 executive session, no decisions were made and no votes were
9 taken. So you may proceed.

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

11 EXAMINATION RESUMED BY MS. BENSON:

12 **Q. Ms. Cofield, you've spoken a little bit about**
13 **your diverse background, and particularly in education.**
14 **And I note for the record, that at one point you ran for**
15 **Superintendent of Education. How do you feel that your**
16 **experiences with your degree and your work in education,**
17 **and also your experience in running for a statewide public**
18 **office, will be of benefit to you if you were elected to a**
19 **judicial position?**

20 **A. My experiences in education have been**
21 **overwhelmingly helpful. It's funny, I always explain to**
22 **people who talk about going into law school and things, how**
23 **my background in education, and learning how to teach**
24 **elementary school fifth-grade students a lesson, carried**
25 **over into the courtroom.**

1 You go before your jury and you explain to them,
2 "This is our lesson today. This is what we're going to do
3 today," and then you teach it to them. And then at the end
4 of, you close your lesson out. And that's exactly what we
5 do in a jury trial. You want to teach your jury what your
6 case is about, and why you should win.

7 I am a very strong proponent of, hopefully, doing
8 the right thing. I got in the race for State
9 Superintendent of Education because I saw some very
10 negative things happening in my own school district, as my
11 children were going through schools. I'm sure you heard
12 about the implement -- the implementation of Common Core
13 and issues like that.

14 And with my background in education, I knew that
15 the way that our children were being taught, was not the
16 way they learned best. And so I -- if I'm going to speak
17 it, I'm going to walk it. And so I made an effort to try
18 to make some changes in that area. And that's why I ran.

19 **Q. Thank you. Ms. Cofield, a few housekeeping**
20 **issues. Are you aware that as a judicial candidate, you're**
21 **bound by the code of judicial conduct as found in Rule 501**
22 **of the South Carolina Appellate Court Rules?**

23 A. Absolutely.

24 **Q. And since submitting your letter of intent, have**
25 **you contacted any members of the Commission about your**

1 **candidacy?**

2 A. No, ma'am.

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

6 A. No, ma'am.

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

11 A. No, ma'am.

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

15 A. Yes, ma'am.

16 MS. BENSON: Mr. Chairman, I would note that
17 the Midlands Citizens Committee reported Ms. Cofield to be
18 unqualified in the evaluative criteria of experience. She
19 was found to be well qualified in the economic conflicts of
20 interest of ethical fitness, professional and academic
21 ability, character, reputation and judicial temperament.

22 She was found qualified in the remaining
23 evaluative criteria of constitutional qualifications,
24 physical health and mental stability. The Committee noted
25 that Ms. Cofield's excellent temperament, experience, and

1 knowledge of the law, particularly in the -- that she had
2 excellent experience -- temperament, experience, and
3 knowledge of the law, particularly in the field of workers'
4 compensation.

5 In summary, the Committee stated: "Ms.
6 Cofield has practiced extensively in the field of workers'
7 compensation, but she has practically no experience in the
8 circuit court, which makes her unqualified for this
9 position."

10 BY MS. BENSON:

11 **Q. Ms. Cofield, would you like to respond to the**
12 **Midlands Committee?**

13 A. Yes, ma'am. I think I explained a little before,
14 while I -- why I believe some of the local citizens
15 committee is not aware of my experience. I have been more
16 known in the past few years for my workers' comp progress,
17 I guess. But I have maintained for 16 years, work in the
18 circuit court work world.

19 I wanted to give you an example to show why I
20 feel our citizens, maybe, of the Lexington area are not
21 always aware of what we do. We have this local magazine
22 called Lexington Life Magazine, and they vote for the "best
23 of." I know you've seen that around. There were three
24 categories for an attorney: Best Real Estate Attorney, Best
25 Family Law Attorney, and Best Litigation Attorney.

1 I was nominated for the best Real Estate
2 Attorney, which is great 'cause I do -- I do real estate.
3 And I was also nominated to be the best family law
4 attorney. I don't do family law. I did, some 25 years
5 ago. But, you know, to me that kind of explains that, you
6 know, citizens may not be very aware of all the work that
7 we do.

8 And I do have a very varied background in the
9 area, and have proven that I am capable of taking on new
10 and complex types of litigation. And I'm not afraid to
11 learn it. I'm certainly capable of learning it. And I
12 will carry that forward if I'm elected.

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

17 And, Mr. Chairman, I have no further
18 questions.

19 CHAIRMAN SMITH: All right. Thank you. Any
20 questions for Ms. Cofield? Representative Murphy.

21 REPRESENTATIVE MURPHY: Thank you, Mr.
22 Chairman.

23 EXAMINATION BY REPRESENTATIVE MURPHY:

24 **Q. Ms. Cofield, thank you, first, for offering to**
25 **serve in this position. I want to kind of follow up with**

1 some of the questions on the experience. Because that was
2 highlighted a lot that you don't have, not only any general
3 sessions experience, but any circuit court experience, and
4 you're offering for a circuit court judgeship.

5 A. Yes, sir.

6 Q. Have you -- I mean, do you have any jury trial
7 experience?

8 A. Yes, sir.

9 Q. How much? I mean, have you --

10 A. Well, I was --

11 Q. -- selected a jury in circuit court?

12 A. Yes, sir. I was trying --

13 Q. General sessions?

14 A. -- to find my list of cases I had done, to talk
15 to you about. Of course, I had done jury trials. Early in
16 my practice, I did several jury trials that resulted from
17 car accidents, truck accidents. I assisted my father in a
18 survival wrongful death action. Those are the jury trials
19 I have participated in as a --

20 Q. Do you have any --

21 A. -- as a litigator.

22 Q. -- general sessions experience?

23 A. No, sir, I do not have any general sessions
24 practice. I've focused my career mostly in the civil area,
25 and doing a lot of areas in the civil area

1 **Q. When would be the last time that you -- as far as**
2 **any court -- the court of common pleas, when's the last**
3 **time that you participated in a contested common pleas**
4 **civil case?**

5 A. That actually went before the jury? Probably
6 seven or eight years ago. There are a lot of cases that I
7 do in circuit court. And if you're aware, the circuit
8 court judge has to do a lot more than jury trials. You
9 have appeals from probate court and you have appeals -- you
10 used to have appeals from workers' comp that were there.

11 And you do have the criminal, of course. And I
12 have attempted to make effort to start being -- learn a lot
13 of that on my own. This year I spent my summer vacation,
14 instead of reading fun books on the beach, I read Professor
15 McAninch's study on criminal law in South Carolina.

16 So I know that I'm capable of learning and
17 applying the things that I've used in other courts to the
18 criminal court arena.

19 **Q. Have you represented anybody in magistrates**
20 **court/criminal court?**

21 A. No, sir, not criminal. Other than to go for a
22 ticket, or something to that effect.

23 **Q. Thank you.**

24 CHAIRMAN SMITH: Any further questions?
25 Senator Young.

1 SENATOR YOUNG: Thank you, Mr. Chairman.

2 EXAMINATION BY SENATOR YOUNG:

3 Q. Ms. Cofield, thank you so much for your interest
4 in serving on the circuit bench.

5 A. Thank you.

6 Q. I have two questions. One is, how would you
7 describe your judicial philosophy with respect to the
8 application of the law, to the facts that are -- would be
9 before you if you were elected to the circuit court?

10 A. I am more of a conservative. I do not believe
11 the judiciary is put in place to make laws. Even though we
12 may not agree with them, sometimes, the law is the law.
13 And it's not a judiciary's place to make statements or
14 change them.

15 Q. How familiar are you with -- you come from a
16 small practice --

17 A. Yes, sir.

18 Q. -- just you and your brother.

19 A. Yeah, now.

20 Q. Right. And you've practiced --

21 A. We've had about five -- four or five people.

22 Q. And before that you practiced solo practitioner,
23 and then also with your father in Anderson?

24 A. That's correct.

25 Q. So you've been in a small firm, pretty much your

1 **entire legal career.**

2 A. Yes, sir.

3 **Q. So is it fair to say that you are very familiar**
4 **with the challenges that face lawyers from small practices**
5 **who are pulled from one court to the next?**

6 A. Absolutely. As a matter of fact, it's -- in
7 considering my history with circuit court, and why I began
8 to focus more on workers' comp, was the scheduling. When I
9 was a young lawyer, about 15 or 20 years ago, I had young
10 children. And scheduling in workers' comp was very easy,
11 you knew a month ahead of time when your hearing was going
12 to be.

13 In circuit court, you didn't. The dockets are
14 difficult. They're difficult for attorneys, they're
15 difficult for our clients, and they're difficult for juries
16 and witnesses. I think my experience in dealing with ten
17 different tribunals, would hopefully bring some new ideas
18 to the circuit court, in how to improve efficiency and
19 improve those docket problems that arise.

20 Certainly, I hope to be a judge who doesn't
21 forget where I came from, that I know the difficulties that
22 attorneys face in scheduling and getting all those people
23 to where they need to be.

24 **Q. And you've mentioned the ten tribunals.**

25 A. Uh-huh.

1 **Q. And I don't know if you've said all -- what they**
2 **all are. I may have missed that, but do you mind --**

3 A. I don't. Let's see if I can remember. I lost my
4 place. Social Security Administration, the Unemployment
5 Administration, the workers' comp arena, the Ethics
6 Commission, the Circuit Court, the magistrates court, the
7 Court of Equity, the Court of Appeals and the Supreme Court
8 -- and I think I left one out, but there's one in there
9 somewhere.

10 **Q. Well, let me --**

11 A. I counted ten.

12 **Q. Another question I have is: You have a mediation**
13 **practice?**

14 A. Yes, I do.

15 **Q. And do you mediate cases that are workers' comp**
16 **cases?**

17 A. I do workers' comp, I do probate, and I've done
18 some accident cases as well.

19 **Q. Do you have -- you've mediated some cases that**
20 **are civil cases that would be in the circuit court.**

21 A. Yes, sir.

22 **Q. And how much time do you think your mediation**
23 **practice currently takes per month?**

24 A. Oh, probably a percentage? Five to ten percent.

25 **Q. Thank you so much.**

1 A. Thank you.

2 CHAIRMAN SMITH: Senator Rankin.

3 EXAMINATION BY SENATOR RANKIN:

4 **Q. Ms. Cofield, I likewise want to thank you for**
5 **offering for this position. I'm current, and you may have**
6 **answered this earlier: Have you tried a case in circuit**
7 **court to verdict?**

8 A. Yes, sir. In my early career I tried several,
9 both for the plaintiff and the defense in circuit court and
10 magistrates court, too, to a verdict.

11 **Q. And what type cases were those?**

12 A. Car accident cases. I may have had a breach of
13 contract case as well, that tried to verdict. You know,
14 most of our cases get settled. Like I said, I currently
15 have three pending cases that include two disputes over
16 easements, and two recently were settled. And lease
17 disputes, I had that as well.

18 **Q. And then criminal cases to verdict?**

19 A. None. I have not handled criminal cases to
20 verdict.

21 **Q. You might have been asked that earlier. And**
22 **we've heard --**

23 A. I was a victim in a criminal case. That was my
24 only experience, really, in the criminal court.

25 **Q. And that's where, more and more, we're hearing**

1 that the trial -- the active trial practice is in terms of
2 cases being tried to -- civil side to verdict. Horry
3 County, only 16 civil cases tried to verdict, as we've
4 heard about Greenville.

5 So the discussion -- and one of the concerns that
6 I had coming into this, with anyone offering, is are they
7 either experienced in this, or can they learn it?

8 And you have certainly spoken to some of perhaps
9 the most boring reading by the beach, of anyone I've ever
10 heard. It makes great testimony here. But your family had
11 to look at you, kind of like I'm looking at you in a --
12 your husband is looking away. For the record, let it
13 reflect. And I would share his --

14 A. I told him some stuff.

15 Q. He wasn't interested in that, I can guarantee it.
16 But that is a concern from the practical standpoint, not
17 the book sense alone, but being in the trenches and trying
18 cases. And perhaps the rap the Citizens Committee has made
19 on you in this one area, is that your -- a lack of
20 knowledge of your, one, reading the book, and your earlier
21 -- earlier practice.

22 How do you respond to the concern, from the
23 practical standpoint, that you would have a steep learning
24 curve, or, perhaps -- or, perhaps, you'd say no learning
25 curve at all?

1 A. I'm not going to say I won't have any learning
2 curve. I'll say I'm completely capable, and have shown a
3 history of taking on new and complicated legal issues, and
4 being able to move from one subject matter to another.

5 There are things that you would do as a judge in
6 a criminal case, that you would always do as a judge in a
7 civil case. You've still got to -- have to deal with
8 evidence, with the submission of evidence, rules of
9 evidence, how to run a hearing, how to poll a jury. That
10 kind of stuff.

11 I think there's a lot of learning to take place.
12 I think I'm capable of it. I think, certainly, my book-
13 reading will be a good start. I will have mentors to help
14 me, and will certainly make all efforts to get involved,
15 immediately, in learning the process.

16 **Q. The last question: In terms of your run for**
17 **Superintendent of Education, that was how long ago? Was**
18 **that against --**

19 A. Three years? Two? Molly Spearman our current --

20 **Q. That was a primary challenge you had --**

21 A. Yes.

22 **Q. -- against her.**

23 A. There were eight of us running.

24 **Q. In the experience category, what did the -- that**
25 **campaign and that -- the loss, perhaps, you might consider**

1 **it an actual victory? What did that give you, that you**
2 **would apply to the bench if you --**

3 A. Well, it certainly gives you hard work. I had
4 never been a politician before. And I jumped in a race of
5 eight people, and traveled the state, and I learned real
6 quickly how to be a politician, I guess.

7 But it made me strong. It made me confident.
8 And I think those are good qualities. It made me not
9 afraid to try new things, else I wouldn't be here today.
10 And I think I can carry that forward, in a positive way, to
11 our circuit court.

12 CHAIRMAN SMITH: Any further questions?

13 Mr. Safran.

14 EXAMINATION BY MR. SAFRAN:

15 Q. I share, I guess, an appreciation for your coming
16 today. I certainly encourage everybody to follow their
17 heart, if this is what you choose to do.

18 I think you touched on this a minute ago, but
19 just for the sake of explanation, in workers' comp you
20 obviously will have to do things that are very similar, if
21 not in many ways the same as what goes on in --
22 particularly the civil end of the circuit court.

23 A. Right.

24 Q. You do depositions.

25 A. Yes, sir.

1 Q. And have to basically prepare witnesses.

2 A. Yes, sir.

3 Q. You have to learn how to do examination of
4 witnesses.

5 A. Yes, sir.

6 Q. You have to be -- even though I know there's a
7 body of law that talks about evidence not applying to
8 practical matter, the rules of evidence of what you deal
9 with in every hearing you to go.

10 A. That's exactly right.

11 Q. And, you know, beyond that in terms of when you
12 get into the appellate level, with the commission they're
13 the same thing: The research, trying to understand what the
14 law is, applying it to the particular fact. So you've had
15 that experience.

16 A. Yes, sir.

17 Q. And I think we've all heard that -- again,
18 circuit court seems to be kind of shifting to where the
19 focus is far more on the criminal end. And you recognize
20 that.

21 A. Yes, sir.

22 Q. And, candidly, I think -- you know, we've all
23 talked about the need for experience in certain areas. I
24 mean, do you feel like based on your background, that at
25 least you have the potential to be able to do those type of

1 **things that would be necessary to run a court, whether it**
2 **be on the common pleas side or the general --**

3 A. Absolutely. I feel very confident with my
4 history. I've run a business. I've managed the -- my law
5 firm. I've managed it to be a very successful business.
6 That and my history -- I get disappointed, Mr. Safran, I
7 know you do, too, to hear people almost kind of put down
8 workers' comp like it's -- like it's not important.

9 Clearly, it is. And we do -- although we're
10 before a commissioner and not a jury, you still have all
11 the rules of evidence, all the preparation that you just
12 talked about that you have to deal with.

13 Not only that, I've established that my ability
14 to argue the law has been very successful through my
15 actions and my reported cases at the Supreme Court and the
16 Court of Appeals, that I'm very proud of. And, you know,
17 that's just another -- another place that offers experience
18 in a general area.

19 No, my past has not been in the criminal court.
20 But I feel very confident that with my background, I can
21 carry over and learn. And I feel like I have the honesty
22 and fairness, and that I'm respected enough to bring a
23 good, positive change to my circuit.

24 Q. One just last thing I wanted to ask you is: I
25 know in prior hearings, we have certainly found that it was

1 a very important aspect that candidates be aware of what
2 Mr. Young -- or Senator Young asked you about, recognizing
3 that life involves more than just being at the office, and
4 that lawyers have demands on them that, nowadays, really
5 exceed what they may have been 20 years ago.

6 Do you bring, maybe because of the experience
7 having worked with the commission, at least in these days,
8 seems to be far more flexible in terms of scheduling --

9 A. Right.

10 Q. -- a recognition of the need for that at the
11 circuit court level?

12 A. Absolutely. I see a lot of need. And from
13 conversations that I've had with people in the criminal
14 area, lately, I think there can be some proactive measures
15 taken to help with that docket situation, and clear out
16 some old cases that, certainly in my circuit, are
17 lingering.

18 And I think with a proactive judiciary, you know,
19 you can do the kind of things that we do in workers' comp
20 or in other tribunals, with status conferences more
21 frequently, and getting involved in attempting mediations
22 and things to that effect, to bring those cases to court
23 instead of languishing, like they appear to be doing for
24 years.

25 Q. Thank you, again.

1 A. Thank you.

2 EXAMINATION BY CHAIRMAN SMITH:

3 **Q. All right. Ms. Cofield, let me -- let me follow**
4 **up with some of these questions. I heard you say earlier,**
5 **to Mr. Safran's question, bring some changes to your**
6 **circuit. What changes are you talking about, that you**
7 **would like to see in your circuit?**

8 A. Primarily, in the criminal area. Because that
9 appears to be where our backlog of cases is. I think what
10 I'm finding is, that our circuit court docket is running
11 very well with the ABC kind of method. But the criminal
12 court is not running quite as effectively because of too
13 much backlog.

14 I think made some proactivity on behalf of the
15 judiciary, to push these -- you know, more meetings, more
16 gatherings to see where we are, more day certains. A
17 little more push to get this backlog through the system.

18 **Q. We've been dealing with some of this, we're**
19 **dealing with sentence reform in the General Assembly now,**
20 **and ways to deal with reentry and alternative courts and**
21 **things to that effect. What's your position on alternative**
22 **courts, such as the mental health court, the drug courts,**
23 **and veteran's courts, things to that effect?**

24 A. Well, obviously, I believe that the mediation
25 efforts have helped tremendously in the circuit court, and

1 workers' comp as well. I think that they are -- they would
2 be, you know, helpful to help get these cases moved so they
3 don't sit there. And, certainly, these kind of cases
4 require a little more knowledge or specific services to
5 take care of them.

6 Q. And I think you've been answering this throughout
7 it, you're successful in your pursuits here in -- on the
8 bench, and I think you've talked about how you've been a
9 lawyer for 26 years, I believe, in small firms. And,
10 obviously, you're doing what a lot of us do; you're engaged
11 in multiple areas of the practice, because that's how
12 you've got to make a living in a small firm.

13 A. That's right.

14 Q. And when -- you know, lawyers, from time to time,
15 are going to come to you as you're -- as a circuit court
16 judge, and say, you know, "I've got a deposition over here
17 that's been scheduled for months, Judge. And I know I've
18 got a hearing before you," or someone wants a trial or --
19 you know, even to the issues of, "My child has a baseball
20 game, today, at four o'clock." How are you going to handle
21 those issues as a circuit court judge, if you were
22 successful?

23 A. What kind of baseball game? You know, you learn
24 through trial and practice, I can certainly tell you in the
25 workers' comp arena, the attorneys who will make a move to

1 not show up, who will not answer discovery and that sort of
2 thing. I think you also learn in practice, those attorneys
3 who are going to routinely not be ready for court, who are
4 going to ask for extensions, who are not going to come
5 forth with their discovery and so forth.

6 You have to be -- you have to be knowledgeable
7 that we are humans and we have things that happen.
8 However, to do it over and over again, like there are those
9 who do it, you know, that's not appropriate. And sometimes
10 you've got to hold people to the fire, and sometimes you
11 have to be difficult, like I have been called before. But
12 I think that's part of the process.

13 **Q. And when you're talking about the criminal**
14 **experience and, you know, obviously, judges -- and you've**
15 **heard this -- is where you're going to see a lot of the**
16 **criminal trials, or trials that's in the general sessions**
17 **court. And that's where mostly trials are occurring.**

18 But also you're going to be called upon to take
19 into consideration a whole host of issues; you hear from
20 victims, you hear from solicitors, you hear from defense --
21 defendants and their families and all that. And, you know,
22 how -- what's going to be your philosophy, as you -- as you
23 hear it, on your sentencing and on your -- on the way you
24 handle yourself in general sessions court?

25 A. Well, of course, I hope that I will develop, and

1 continue to develop, philosophy concerning that. You know,
2 in the guidelines for sentencing and stuff that I have
3 studied, brings back some of those education thoughts to
4 mind.

5 Because when you're teaching a child, you know
6 that each child comes to you with a different background.
7 Some children come to school and they haven't eaten,
8 haven't had food. I've had children who didn't have water
9 -- running water at home.

10 The same thing is going to happen in a -- in a
11 circuit court, whether it be criminal or civil, individuals
12 come to you with different backgrounds. And, you know,
13 those sometimes have to be taken into consideration.

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

16 (Hearing none.)

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

25 On that note, and as you know, the record

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

5 MS. COFIELD: I thank you as well. Y'all
6 have a nice day.

7 CHAIRMAN SMITH: All right. Y'all have a
8 nice day. Good to see y'all.

9 (Candidate excused.)

10 CHAIRMAN SMITH: Ms. Elder, how are you
11 doing today?

12 MS. ELDER: I'm good. Thank you.

13 CHAIRMAN SMITH: Will you raise your right
14 hand, please, ma'am.

15 WHEREUPON,

16 DONNA EARLS ELDER, being duly sworn and
17 cautioned to speak the truth, the whole truth and nothing
18 but the truth, testifies as follows:

19 CHAIRMAN SMITH: Ms. Elder, before you is
20 the data questionnaire and the sworn statement. Are these
21 documents that you've submitted to the Commission?

22 MS. ELDER: Yes, sir.

23 CHAIRMAN SMITH: Are they both correct?

24 MS. ELDER: Yes, sir.

25 CHAIRMAN SMITH: Does anything need to be

1 changed or updated at this time?

2 MS. ELDER: No, sir.

3 CHAIRMAN SMITH: Okay. Do you have any
4 objection to us making those documents and any amendments a
5 part of the record, today, of your sworn testimony?

6 MS. ELDER: No, sir.

7 CHAIRMAN SMITH: If you'll hand those to
8 Lindi, please, ma'am. And we're going to make those a part
9 of the record.

10 (EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION
11 COMMISSION PERSONAL DATA QUESTIONNAIRE OF DONNA
12 EARLS ELDER)

13 (EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION
14 COMMISSION SWORN STATEMENT OF DONNA EARLS ELDER)

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

24 We've received no affidavits in opposition
25 to your election today. And no one here -- no one has --

1 no witnesses are present to testify. Do you wish to make a
2 brief opening statement to the Commission?

3 MS. ELDER: Yes, sir. Thank you. Mr.
4 Chairman, and members of the committee, my name is Donna
5 Elder. And I first want to obviously thank you all for
6 serving. This is not an easy job. It's a huge time
7 commitment for you all to be here. And I appreciate that,
8 and what you do. And it's a difficult job to do what you
9 do.

10 I have been practicing law for a little over
11 26 years. I started as an associate in Gaffney, South
12 Carolina. And I did a little bit of everything at that
13 time; primarily personal injury, products liability,
14 anything that the person I worked for asked me to do,
15 pretty much.

16 I went to a solo practice after that. In
17 that solo practice, I concentrated primarily in common
18 pleas. I didn't do a lot of criminal defense. Because I
19 didn't do a lot of criminal defense, I did get a lot of
20 opportunity to do and represent individuals in PCR
21 hearings.

22 During that time period, I did a little bit
23 of domestic work, some probate work. I was the retained
24 attorney for the Cherokee County School District. I served
25 as a part-time magistrate for a period of time. And I then

1 went to the parole board -- the juvenile parole board.

2 Once I was on the parole board for that
3 period -- for about six years, I could not be reappointed.
4 And I did not want to leave the juvenile system. And at
5 that time, then Solicitor Hembree had a opening for a
6 juvenile prosecutor. So I picked up and moved down to
7 Horry County, and stayed there for about 14 years.

8 I did juvenile prosecution for about a year
9 and a half, then moved over to general sessions. And
10 that's where I stayed for, the remainder of my time in
11 Horry County.

12 During the time that I was in general
13 sessions, I handled approximately 10,000 cases over that
14 period of time when I was there. I focused primarily on
15 violent crimes and the trials of those. I supervised about
16 three or four lawyers at any given time, and their
17 caseloads.

18 Also during that time period, I was able to
19 initiate a civil forfeiture matter, a civil forfeiture
20 program, in the solicitor's office, which allowed me to
21 concentrate on common pleas and general sessions.

22 During the time period that I handled that
23 program in the solicitor's office, I filed approximately,
24 on the average, of about 250 civil cases a year. That did
25 not include consent orders. Those were all contested

1 filings, where there was a summons and a complaint. The
2 discovery process, I did that while also maintaining my
3 criminal case load.

4 In 2014, I was offered a job by Rick Reames,
5 who was the director of DOR. I came up here to work for
6 him. And then an opportunity came and I got a call from
7 the Senate, and I came to the Senate and have been here
8 since.

9 When Judge McMahon announced his retirement
10 -- retirement, I thought it was a good opportunity for me
11 to take the next step. And I think I've had a unique
12 opportunity to position myself in just about every area of
13 the legal professional, and I believe I can contribute in a
14 positive way to the judiciary at this time.

15 CHAIRMAN SMITH: All right. Thank you.
16 Answer any questions that Counsel may have for you, ma'am.

17 MS. ELDER: Yes, sir.

18 MR. HINSON: Thank you, Ms. Elder.

19 MS. ELDER: Good afternoon.

20 MR. HINSON: Mr. Chairman, I note for the
21 record that based on the testimony contained in the
22 candidate's PDQ, which has been included in the report,
23 with the candidate's consent, Ms. Elder meets the
24 constitutional and statutory requirements for this
25 position, regarding age, residence, and years of practice.

1 EXAMINATION BY MR. HINSON:

2 Q. Ms. Elder, given your current employment with the
3 South Carolina Senate, please explain how you intend to
4 balance your candidacy with statutory and ethical rules
5 concerning judicial candidates.

6 A. When I decided to proceed and to put my name in
7 as a candidate, before I became a candidate, had
8 conversations, of course, with the majority leader, with
9 the clerk of the Senate, and reviewed the rules of what I
10 could do and what I couldn't do during the course of my
11 candidacy. So I am aware that there are limitations that I
12 will not be able to do during this period of time, and will
13 certainly make sure that I comply with all those
14 requirements.

15 Q. Thank you. Ms. Elder, the Commission received 67
16 ballot box surveys regarding you, with 7 additional
17 comments. The ballot box survey, for example, contained
18 the following positive comments:

19 "Excellent legal scholar and extremely hard
20 worker." Another stated you were tough and fair and knew
21 the law better than anyone.

22 Twelve of the written comments expressed
23 concerns. Multiple comments questioned your lack of civil
24 experience, and your ability to remain impartial in
25 criminal cases, given your background as a prosecutor. How

1 **would you address those concerns?**

2 A. Well, I understand that lawyers that maybe didn't
3 -- I understand that a lot of civil lawyers, or lawyers
4 that are common pleas, may not be aware of me or have had a
5 lot of dealings with me, over a significant period of time.
6 And they may have some issue or some concern about that.

7 But I believe that I have -- I have a firm grasp
8 of the rules, and the evidentiary rules which will be --
9 certainly be important in any type of case, whether that's
10 common pleas or general sessions.

11 I think that I have had a number of years of
12 experience in common pleas, although they may not be recent
13 years of experience. I've had a large number of cases,
14 going through the common pleas system. And that includes
15 from the beginning to the end through trial. That includes
16 discovery. That includes interrogatories and it includes
17 depositions. It includes the pretrial motions. It
18 includes default judges, publication issues,

19 All of those things, I have certainly dealt with
20 and have had the opportunity to deal with down in Horry
21 County, or in Cherokee County, before that.

22 As far as impartial, I was a prosecutor for 13
23 years. And I know that sometimes, although lawyers have an
24 oath of civility, sometimes they don't come out of a
25 courtroom accepting -- accepting that. Especially if

1 they're not able to do what they think they should do, or
2 have told their clients they could do.

3 So I think that there's probably been over the
4 course of time, over that period of time, some lawyers who
5 probably don't care for me because of what I do and what I
6 did. But I can assure you that I believe in the judicial
7 system. I believe in being fair and impartial.

8 And over the years -- over 26-plus years, I've
9 learned that it's all about balance, and trying to find the
10 balance between doing what is right and representing my --
11 my position in the solicitor's office was to represent the
12 people, to represent the victims to -- to take in the
13 interest of the police departments and the people in
14 general, and to also be fair to the defendant. And I take
15 that very seriously.

16 So I would certainly apply that on the bench and
17 make sure that I responded appropriately to anyone and
18 everyone who came through the courtroom.

19 **Q. Thank you. You touched on this briefly, but**
20 **several of the written comments also questioned your**
21 **temperament and character in dealing with both opposing**
22 **counsel and fellow staff. Can you -- would you please**
23 **offer an explanation as to that?**

24 A. Sure. When I went to -- although I had
25 practicing for 13 years before I went to the solicitor's

1 office, going to the solicitor's office was a brand new
2 experience for me. It opened an area of the law that I
3 never had access to, or never participated in. So I kind
4 of felt like I was a first-year lawyer.

5 And I attacked my cases with zeal, and pursued
6 those with every -- with a hundred percent. I realized a
7 year or so in, after -- actually, a family court judge
8 called me to the bench during a trial one time, and said,
9 "You do realize that everyone doesn't deserve the death
10 penalty."

11 So he was obviously joking at the time, but it
12 did bring home a point that it wasn't just about
13 prosecution, it was about finding a balance. And it was
14 about having an open mind to what every side said, and not
15 just my side.

16 So I began a process at that point, of
17 reevaluating how I approached things. And I wasn't so
18 stringent. But as I know many of you probably have seen
19 over your years, that five minutes of being overzealous
20 takes 25 to 30 years to take away from. And once you get
21 that reputation, it's hard to break free from.

22 But I have focused on that, since that point.
23 And think I have reached a balance.

24 **Q. Thank you for that. One additional comment**
25 **questioned whether or not you had been sued by a client.**

1 **And I understand your PDQ, you stated that you had not ever**
2 **been sued by a client. Would you please clarify that for**
3 **the record.**

4 A. Yes. I haven't had a client in probably 18
5 years. But prior to that, I had never been sued by a
6 client. I never had a claim against my malpractice
7 carrier, my title insurance carrier. I never had any of
8 that.

9 **Q. Thank you. Additional comments questioned your**
10 **candor in court. How would you address that concern?**

11 A. I think that, that is probably the most shocking
12 to me, that someone would say that or someone would write
13 that in anonymously. Although, I understand anonymous,
14 there's no accountability for what someone may say.

15 I have been involved in the Bar, in the Ethics
16 Committee, for a number of years. And I take that ethical
17 approach throughout my career, in my personal life, in my
18 professional life. And I am honest to a -- probably to a
19 fault, some would say.

20 But I believe in that. And I believe in being
21 forthright with the court. As a matter of fact, I know the
22 Committee cannot and judges cannot give recommendations. I
23 understand that. But it's unfortunate, because I think the
24 judges that we practice in front of could give you a great
25 deal of insight as to the candidates that appear before

1 you.

2 And I feel confident in saying that any of the
3 judges that I spent a significant time in front of would
4 tell you there was absolutely no question in their mind
5 about my candor to them in making statements.

6 **Q. Thank you. One concern stated that in at least**
7 **one case, you hid evidence and did not provide that**
8 **evidence to the opposing side, or return it to its rightful**
9 **owner. Would you clarify that, please.**

10 A. I've never handled evidence outside of a
11 courtroom. The way we handle the office at the solicitor's
12 office during my time there, we had on-call weeks we were
13 required to go to crime scenes. That was part of it when
14 there was a loss-of-life case.

15 So I would certainly -- if it was two o'clock in
16 the morning, or eight o'clock Monday morning, we would be
17 at those crime scenes. And as the responding solicitor, I
18 never once touched evidence, held evidence, took evidence.

19 I was always with a crime scene, I would walk
20 through after they processed the scene. Per our policies,
21 I would -- if I noticed something that I thought would be
22 necessary for the case, or should have been taken, or
23 pictures that needed to be taken that maybe were
24 overlooked, I would ask the appropriate responding law
25 enforcement officer to do those things.

1 That's the only thing I can think of, that --
2 that, that maybe -- that may refer to. But I've never had
3 any issue in any of the trials that I've had, where that
4 handling of evidence by me was even a question raised in a
5 trial.

6 **Q. Thank you. Ms. Elder, you indicated in your PDQ**
7 **that a lawsuit was filed against you in 2011, by an inmate,**
8 **for return of property. Can you explain the nature and**
9 **disposition of this lawsuit?**

10 A. I didn't -- I wasn't even served. I think it was
11 a -- I think it was a inmate that filed in federal court.
12 It may have been state court. I can't remember. And it
13 was involving a -- I believe, a civil forfeiture.

14 **Q. Also, you indicated in your PDQ that a lawsuit**
15 **was filed against you in district court in 2013, by a Greg**
16 **Eliason. Can you explain the nature and disposition of**
17 **that lawsuit?**

18 A. Yes. I was involved in a long-term investigation
19 involving a motorcycle gang, and we brought forth charges.
20 During the course of those charges, the officers were
21 interviewing some of the people who were detained.

22 During those interviews, there was information
23 that was provided to the inter -- the officers interviewing
24 that. And an officer was involved in providing information
25 about road blocks and things like that.

1 I informed my boss, the solicitor, that, that had
2 come out in a interview. He then informed the chief of
3 police. The chief of police asked that officer to do a
4 polygraph and a drug test. He refused and resigned.

5 He then brought for wrongful termination against
6 myself, several officers, the department, the county --
7 there was several people involved. I was dismissed out of
8 that, after discovery, after depositions.

9 Q. Thank you. I have just a few housekeeping
10 issues.

11 A. Sure.

12 Q. Ms. Elder, are you aware that as a judicial
13 candidate, you are bound by the code of judicial conduct as
14 found in Rule 501 of the South Carolina Appellate Court
15 Rules?

16 A. Yes, sir.

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

20 A. No, I have not.

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

24 A. No, I have not.

25 Q. Have you asked any third parties to contact

1 members of the General Assembly on your behalf, or are you
2 aware of anyone attempting to intervene in this process on
3 your behalf?

4 A. No, I'm not.

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

8 A. I do.

9 MR. HINSON: I would note that the Midlands
10 Citizens Committee reported that Ms. Elder is qualified in
11 the evaluative criteria of constitutional qualifications,
12 physical and mental health, and well qualified in the
13 evaluative criteria of ethical fitness, professional and
14 academic ability, character, reputation, experience, and
15 judicial temperament. The Committee added that Ms. Elder
16 has considerable criminal experience, she has some civil
17 law experience, but it was some time ago.

18 Mr. Chairman, I would note for the record,
19 that any concerns raised during the investigation by staff,
20 regarding the candidate, were incorporated into the
21 questioning of the candidate today. And with that, I have
22 no further questions.

23 CHAIRMAN SMITH: All right. Thank you. Any
24 questions? Senator Young.

25 SENATOR YOUNG: Thank you, Mr. Chairman.

1 EXAMINATION BY SENATOR YOUNG:

2 Q. Ms. Elder, thank you very much for your interest
3 in serving and being a circuit court judge in South
4 Carolina. I have some questions.

5 A. Yes, sir.

6 Q. The first one is: How would you describe your
7 judicial philosophy with respect to the application of the
8 law to the facts that would be before you as a circuit
9 court judge?

10 A. I have had the opportunity in the past three
11 years to come back to the basic of reading -- actually
12 reading the law and not assuming what it says. I think as
13 a lawyer you get sometimes -- especially if it's something
14 you do on a regular basis -- you assume that you know what
15 the actual words say.

16 I think that I've had an opportunity to go back
17 and even learn now, I never knew that's what that statute
18 said. I think that first and foremost, it's important for
19 a judge to do to -- even though -- I think in every case
20 they should review before they try a case, for example, to
21 review the applicable statutes to make sure they know the
22 words there.

23 I think that judges are responsible for enforcing
24 the law as you all give it to us. And it is not our
25 position as a judge to set public policy. That is the

1 legislator's job.

2 Q. I notice from your PDQ that you were in private
3 practice in Gaffney?

4 A. Yes.

5 Q. It looks like eight or nine years.

6 A. It was from '91 to about 2001.

7 Q. Almost ten years?

8 A. Yes.

9 Q. And you were in a smaller firm during that time?

10 A. I was -- I started with Ken Holland, and was with
11 him for about a year and a half. And then I went to a solo
12 practice, where it was just me.

13 Q. So you had cases that were in multiple courts
14 when you were a solo practitioner; is that right?

15 A. Yes, sir, that is correct.

16 Q. And so you understood and learned as a solo
17 practitioner how you can be -- your time limitations, in
18 terms of being in one court versus being called to court in
19 another court, or having obligations associated with a case
20 in multiple courts, you know firsthand what those
21 challenges might be.

22 A. Oh, absolutely. I try to also -- although I was
23 on the other side of that in the prosecutor's office, I
24 certainly was mindful of that with the private lawyers that
25 came through as well. And I realized that they do have

1 other obligations than to just sit there in court, or to
2 just wait until their turn, to try to be efficient. And
3 also compassionate when trying to schedule things.

4 Things are going to come up beyond their control,
5 that we all need to have an understanding for, without
6 completely clogging up the court system, but we've got to
7 make sure that, that's sufficient as well. But we all need
8 to be able to bend a little bit when we schedule things.

9 **Q. Questions on the -- you were asked some questions**
10 **about some of the comments that came from the Bar, about, I**
11 **guess, your demeanor and some of the questions related to**
12 **your experiences in the solicitor's office. How many years**
13 **did you practice in the solicitor's office?**

14 A. I was there from 2001 till two thousand -- the
15 middle of 2014.

16 **Q. And you handled some very high-profile criminal**
17 **cases in Horry County?**

18 A. Yes, sir. I handled a multitude of high-profile
19 cases there. And they ranged from very complex murder
20 cases, that the public took a significant interest in, to
21 public corruption to some police officers. So there was --
22 there was always -- you know, you're never going to please
23 everybody by taking those types of cases.

24 **Q. So did you have -- I guess there was some high**
25 **stakes at play with the cases that you handled --**

1 A. Yes, sir.

2 Q. -- with members of the local Bar in the Grand
3 Strand. Is that fair to say?

4 A. Yes, sir, that is.

5 SENATOR YOUNG: I may have some additional
6 questions in a few minutes.

7 CHAIRMAN SMITH: Okay. Thank you. Any
8 other questions? Senator Hayes.

9 EXAMINATION BY MR. HAYES:

10 Q. I want to join the others in thanking you for
11 your willingness to serve for a circuit court judge. We've
12 talked a little bit about your background, and I think you
13 do have a very -- a varied background. I think having been
14 a solo practitioner, been on the parole board, you must
15 have done some family court work. So I think you ran for
16 family court at one time.

17 A. Yes, sir.

18 Q. And of course you, here recently, have done quite
19 a bit of criminal work as well. Putting aside your
20 experience, what in your personality or background would
21 help make you a good judge, and what in your personality
22 and background might detract from your ability to be a good
23 judge?

24 A. Well, I think that I'm an extremely organized
25 person. I think that, that is an important characteristic

1 of a successful and positive judicial experience. I
2 understand the importance of keeping a schedule. I
3 understand and appreciate the importance of protecting your
4 roster, and making sure that it runs efficiently. And I
5 think that I am an efficient person when it comes to those
6 things, and running court.

7 And I also -- I think I have developed over a
8 period of time, the ability to see that there is more than
9 one side, that there are also -- there's this side, this
10 side, and then there is 15 other sides. And I think that's
11 important to consider the forest, so to speak, for the
12 trees. And I think that, that is also beneficial as a
13 judge.

14 As far as negative, I tend to -- I'm a very hard
15 worker. I work -- I don't have a problem working long
16 hours, and sometimes I tend to apply my work ethic to those
17 around me. And my expectations are high. And I think
18 sometimes that might be a -- that would be a detriment, as
19 you -- as your question indicated.

20 And I would have to understand, as Senator Young
21 had asked, there are private lawyers who have so many other
22 commitments and so many other things, that sometimes even
23 if they are -- or have a high work ethic, they can't
24 necessarily be focused in my courtroom.

25 And so I'm going to have to make sure that I

1 don't have my expectations for me, and put them on others
2 that appear before me.

3 **Q. Thank you.**

4 SENATOR RANKIN: Representative Rutherford.

5 REPRESENTATIVE RUTHERFORD: Thank you.

6 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

7 **Q. Can you tell me -- or tell this body why 30**
8 **percent of the lawyers that responded to your ballot box**
9 **found you unqualified as it relates to temperament?**

10 A. Representative Rutherford, again, I -- I think
11 that I started in the solicitor's office, I was an
12 aggressive prosecutor. I did -- was not a pushover. And
13 I'm not going -- I'm never going to be that type of
14 personality.

15 I am -- when I decide to prosecute a case, I will
16 bend as far as I can bend. But I'm not going -- there is a
17 line that I will not go below. And I think that in any
18 type of situation where you have a prosecutor and a defense
19 attorney, there is going to be those defense attorneys that
20 believe that you're being overzealous, regardless of what
21 you do, and regardless of what type of plea offers you
22 make. They're going to believe that their client shouldn't
23 be taken to trial. And some cases have to go.

24 **Q. But you would agree that, while that may make you**
25 **an effective advocate, that would be troubling when you're**

1 **trying to run for a judgeship, would you not?**

2 A. I think that makes me an effective advocate,
3 because that was my job as a advocate. I am also
4 experienced enough to know that it's not my job as a judge.
5 My job as a judge is to listen, to give everyone a fair
6 opportunity to be heard and to weigh both sides, and every
7 side, to come up with the proper conclusion.

8 Q. But if 20 percent -- if 30 percent of the lawyers
9 who know you, believe that you would not be able to do
10 that, do you think that your self-assessment that you've
11 been able to turn that corner may not be correct?

12 A. No, sir. I think that is correct.

13 Q. If, in addition, 30 percent of the lawyers know
14 you said that you were ethically unqualified, will you
15 address that?

16 A. I can't address that. I don't -- I don't -- I
17 have no idea what they would refer to, other than it's the
18 same -- I believe he said 12 people that responded. Again,
19 these are anonymous reports. And I would certainly welcome
20 an opportunity to address something specific, but they saw
21 fit not to specify an incident that they were talking
22 about.

23 Q. Well, some of them did. And as they may not have
24 spoken to specific instances it is -- as it relates to
25 judicial temperament, you had almost as many find you

1 unqualified as you did qualified -- or well qualified. The
2 same thing with ethics, and most of them said that you
3 would not be able -- or most of the people that said
4 negative comments, said that you would not be able to set
5 aside the fact that you were once an advocate and you would
6 maintain that posture as a judge. How do you address that?

7 A. All I can say is, I don't see myself that way. I
8 don't think that my time in the solicitor would indicate
9 that. And I think that people who have responded may feel
10 that way for whatever type of case they were involved in
11 against me, that they have or harbor these feelings from.

12 But I believe, in general, that my record speaks
13 for itself. And I don't think I have a difficult time in
14 treating people with respect, and treating them in a fair
15 and impartial way.

16 EXAMINATION BY SENATOR RANKIN:

17 Q. Obviously, Donna, I know you. I know you from
18 your work with the Caucus. And back to that earlier
19 question, your role is one of what: Research? Purely
20 policy? Purely politics? Would that be a fair
21 categorization or paraphrasing of your answer?

22 A. Yes, sir. That's exactly it. We have someone,
23 as you know, that does all of the communicate and things
24 like that. I don't get involved in that. I do absolutely,
25 basically, what a committee person would do -- a research

1 person on any committee would do.

2 If somebody has questions about research of a
3 bill, I do that. If they need some drafting assistance, I
4 help them with that. And just the basic process of the
5 legislation itself. But I do not get involved in anything
6 of the Caucus, outside of the legislative and policy arena.

7 **Q. In terms of what we have to do -- and you've**
8 **worked with Senator Hembree for longer than I've known you,**
9 **I guess or I -- well, that's exactly right. You no longer**
10 **work for him alone. But he was once in this position.**
11 **This is my first rodeo at it. And I'm curious to know what**
12 **you say about the process, and about what we have to judge**
13 **you as a candidate in this, you know, from the objective**
14 **and the subjective.**

15 A. I think that there is -- we tried over the --
16 over the course of my time as a lawyer, we tried different
17 things when it referred to the screening and election of
18 our judges, and it's difficult to find the sweet spot, so
19 to speak.

20 I think that regardless of what process we do,
21 it's daunting on the committee, it's daunting on the
22 candidates. I think it's necessary. I think that the
23 background and -- that is necessary. I do have some issue
24 with anonymous ballot box surveys. I understand the
25 importance of them and giving everyone a right and an

1 opportunity to comment.

2 However, when you are hiding behind anonymity,
3 you oftentimes have no accountability for what you say or
4 don't say. And whether it's true or not true doesn't
5 matter; you can say it anyway.

6 **Q. Have you ever participated in an anonymous ballot**
7 **box?**

8 A. I have. I didn't -- I didn't like them twenty-
9 something years ago because of that. And I have responded
10 -- on my ballot boxes, you have the opportunity to put your
11 name. And I've always put my name.

12 **Q. Should we consider the favorable and the**
13 **unfavorable if they're all anonymous?**

14 A. Well, they go -- the same is true for favorable.
15 You know, what's to say you have a candidate that is not in
16 a practice with 30 other lawyers, as associate and
17 partners, will -- you know, they're going to get everybody
18 in their firm to do positive ones on an anonymous basis,
19 just like there may be out -- people out there from another
20 candidate, or somewhere else, that is going to do negative
21 ones.

22 So it's difficult to strike a balance when you're
23 all anonymous.

24 CHAIRMAN SMITH: Representative Murphy.

25 REPRESENTATIVE MURPHY: Thank you, Mr.

1 Chairman.

2 EXAMINATION BY REPRESENTATIVE MURPHY:

3 Q. Ms. Elder, in your testimony, you stated that in
4 your years of practice -- or your time at the solicitor's
5 office, you never touched evidence. One of the concerns I
6 have is that there was an issue that came up in Horry
7 County, regarding a piece of evidence. In particular, a
8 jacket that was owned by a person accused of a crime, and
9 the charges were nol prossed, dismissed. It didn't go into
10 the reason why.

11 But you were questioned about having knowledge of
12 the jacket, you denied any knowledge of knowing where the
13 jacket was, or having the jacket; yet, after you left the
14 solicitor's office, the jacket was found in a -- in your
15 former office, in a box with a note of -- allegedly written
16 by you, that said, "Call me when you find this jacket," or
17 something to that effect.

18 Help me get my hands around that. If you didn't
19 touch the evidence, never touched evidence, had no
20 knowledge of this jacket, yet this jacket was found under a
21 desk, in a box in a locked office that you had just
22 vacated, can you help us explain that?

23 A. Yes, sir. The jacket in question came from a --
24 it was a Hell's Angel member that was not the defendant in
25 a trial. It was -- the individual that came to seek out

1 the jacket, the defendant, was not -- it did not belong to
2 him, first of all.

3 The trial in question was -- ended up in a hung
4 jury as to the charge. The jacket was placed in a locked
5 vault of the solicitor's office. After the trial resulted
6 in a hung jury, I notified Horry County because the clerk
7 handed all the evidence back to us from that case.

8 They put it in a -- the vault in the solicitor's
9 office. When I left, I notified Dave Caraker, who is still
10 a solicitor down in Horry County, that, that evidence was
11 still in the locked vault of the solicitor's office, and
12 that the case needed to be reviewed to see if they were
13 going to retry it.

14 **Q. So the empty locked office --**

15 A. It was not an office when I left. It was in a
16 vault.

17 **Q. So the vault is not the empty locked office.**

18 A. No, sir, I would think not.

19 **Q. Okay. Thank you.**

20 A. Yes, sir.

21 CHAIRMAN SMITH: Representative Rutherford.

22 REEXAMINATION BY REPRESENTATIVE RUTHERFORD:

23 **Q. I'm sorry, I thought you said that you all --**
24 **that you did not handle evidence.**

25 A. I don't.

1 Q. So tell me -- you said the clerks handed it back
2 to you all.

3 A. The officers that were there. The lead detective
4 that was there.

5 Q. So the clerks handed it to the lead detective.

6 A. Correct.

7 Q. And the lead detective did what with it?

8 A. Put it downstairs in our vault.

9 Q. In your vault.

10 A. In the solicitor's office vault.

11 Q. And who had access to the vault?

12 A. Generally, it was -- we had to go through the
13 solicitor's office investigators.

14 Q. But being more specific, did you have access to
15 the vault?

16 A. Through them, yes.

17 Q. What do you mean through them? You didn't have
18 the code combination?

19 A. No, sir.

20 Q. So only the solicitor's office investigators.
21 And this was locked -- it was a locked vault?

22 A. It was locked. They had a key.

23 Q. So when it was handed to the investigator, he
24 then had to hand it to the solicitor's office investigator
25 to be put in there?

1 A. They opened the vault. I think it was a late
2 night, they opened the vault --

3 **Q. Who is "they"?**

4 A. -- to put it back in there. The detective in the
5 case, and direct who that detective was.

6 **Q. So the detective in the case now has a key.**

7 A. No, sir. He took it downstairs. And they opened
8 the vault -- "they," meaning the investigators -- opened
9 the vault for him to put it in there.

10 **Q. But there's no tracking of who opened the vault
11 for him.**

12 A. No, sir.

13 **Q. Okay. And --**

14 A. It was not fungible evidence.

15 **Q. I didn't ask that. So the point is -- I was a
16 solicitor, very briefly. But as I remember it, when the
17 clerks hand back evidence they simply give it over to the
18 team. And the team is the prosecutor, the investigator,
19 whoever it is. Why would you not have taken the evidence,
20 if it was in y'all's safe?**

21 A. Because I had no reason to take it.

22 **Q. Okay.**

23 A. I'm sorry, maybe I'm misunderstanding.

24 **Q. No, I'm just trying to understand why -- was the
25 invest -- was the investigator in the case interviewed?**

1 A. Interviewed for --

2 Q. Interviewed as to how this jacket, when someone
3 was requesting, wasn't where it was supposed to be.

4 A. No, they knew where it was. It was in the vault.

5 Q. So at no point was this jacket ever missing?

6 A. No, sir.

7 Q. Okay. So let me go back to this, because I
8 didn't know -- and I still don't necessarily understand
9 your title. You do what exactly for the Senate Democratic
10 Caucus?

11 A. The Senate Republican --

12 Q. Senate Republican Caucus. I'm sorry.

13 A. I am the research director for the Senate Caucus.

14 Q. And this is your current job?

15 A. Yes, sir.

16 Q. Did anyone suggest to you -- or did you think
17 that given the canons, that maybe you should, once you put
18 in your application for this, resign from that?

19 A. No, sir.

20 Q. In reading the canons, you think that it's fine
21 to continue in a partisan job?

22 A. I have read the canons, and specifically as it
23 related to my job. And I apologize, I can't remember which
24 one, but there is a canon that says that -- that a person
25 in -- and I believe there was an attorney general opinion

1 on it as well, that they could continue in the position, as
2 long as they took steps that it didn't appear to be
3 partisan.

4 I don't attend Republican functions. I don't
5 attend fundraisers. I have not done any of that, anything,
6 since I've become a candidate. I am solely there for the
7 purpose of preparing legislation.

8 Q. But again, the Senate is different than the
9 House. But I am the minority leader in the House, and I
10 have people on my staff that do what you do, and their
11 preparation of legislation is preparation of what to some
12 would be considered hyper-partisan legislation. Because
13 there is legislative counsel and there are staff members
14 on each committee, are there not?

15 A. That is correct. Yes, sir.

16 Q. So in your research, is your research not
17 partisan research? I mean, isn't that the nature of the
18 job?

19 A. I research both sides of any issue.

20 Q. But you research both sides in order to find an
21 advantage for the Senate Republican Caucus, otherwise, they
22 would not need you. Isn't that right?

23 A. I don't seek an advantage. Someone asks me to do
24 a piece of legislation, I will look at it from a legal
25 perspective and tell them whether I think it is

1 constitutional, what the benefits of the legislation would
2 be, what the negatives -- what the ramifications would be.

3 Q. Well, I struggle with the fact -- and, again,
4 because I -- this is what I do, I struggle with the fact
5 that you're either telling us that all you do is look at
6 things across the board in a fair, bipartisan way -- which
7 is what staff does up here -- or y'all's senate staff, your
8 committee staff, and asking you to be good at your job,
9 which would be to look at things and find an advantage for
10 those people that you work for.

11 A. I don't look at finding an advantage. No, sir.
12 I don't look at a bill from that perspective.

13 Q. Well, do you not see the problem, now, that the
14 next question from me, would be for you to go through the
15 last request -- or the request that you are receiving from
16 your bosses, people that are sitting on either side of me,
17 and tell me how you'd work through that, to not look for an
18 advantage when the Senate has ample staff to do exactly
19 what you say that you're now doing, which is non-partisan?

20 A. Well, first, there's not attorneys on every
21 committee that is suited for a judiciary. We have
22 attorneys on, I think, maybe Fish, Game and Forestry. But
23 so not every committee has a attorney on it.

24 Q. But not every bill requires an attorney, you
25 would agree?

1 A. Absolutely. And I don't review every bill.

2 Q. And so when I'm asking you these questions, I
3 would -- if I were to ask you about the last request that
4 you got about a bill, it would be attorney-client
5 privilege, would it not?

6 A. I wouldn't -- I would feel uncomfortable sharing
7 anything outside, without their permission.

8 Q. As well you should. And I respect that. But
9 isn't that why the canons are set up and this process is
10 set up to be able to talk to you about what it is that you
11 do, and make sure that what you're doing, that you're not
12 doing it for the Senate Republican Caucus as zealously as
13 you did it for the Horry County solicitor's office, when
14 the judge had to call you up and tell you that not every
15 client deserves the death penalty?

16 Because certainly if you did it that zealously,
17 then if I can hire you for the Democrats, I'd certainly do
18 that because of your zealous advocacy. But because that's
19 the job that you're currently in, do you see how it limits,
20 certainly me, to ask you questions about what you do?
21 Because it is, by its very nature and definition, partisan.

22 A. I think that you can ask me questions about what
23 I do. It's the specific particular bill, for example --
24 you know, the opinion that I gave a senator about a bill is
25 not necessarily my opinion about my personal opinion. And

1 I think that, that is what the committee is focused on when
2 it -- when it screens a candidate, how they are -- how they
3 personally area. And I don't see how that would limit your
4 ability to question me in that regard.

5 Q. Well, because if you had resigned your position
6 with the Senate Democratic [sic] Caucus before you started
7 this, I would have no need to ask. But at this point,
8 because you are continuing to be a candidate while still
9 employed with the Senate Republican Caucus, it challenges
10 me to say, how is it that what you're doing is not exactly
11 partisan.

12 And I can't even ask -- or at least I should not
13 ask you to violate attorney-client privilege and tell me
14 how it's not. Because the people that I employ at the
15 House Democratic Caucus, their job is to be partisan. If
16 they're not, then they should not be there. That would not
17 limit you or stop you from running from a judgeship, but it
18 should stop any one of them from submitting that
19 application if they had not resigned beforehand.

20 Everybody up here runs as a Democrat or a
21 Republican as elected officials. We get that. But I don't
22 know how you continue to be employed by these Senate
23 Republican Caucus, even if it's just to do research,
24 because that research is, by its very nature, to give an
25 advantage to one party over another. You don't agree?

1 A. No, sir, I don't. I work for the clerk directly,
2 for Jeff --

3 **Q. The clerk of the Senate, yes.**

4 A. Yes, sir.

5 **Q. Yeah.**

6 A. He hires me and he fires me. I am assigned to
7 the -- to the Republican Caucus for -- and directly work
8 with Senator Massey, the majority leader.

9 **Q. Did you request to be moved to another committee**
10 **while this process went on?**

11 A. No, sir. I reviewed the canons, and I reviewed
12 the attorney general's opinion surrounding those things.
13 And I think that it is clear if I was a judicial -- if I
14 was a judge, obviously, I could not do those things.

15 I cannot be involved in anything that would give
16 an appearance of impropriety as to which, whether I'm a
17 Republican or Democrat, or any political affiliation,
18 because that may lead to some appearance.

19 However, I believe the canons provide that a
20 candidate does not have to give up employment, whether that
21 be -- I think there was a issue with a solicitor, and there
22 was a couple of other offices that they looked at. And I
23 think that, that -- I did review that and I did discuss
24 that, and I researched that prior to becoming a candidate.
25 And I do not think the canons prevent me from being here

1 today.

2 Q. Do you think that a judge, a part-time judge, a
3 part-time magistrate, could hold your position?

4 A. I don't think that -- because he's a state --
5 because he's under the state system already, it would be
6 two appointments, maybe. I don't know. I think that --

7 Q. Not for that reason.

8 A. I'll have to look at that.

9 Q. But for partisan issues, do you think that a
10 sitting magistrate, a temporary employee, a temporary
11 magistrate, could hold the position doing research for the
12 House Republican -- I mean, for the Senate Republican Caucus?

13 A. If he was a current magistrate? No, sir. I
14 think the difference is between when you -- once you become
15 a judge in that position, and when you're a candidate
16 before you get there.

17 SENATOR RANKIN: Any other questions?

18 (Hearing none.)

19 SENATOR RANKIN: Thank you, Ms. Elder. That
20 concludes this portion of your screening process. And I
21 have to read this, verbatim --

22 MS. ELDER: Yes, sir.

23 SENATOR RANKIN: -- so that the court
24 reporter doesn't ask me what I said. I, on behalf of the
25 Committee, want to thank you for this -- for offering. And

1 I want to take the opportunity to remind you that, pursuant
2 to the Commission's evaluative criteria, the Commission
3 expects candidates to follow the spirit as well as the
4 letter of the ethics laws, and that we will view violations
5 or the appearance of impropriety as serious, and
6 potentially deserving of heavy weight and screening
7 deliberations.

8 On that note, and as you know, the record
9 will remain open until the formal release of this report of
10 your qualifications, and you may be called back at such
11 time if the need arises. Again, thank you for your
12 offering for this position, and for your service to the
13 State Senate.

14 MS. ELDER: Thank you, Senator Rankin.
15 Thank you.

16 SENATOR RANKIN: Folks, we're going to go
17 ahead and break for lunch and try to get it brought in
18 here. And then we're going to be as close to two o'clock
19 with Mr. Graham as we can be. We'll go off the record now.

20 (OFF THE RECORD AT 1:37 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 78 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 3RD DAY OF DECEMBER 2017.

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

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

3 * * * * *

4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

6 * * * * *

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

8 ERIN B. CRAWFORD, CHIEF COUNSEL

9 SENATOR LUKE A. RANKIN, VICE-CHAIRMAN

10 REPRESENTATIVE CHRIS MURPHY

11 REPRESENTATIVE J. TODD RUTHERFORD

12 MR. ANDREW N. SAFRAN

13 MR. JOSHUA L. HOWARD

14 SENATOR RONNIE A. SABB

15 SENATOR TOM YOUNG, JR.

16 MR. MICHAEL HITCHCOCK

17 MR. ROBERT W. HAYES, JR.

18 * * * * *

19 DATE: November 27th, 2017

20 TIME: 2:44 P.M.

21 LOCATION: Gressette Building, Room 105

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

24

25 REPORTED BY: LISA F. HUFFMAN, COURT REPORTER

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(No Information Requested.)

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P R O C E E D I N G S

CHAIRMAN SMITH: Mr. Graham, how are you doing today?

MR. GRAHAM: I'm good, Mr. Chairman. How are you?

CHAIRMAN SMITH: I'm well. Mr. Graham, will you raise your right, please, sir.

(The candidate is sworn in.)

CHAIRMAN SMITH: Mr. Graham, before you is your personal data questionnaire and sworn statement. Are these documents that you have submitted to the Commission?

MR. GRAHAM: Yes, they are.

CHAIRMAN SMITH: Any changes that you need to make?

MR. GRAHAM: Not that I'm aware of, no, sir.

CHAIRMAN SMITH: Are both of them correct to the best of your knowledge?

MR. GRAHAM: Actually, I have three because of the addendum. Yes, sir.

CHAIRMAN SMITH: So those and whatever amendments that are before you. Do you object to making these documents and the amendments a part of the record of your sworn testimony?

1 MR. GRAHAM: No, Mr. Chairman.

2 CHAIRMAN SMITH: If you'll hand those to
3 Lindi for me, please, sir and we're going to
4 make those a part of the record of your sworn
5 testimony.

6 [EXHIBIT NO. 8, JUDICIAL MERIT
7 SELECTION COMMISSION PERSONAL DATA
8 QUESTIONNAIRE FOR DAVID SHAWN
9 GRAHAM, ADMITTED.]

10 [EXHIBIT NO. 9, SWORN STATEMENT FOR
11 DAVID SHAWN GRAHAM, ADMITTED.]

12 [EXHIBIT NO. 10, AMENDED PERSONAL DATA
13 QUESTIONNAIRE FOR DAVID SHAWN GRAHAM,
14 ADMITTED.]

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

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

6 MR. GRAHAM: No, I just appreciate you all
7 having me here today and spending the time to
8 get to know me a little better.

9 CHAIRMAN SMITH: Thank you. And let me
10 apologize to you also. I think we're running
11 about forty-five minutes behind time so we say
12 we're optimistic all the time about this.
13 Will you answer any questions that counsel may
14 have, please, sir?

15 EXAMINATION

16 (By Ms. Crawford)

17 Q. Hi, Mr. Graham. Bob Maldonado was your screening
18 attorney but he couldn't be here today so I'm going
19 handle this for him. Mr. Chairman, I note for the
20 record that based on the testimony contained in Mr.
21 Graham's PDQ, which has been included in the record
22 with the candidate's consent, David Shawn Graham
23 meets the constitutional and statutory requirements
24 for this position regarding age, residence and
25 years of practice. Mr. Graham, why do you want to

1 **be a Circuit Court judge?**

2 A. I want to be a Circuit Court judge because I want
3 to continue the public service that I've been
4 doing. Prior to going to law school, after I
5 graduated undergraduate I worked for IBM so I was
6 in the business sector for four years. And I'd
7 always thought about going to law school. And I
8 went to law school to help people just like all us
9 attorneys, to make a career out of it, to make a
10 living and to help people. Once I started being an
11 attorney, I was actually in the civil practice. I
12 realized that I wanted to be more of a public
13 servant, although all attorneys are public
14 servants. And so that's when I became a
15 prosecutor. For twenty years, I've been a
16 prosecutor and as you all know from reading
17 opinions are administers of justice doing the right
18 thing for the right reason. I'm at the point of my
19 career after doing this for twenty years I've kind
20 of reached the pinnacle of a prosecutor other than
21 being elected. And at this point when this
22 opportunity came up I set this as a goal for myself
23 and believe that it's the right thing for me. And
24 honestly I believe it's the right thing for the
25 citizens of Lexington County and for the state. I

1 bring that public service mindset and the skills
2 that I have and I think that I would be a good fit
3 and I would be honored to be a Circuit Court judge
4 in South Carolina.

5 Q. Thank you, Mr. Graham. The Commission received 72
6 ballot box surveys regarding you with 13 additional
7 comments. Some positive comments that were
8 submitted contained the following. "I worked with
9 Shawn and always found him to be very intelligent
10 and hardworking. Even though he worked at the
11 Solicitor's Office, I felt like he could be fair
12 and impartial. I think he would be a fabulous
13 judge. He has the perfect temperament for the
14 job." Another comment stated, "I have a lot of
15 respect for him and believe he would do a very good
16 job." A few negative comments indicated that you
17 might have a bias towards prosecution. As you're
18 obviously a strong advocate for the state how would
19 you be able -- how would you react to that comment
20 and how would you be able to transition to the role
21 of a non-biased judicial capacity?

22 A. I think when I start the process as a prosecutor
23 I'm actually non-biased. So I think it's a bit of
24 a jump to say that I'm -- I'm biased. When a case
25 comes in, well, even before the cases come in, the

1 last ten years or so I've worked mainly on murder
2 cases and for the last ten years or so I get
3 telephone calls from law enforcement prior to them
4 even making cases. There have been times where I
5 have told them don't make a case, you need more
6 evidence. The standard is not probable cause but
7 reasonable doubt of conviction. Once a case comes
8 in our office, of course, there's options with what
9 you can do with it. It's not always to try to get
10 the most sentence and see somebody in jail.
11 Obviously, there's cases that need to be dismissed,
12 there's cases that need to be remanded, there's
13 cases that need more investigation, there's cases
14 that need to be reduced, there's cases that need to
15 be sent to diversion programs and there's cases
16 that need to be offered. Of course, once an offer
17 is made, from what I think is fair, that's what we
18 do as an administer of justice. But I go into
19 every case, I guess, as an unbiased, neutral party.
20 Do I work with law enforcement? Of course, I do.
21 Do I work with prosecutors, of course, I do. I
22 don't believe that, that in and of itself makes me
23 biased toward them. Every person who comes before
24 the judge deserves an open and honest approach to
25 believe that they're coming before you and telling

1 the truth. I mean, I don't know if there's any
2 transition to be made from where I'm at and who I
3 am and what I am. Of course, as a judge, I would
4 not be biased and I don't believe that, that would
5 be a problem.

6 **Q. Thank you, Mr. Graham. And you touched on this**
7 **briefly, but there were some comments that**
8 **expressed concern about your lack of civil**
9 **experience. Can you --**

10 A. Sure. And I don't know that I'm unusual and you
11 all probably are much better after talking to the
12 candidates for the open offices now. I think in
13 the society that we're in that's going to be more
14 and more. You're either going to have somebody who
15 has some experience in both civil and criminal law
16 on plaintiff and on the defense side or prosecution
17 and defense side, but then the waters of that
18 experience are very shallow where you're going to
19 have people like me who are going to have very deep
20 in a certain area but lacking in another. Do I
21 have exposure to a little bit civil work? Sure, I
22 do. In law school, I interned at the South
23 Carolina Retirement System. My first job out of
24 law school was with a civil defense firm down in
25 Charleston and I did that for five months. I never

1 had my own client but I worked on cases and did
2 research and went to court. Since that time in
3 applying and putting in my application for this,
4 you know, obviously we all read the opinions. The
5 truth is I've read more criminal because criminal
6 was more to me. I've been reading more civil since
7 then. I've also took off time from work and I went
8 in and watched a week of Common Pleas non-jury so
9 that I get better exposure to that and have an
10 understanding more of what happened. Of course, as
11 a prosecutor I've appeared in Common Pleas non-jury
12 from appeals of Magistrate Court earlier in my
13 career. And also in PCR or post DNA testing type
14 procedures and allegations coming from inmates who
15 have been convicted. In addition to attending a
16 week of common pleas non-jury, I've also taken some
17 civil CLEs. I've taken one on summary judgment and
18 I've taken one on tort law. And I think that,
19 that's what I would continue to do to increase my
20 knowledge. I mean, there is a deficiency and I
21 recognize that.

22 **Q. Thank you, Mr. Graham. Two comments indicated that**
23 **you have a win at any cost outlook in the**
24 **Solicitor's Office and that you and your staff**
25 **intentionally bend or break the rules, so to speak.**

1 **How would you respond to that?**

2 A. I guess my first thought was I'm offended. I was
3 shocked and surprised that I got that. There has
4 been, as far as I know, there's never been an
5 allegation in court where I have been in front of a
6 judge of any kind of conduct like that. I don't
7 believe that there's been any attorneys who filed
8 anything with the Ethics Commission or the South
9 Carolina Supreme Court on that. So I would -- I
10 would deny that. That just, not only as an
11 administer of justice, is it's not right and
12 personally it's not right. It's not me. And I
13 think that's it's probably supported by the fact
14 that I think there was -- was there only one person
15 that made the comment "to win at all cost"?

16 **Q. I think it -- yes, sir. Or two.**

17 A. I think it -- I think it was just a single comment.
18 I mean, when you look at the type of cases that I
19 prosecuted, especially in the last ten years, which
20 have been almost solely homicide cases, I mean,
21 they're not cases that get remanded back for a
22 lesser charge. By the time they come in and
23 they've been indicted for murder, it's a murder
24 case. So, I mean, they are hard-fought. They're
25 hard-fought cases. I normally make offers. And

1 when that doesn't happen then we go to trial and,
2 you know, when I go to trial I do fight hard to win
3 because I believe in what I'm doing. I wouldn't be
4 there if I didn't believe that it was the right
5 thing to do at that time.

6 **Q. Mr. Graham, what do you feel is the appropriate**
7 **demeanor for a judge?**

8 A. The demeanor in my career of going in front of
9 Circuit Court judges, Thomas Cooper from Manning,
10 retired, probably epitomizes a Circuit Court
11 judge's demeanor. It's what I would want to
12 emulate. He -- he treats every person in that
13 courtroom with respect which I think everybody
14 deserves that. The litigants on both sides,
15 whether they're a criminal defendant or a
16 prosecutor or a victim or a defense attorney or in
17 a civil suit somebody who's been hurt or wronged
18 who's bringing the suit or the corporation where
19 the attorneys are representing, everybody deserves
20 their day in court and everybody deserves to be
21 treated with respect. So primarily that would be
22 the main, if I had to pick one word, it would be
23 respect.

24 **Q. Thank you. A few housekeeping issues. Mr. Graham,**
25 **are you aware that as a judicial candidate you are**

1 bound by the Code of Judicial Conduct as found in
2 Rule 501 of the South Carolina Appellate Court
3 rules?

4 A. Yes.

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

8 A. No.

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

13 A. No.

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

18 A. I have not, no. I am not -- have -- am not aware
19 of anyone.

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

23 A. Yes.

24 MS. CRAWFORD: I would like to note that
25 the Midlands Citizens Committee reported that

1 Mr. Graham is qualified in the evaluative
2 criteria of constitutional qualifications,
3 physical health, mental stability, experience
4 and judicial temperament. And was also well
5 qualified in the remaining evaluative criteria
6 of ethical fitness, professional and academic
7 ability, character and reputation. The
8 Committee stated in summary, "Mr. Graham is a
9 fine prosecutor but we do have some real
10 concerns about his performance as a Circuit
11 Court judge." Likewise the Committee stated
12 that, "Mr. Graham has been an exemplary
13 prosecutor. Based on the research though
14 there are some concern that he's so much a
15 prosecutor that he is not respecting the
16 defense side of the system or its
17 practitioners. There are also some mild
18 concerns about his temperament. Also he has
19 almost no experience in civil law." Mr.
20 Chairman, I would note for the record that any
21 concerns raised during the investigation by
22 staff regarding Mr. Graham are incorporated
23 into the questions of the candidate today.
24 And I have no further questions.

25 CHAIRMAN SMITH: Any questions for Mr.

1 Graham? Senator Sabb.

2 SENATOR SABB: Thank you, Mr. Chairman.
3 Mr. Graham, thank you so much for offering for
4 this position. I will tell you that I was
5 moved by a couple of your comments. One was
6 the idea of having reached the pinnacle of
7 your prosecutorial career after doing it for
8 twenty years. I found that interesting
9 because I did it for twenty years and I felt
10 exactly the same way you do. The other
11 comment you made that I thought was
12 significant that sort of struck home was the
13 role of the prosecutor and that is the
14 administration of justice. Quick editorial
15 note real quick. In prosecuting, one of the
16 things was, if you're a defense attorney and
17 you believe that someone is innocent you just
18 fight as hard as you can to get them off. If
19 you're a prosecutor and you believe somebody's
20 innocent you have the power of the pen. And
21 it appears to me as if that's the way that you
22 approached your role which I have appreciation
23 for. But I'm troubled by the idea that you
24 apparently have not done a whole lot of work
25 in the civil arena. As you and I both know,

1 both arms, if you will, in the justice system
2 is important. How would you compensate for
3 the lack of experience along those lines?

4 MR. GRAHAM: Thank you, Senator. You
5 know, in the position, I guess, the -- all the
6 candidates before you for the Lexington
7 position I think are actually going to fall
8 into -- into one or other. They're going to
9 be criminal or their going to be civil. I've
10 talked to four different Circuit judges who
11 I've appeared before over my career. All of
12 them have said that they believe that I can do
13 it. So the question, I guess, is how I do it.
14 The, you know, the position would start July
15 1st. I don't know that there's time for me to
16 run off in civil practice and actually gain
17 practical experience between now and then.
18 The only thing that I know to do is to
19 increase my study and knowledge and learning
20 of the law between now and then by continuing
21 to instead of maybe focusing on criminal CLEs
22 is to actually go out and continue to do civil
23 CLEs. I know on the bench, of course, you
24 probably have access to other judges and would
25 be able to call on them as needed just like I

1 would probably be a -- somebody they could
2 call on criminal matters. Obviously, you
3 know, during civil litigants that have
4 appeared in front of me at the beginning might
5 it require me to require them to be more
6 briefing than normal. It probably would. But
7 I do -- I -- I have a passion for learning
8 which has taken me to where I am at. I've
9 just focused it in a certain area. I think I
10 have the -- the brains and the drive to learn
11 what I need to learn and to do a good job.

12 SENATOR SABB: The circuit that you
13 practice criminal law in, are there
14 alternative courts like drug courts?

15 MR. GRAHAM: There are. We have -- the
16 only alternative court that we have right now
17 is adult drug court that I believe. Juvenile
18 Arbitration for juveniles.

19 SENATOR SABB: As a potential jurist, what
20 is your view of those type courts?

21 MR. GRAHAM: I think they're great. I
22 think that, you know, practicing criminal law,
23 which I know some of you have and some of you
24 haven't, some of you have done a lot and some
25 of you have done a little. There really are

1 few evil people in this world. There are some
2 out there but most people make bad mistakes.
3 A lot of it goes back to drug or addiction
4 problems. I think the Drug Court, I think
5 Lexington had the first in the state. I think
6 it also had the first pretrial intervention
7 program in the state. And I've always been
8 big supporters of all those. Giving people
9 another chance is good for the person and it's
10 also good for society and it's probably what
11 we all want. We want everybody to be, tax --
12 you know, don't call the police, don't get in
13 trouble, pay your taxes and work and make --
14 make our state a better place. I am hoping,
15 I'm talking with Solicitor Hubbard, the new
16 solicitor, that Lexington may be going toward
17 having a Mental Health Court at some in the
18 future. But obviously, I think -- I think
19 those programs are necessary and I think
20 they're important and I'm grateful that we
21 have them and I hope we have more.

22 SENATOR SABB: On a scale of one to ten,
23 how would you rank the importance of judicial
24 temperament?

25 MR. GRAHAM: I would say that it's very

1 high. It's a nine. It probably is the --
2 it's what everybody sees and what everybody
3 deals with whether, like I said, you're a
4 litigant or you're an attorney, everybody
5 deserves to be treated with respect, everybody
6 deserves to have their day in court. They
7 don't need to be cut off, in my opinion, up
8 until some point after they've said what they
9 need to say.

10 SENATOR SABB: Give me two examples of
11 your experiences as a prosecutor as it relates
12 to the judge and dressing a lawyer down, tell
13 me about how you view the best experience as
14 having been and how you view the worst
15 experience as having been.

16 MR. GRAHAM: For what I've seen as how the
17 judge's temperament of dressing an attorney
18 down?

19 SENATOR SABB: Well, let's assume
20 hypothetically that you have two lawyers in a
21 murder trial, both of whom are zealously
22 advocating their various position. One goes
23 just a wee bit overboard and after having been
24 warned by the judge a couple of times, but
25 just adamant about the issue because it's a

1 pivotal issue in the trial. You win the issue
2 you might win the trial; you lose the issue
3 you might lose the trial. And so in that
4 situation as you reflect back on your twenty
5 years of having prosecuted give me what you
6 would view as an example of how the judge went
7 wrong in dealing with it and then give me an
8 example of a similar circumstance in terms of
9 how the judge handled it right.

10 MR. GRAHAM: I want to say one of the --
11 I've only had two cases that have been
12 overturned in my career. One of the first
13 ones I think the judge was an old-time judge
14 and it was myself as a younger prosecutor. It
15 was a CDVHAN case. And the defense attorney
16 was a young defense attorney. I think the
17 judge handled that situation wrong. The, if I
18 remember correctly, the case was overturned
19 for failure to give a self-defense charge.
20 And I believe that the attorney was advocating
21 for that and I believe that he got cut off.
22 And it was a judge who, I would say, has a
23 temper and -- and came down and cursed people
24 which I didn't think, you know, as a young
25 attorney I didn't like it, now that I'm older

1 I still don't like it and I don't think it's
2 appropriate. I think what the better response
3 to that would be is, and we all get
4 frustrated, judges are tired at times and
5 they're frustrated, they think they've heard
6 enough. I think the more appropriate remedy
7 would be like -- somebody like Judge Cooper
8 who has -- who I've seen, not necessarily in a
9 case I handled, but know about, I mean, he
10 told the attorneys that they had protected the
11 record for themselves but he made a decision
12 that it was time to move on. And I think
13 that's the better way to do it. If the judge
14 needs to take a break to let passions cool
15 that's probably the appropriate thing to do as
16 well. I do -- the record does need to be
17 protected though and the attorney's, for
18 either side, deserve to have that heard
19 whether, you know, even if that means sending
20 the jury out to protect the record.

21 SENATOR SABB: Last question. You are
22 managing the civil docket, case has been
23 scheduled for two weeks, everybody's ready to
24 go or so they thought, the weekend before
25 plaintiff's lawyer has a serious problem with

1 getting witnesses for trial on Monday. What's
2 your knee jerk reaction to the email that you
3 get asking for a continuance?

4 MR. GRAHAM: I'd want to know more. I'd
5 want to know when those -- why -- I mean, what
6 came up, what's the reason why they weren't
7 prepared? I don't think I could grant or deny
8 a continuance without getting more
9 information.

10 SENATOR SABB: Fair enough. Thank you.

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

13 SENATOR YOUNG: Thank you, Mr. Chairman.
14 Mr. Graham.

15 MR. GRAHAM: Senator.

16 SENATOR YOUNG: Good afternoon.

17 MR. GRAHAM: Good afternoon.

18 SENATOR YOUNG: Good to see you again. I
19 appreciate your interest in serving the state
20 as a Circuit Court judge. I know that
21 everybody on this Commission does -- echoes
22 those comments. First question I have for you
23 is how would you describe your judicial
24 philosophy with respect to the application of
25 the law to the facts that would be before you

1 as a Circuit judge?

2 MR. GRAHAM: Are you asking about judicial
3 activism?

4 SENATOR YOUNG: Yes.

5 MR. GRAHAM: My opinion is a Circuit Court
6 judge's job is to take the facts, take the law
7 as it's written and apply it. Changes to the
8 law need to be made by the Legislature.

9 SENATOR YOUNG: You have practiced almost
10 your entire legal career in the Solicitor's
11 Office as we just had a brief exchange with
12 Senator Sabb. You had a brief period, you
13 were in private practice in Charleston; is
14 that right?

15 MR. GRAHAM: Correct.

16 SENATOR YOUNG: Did you do civil practice
17 then?

18 MR. GRAHAM: The firm was Barnwell Whaley
19 Patterson and Helms. It was primarily
20 insurance defense.

21 SENATOR YOUNG: It was a larger firm?

22 MR. GRAHAM: Mid-size -- I believe it's a
23 mid-size is what they would categorize
24 themselves.

25 SENATOR YOUNG: In your experience as a

1 prosecutor in both the 14th Circuit and the
2 11th Circuit, have you -- you've handled a
3 number of cases with lawyers who come from
4 smaller practices; is that fair to say?

5 MR. GRAHAM: Oh, yes, sir.

6 SENATOR YOUNG: Do you recognize the
7 challenges on time and being in multiple
8 places on the same day for lawyers who
9 practice in smaller firms?

10 MR. GRAHAM: No doubt. I've actually -- I
11 have a case with Representative Rutherford
12 right now and it's amazing -- as a legislator
13 there's protection from January to, I think
14 it's been extended to July now, but
15 Representative Rutherford couldn't appear in
16 court today because he's here. And I know he
17 was on the V.C. Summer's Commission as well.
18 So that takes, as you all as lawyer
19 legislators, but even as, you know, solo
20 practitioners, small firm practitioners, they
21 are in multiple places at multiple times. I
22 really think that one of my strongest person
23 -- personal skills is empathy. Although I
24 have never been a solo practitioner on the
25 other side, I really do understand as best I

1 can and I'm cognizant of that and aware of
2 that and honestly am willing to work with
3 that. As a prosecutor, the first, in my
4 opinion, the first call if -- if a defense
5 attorney needs a continuance in a case that's
6 set for Monday in all honesty the first call
7 should be to me. It shouldn't be to the
8 judge, it should be to the prosecutor and they
9 should be telling you what their problems and
10 issues are and if I can help them, I will. I
11 mean, really at the end of the day the job of
12 the prosecutor and the job of the court is to
13 do justice and do the right thing. But I'm
14 very cognizant of schedules. Yes, sir.

15 SENATOR YOUNG: Those are all my questions
16 as of right now.

17 CHAIRMAN SMITH: Any further questions?
18 Senator Rankin.

19 SENATOR RANKIN: Nice to meet you, sir.
20 I'm Luke Rankin, Horry County. It would scare
21 some to believe that, and I don't practice in
22 the criminal area much, that we would be
23 selecting, and as you've recognized earlier,
24 there are a number of folks with mostly
25 criminal or mostly civil experience. It might

1 give pause to some to say that we were
2 electing or nominating someone who had very
3 little except perhaps a year of experience in
4 the civil realm. You've answered that
5 somewhat. Criminal is where it's at in terms
6 of cases that are being litigated, you know
7 that in your own district, I guess, your own
8 circuit but -- so you were a year at Barnwell
9 Whaley, I think, '96 to '97.

10 MR. GRAHAM: Not as much as that but that
11 was my first job out of law school. Yes, sir.

12 SENATOR RANKIN: Did you try any cases
13 there, and that would hard to do as a --

14 MR. GRAHAM: As a civil lawyer.

15 SENATOR RANKIN: Yes.

16 MR. GRAHAM: No, sir. I did not.

17 SENATOR RANKIN: Do you keep count of the
18 cases you've tried and prosecuted --

19 MR. GRAHAM: How many --

20 SENATOR RANKIN: -- to the verdict? Yeah.

21 MR. GRAHAM: -- in General Sessions? I
22 think I've -- near seventy.

23 SENATOR RANKIN: Yeah.

24 MR. GRAHAM: Twenty-six of those have been
25 murder or involuntary manslaughter cases,

1 seven of those have been death penalty cases.

2 SENATOR RANKIN: Ever any goal to actually
3 run for the Solicitor's position in your area?

4 MR. GRAHAM: I'm really not a politician.
5 So no, it really was never on my horizon to
6 do.

7 SENATOR RANKIN: The ballot box surveys
8 which you got 72, I think you were surprised
9 to hear and happily pointed out that there was
10 only one that apparently painted such a, I'll
11 call it, harsh view of you. Do you think that
12 that is a tool that we should use to solicit
13 input about you and the other candidates
14 running for judgeships?

15 MR. GRAHAM: I do. I think it's probably
16 the people that know us best. You know, we
17 submit letters of recommendation. Those are
18 handpicked. And then we also provide, I
19 think, five names of attorneys who have been
20 on the opposite sides. Those are also
21 handpicked. So we're getting to choose people
22 that we honestly believe or think that like us
23 and think we would do a good job. And I would
24 think that the letters that I have would
25 support that. But I think that the ballot box

1 is probably a fair cross section of everybody
2 that I've come in contact with in my career
3 who felt, you know, either strongly for me or
4 strongly against me that they should respond.
5 Though I was surprised that were negative
6 comments, you know, when you step back and
7 look at it, it's really not too surprising.
8 As a -- as a prosecutor I probably have a low
9 number of complaints against me. But I think
10 as a whole that I think it is probably a very
11 useful thing for this Commission to consider.

12 SENATOR RANKIN: You were asked this at
13 the outset and I'll just touch on it one more
14 time. But the comment by your Midlands
15 Citizens Committee, you've read their results,
16 their report, correct?

17 MR. GRAHAM: I was told by my screening
18 attorney. I did not see the report.

19 SENATOR RANKIN: That, again, favorable
20 but on the other side some concern that there
21 is so much a prosecutor that he does not
22 respect the defense side of the system or its
23 practitioners. There are also some, again,
24 some, mild concerns about his temperament.
25 And I think Senator Sabb asked you about

1 temperament. That's, you didn't put a number
2 to that, but you would rate that very highly
3 on a scale of one to ten? I'll give you one
4 more shot.

5 MR. GRAHAM: Sure, I think I said, "nine."

6 SENATOR RANKIN: I'm sorry, I didn't hear
7 it.

8 MR. GRAHAM: I said, "nine" Senator.

9 SENATOR RANKIN: Okay. My apologies. You
10 haven't served as a judge, you've served as a
11 prosecutor, I guess, or assistant prosecutor.
12 Going forward if you were to make it to the
13 bench and we were to later -- or this group
14 were to later hear about temperament and a
15 negative or poor temperament, again, extreme
16 hypothetical here, what would we do about
17 that? What should we do about that if you
18 have been --

19 MR. GRAHAM: I would be shocked if you
20 heard that I had a poor temperament. It
21 really is, anybody who knows me would say
22 that, that's not true. I've -- I've never
23 lost my temper in court, I've never been
24 called down in court for losing my temper.
25 I'm a zealous advocate, you know, I do fight

1 hard and I fight to win once I get into court,
2 but like Senator Sabb said, we get to choose
3 whether we go to court. And in all honesty as
4 a prosecutor, if the facts aren't there, there
5 are ways of getting rid of that case. If you
6 heard that I had problems about a demeanor I'd
7 expect to be called on it.

8 SENATOR RANKIN: That's all. Thank you.

9 CHAIRMAN SMITH: Any further questions?
10 Mr. Safran.

11 MR. SAFRAN: Thank you, Mr. Chairman. Let
12 me just ask a few things. Obviously, as you
13 pointed out earlier all the candidates seem to
14 kind of have strengths in terms of background
15 and weaknesses in other areas. Not
16 necessarily that they would be weak because of
17 ability but just experience. I mean, you
18 would agree that experience at a Circuit judge
19 level really kind of across the board would be
20 the most beneficial scenario, wouldn't it?

21 MR. GRAHAM: I think the perfect candidate
22 would be somebody who has been practicing for
23 thirty years and has done both sides of
24 everything. Yes, sir.

25 MR. SAFRAN: Well, and I guess the

1 question is this. Certainly, I can understand
2 personally that you may start out in a
3 practice. It may not be kind of exactly what
4 you would envision and I'm assuming that might
5 have happened. I mean, I used to practice in
6 the 14th Circuit years ago and the firm that
7 you were with, nice guys, never had any issue
8 with that. And I think you went to work with
9 Solicitor Burdick (ph.) after that?

10 MR. GRAHAM: That's correct.

11 MR. SAFRAN: I'm sure you picked up a lot
12 of good experience there. But, I guess, the
13 question is, is that when you look at kind of
14 the way you've gone as kind of the natural
15 ascension that essentially once you put in
16 your time with the Solicitor's Office and
17 going to the Circuit Court it really kind of
18 the next step or, I mean, do you feel like it
19 there may be some other seasoning that might
20 be helpful before you try to take that leap?

21 MR. GRAHAM: In a perfect world, yes.
22 Sure. Would it be time -- would it be nice if
23 it was, let's assume I don't make it through
24 screening, I'm assuming by that point, six
25 years from now when another seat comes open

1 again, by that time I would have civil
2 experience and I will. But yes, I mean, I
3 think the problem and the reality is that
4 myself and everybody's going to be in is the
5 there are very few perfect candidates anymore.
6 You know, maybe someday we'll have criminal
7 judges and we'll have civil judges. I don't
8 know that, that's ever on the horizon. I know
9 some states do it. That would probably be
10 good for most people like myself and most
11 practitioners coming up. It just seems that
12 most people focus on one area of the law now.
13 And even if you, you know, even if there's
14 somebody who is a criminal defense attorney
15 they may do a little bit of civil work, but I
16 don't know if filing one or two lawsuits or
17 defending one or two lawsuits, do they know
18 more than me? I think they do, but does that
19 make them as qualified as an expert like --
20 like this Commission would want? I mean, it
21 doesn't. I do know that if you -- if you
22 look, because I do, I think this Commission
23 and the legislators as a whole are going to
24 have to choose in this race and it's going to
25 be -- and it's going to be very different. I

1 don't know that you're going to find anybody
2 that's got both. I really do think that
3 they're going to come down to either just
4 civil or just criminal. And if you -- if
5 people starting say they're over, it's going
6 to be like me with five months at Barnwell
7 Whaley Patterson and Helms when I started. I
8 do know that the number of criminal terms, at
9 least in Lexington is going to go up. It
10 needs to go up for the volume. I know the
11 number of civil terms is going down. The
12 Chief Justice from my understanding across the
13 state is reducing the number of civil terms.
14 So, you know, there was only, last year for
15 instance, I -- I tried four murder trials to
16 verdict. There were only four civil jury
17 trials in Lexington and I think that's an
18 example across the state. Am I the perfect
19 candidate? No. Am I qualified and well
20 qualified? Yes, I believe that I am. The
21 number of civil terms are going to be cut,
22 we've got mandatory arbitration that's coming
23 in.

24 MR. SAFRAN: Mediation you mean?

25 MR. GRAHAM: Arbitration. Mandatory

1 arbitration. If I'm wrong, I'm wrong.

2 MR. SAFRAN: Yeah, I don't know.

3 MR. GRAHAM: But the cases are going to
4 have to, before they go in front of the judge,
5 they're going to be tried to be worked out.
6 And that would only increase the number of
7 cases that settle prior to a judge coming and
8 looking at it.

9 MR. SAFRAN: Let me ask this. I mean, you
10 brought it up and I'm certainly not trying to
11 put you on the spot, but what's the answer to
12 the question that just came from your, I
13 think, accurate comment that if you're looking
14 for somebody that has, kind of, the across the
15 board experience, you're not going to find
16 them running anymore. Why is that?

17 MR. GRAHAM: I don't know. The perfect
18 candidate honestly would be somebody that has
19 about thirty years of experience. Those
20 people, and I guess maybe finding those
21 people, because it's not only the experience,
22 then you got to put in the demeanor and all
23 the other things as well, it's hard to find
24 that person. So I guess you're looking, you
25 know, you would be looking for somebody who

1 maybe was a prosecutor for a number of years
2 and then went into private practice and was a
3 defense attorney for a number of years and
4 then branched out into civil. But at that
5 point momentarily you've also got to find
6 somebody who's in the position that they're --
7 it's a wash on what they're making or their
8 personal situation is their children, if they
9 have children, are they out of college or in
10 college and they have to pay for those, are
11 they at the end of their career, have they
12 made enough money. Really, in the perfect
13 world, I guess you're looking for the
14 successful lawyer that's made enough money
15 that now wants to give back who for the last
16 six years or twelve years wanted to do public
17 service when they've been making money. But
18 for whatever reason, at least in our race,
19 that didn't happen.

20 MR. SAFRAN: I got you. Let me ask you, I
21 know I heard earlier that you expressed, based
22 on experience, that you would be certainly
23 aware and to some extent empathetic about the
24 rigors that small practitioners would have as
25 far as trying to be in so many places at one

1 time or more or less being charged in their
2 own office with handling so much by one person
3 that, that kind of flexibility would transfer
4 over. Obviously, you get these comments that
5 come from the ballot box that seem to kind of
6 say the opposite. So what do you think led
7 them to possibly believe that, that wouldn't
8 be the case where you sensed that your
9 experience has been outwardly that it has been
10 the case. Where do you think the disconnect
11 was?

12 MR. GRAHAM: Well, I'm sorry --

13 MR. SAFRAN: Well, let me --

14 MR. GRAHAM: -- what ballot box comment
15 are you --

16 MR. SAFRAN: Well, these anonymous
17 comments. The, I think, where they were
18 talking about win at all cost.

19 MR. GRAHAM: That -- that was one comment.

20 MR. SAFRAN: I understand. But talking --
21 not being able to kind of separate the
22 prosecutorial hat, you know, which necessarily
23 I think there's a, at least whether it's
24 legitimate or not, there is some perception
25 that Solicitor's Office is going to hold the

1 cards a lot of times and they're going to move
2 forward on their agenda. So I kind of glean
3 that from that. But you're telling me your
4 experience, in terms of how you treat people,
5 has been somewhat different. That you are
6 aware, that you are certainly going to give
7 some credence to their own demands when they
8 come to you and say, I have a problem that's
9 come up I need to take a break.

10 MR. GRAHAM: I've never been -- I've
11 always wanted to look at myself in the mirror
12 after I've done my job. The facts have always
13 been able to support what I've honestly have
14 thought the right thing was in the case. I
15 have never hidden evidence. I don't turn over
16 evidence at the last minute. If I get it in
17 the last minute, I turn it over. I'm very,
18 very aware and I have my whole career of what
19 the rules are, the criminal discovery as far
20 as Brady, and I've gone above and beyond what
21 the law requires me to do. I think in all
22 honesty twenty years as a prosecutor and
23 having one comment is really kind of
24 impressive. And I think it does speak to --
25 to me and to my character. I don't have a win

1 at all cost attitude. I never have and I
2 never will.

3 MR. SAFRAN: Thank you.

4 CHAIRMAN SMITH: Any further questions?
5 Mr. Howard.

6 MR. HOWARD. Mr. Graham, thank you for
7 being here once again. As everybody has
8 stated, thank you for putting in your
9 candidacy for this judgeship. And I
10 appreciate how candid your responses have
11 been. I am a civil lawyer and I do appreciate
12 how candid your responses have been because
13 I'm not a criminal lawyer. One of the
14 questions I would have for you though is just
15 thinking about what the differences between
16 the two, what do you think, and you said you
17 had sat through a week of non-jury, what do
18 you think you're going to have to sort of
19 develop to sort of bolster the civil side of
20 what you'd be doing as a Circuit judge?

21 MR. GRAHAM: Most everything. I mean,
22 being totally honest, I don't -- I don't want
23 to come in here and claim that I have picked
24 up knowledge reading cases. I mean, I went to
25 law school, like all of us went to law school.

1 Have I practiced and developed the -- the
2 civil part of that? I mean, no, I haven't.
3 So I don't want to come in and to try to blow
4 smoke and convince you that I know all about
5 civil law because I don't.

6 MR. HOWARD: Okay, you know, I appreciate
7 that answer. When I think of the candidate
8 who doesn't have little or really has little
9 to no civil experience the things that I start
10 thinking about are what is the role of the
11 judge often in a civil trial. And you're
12 going to be called upon, if you were elected
13 to the seat, you going to be called upon to
14 sit in equity and in equity you are the judge
15 and the jury. And so in a lot of non-jury
16 situations you're going to be called to be the
17 judge and the jury. What sort of -- those are
18 going to require you to sort of draw on some
19 experiences and, you know, when I think about
20 it. So what sort of experiences do you think
21 you've had, even if they're just life
22 experiences and stuff, like, what have you
23 gone through that you can sit there and say I
24 can draw upon that and help me in these.

25 MR. GRAHAM: You know, I guess, when I

1 didn't grow up from -- I'm not from a family
2 of lawyers. I'm the first lawyer in my
3 family. I didn't go to undergraduate thinking
4 I was going to be a lawyer. I grew up and
5 thought I was going to be an engineer and I
6 got a degree in mathematics. Got out of law
7 school and I worked for IBM for four years as
8 a systems engineer which is kind of technical
9 salesperson for larger mainframe accounts. So
10 I have -- I have some real life work
11 experience in addition to just coming straight
12 into law school and straight into practice.
13 Have I been in cases where there have been
14 million dollar verdicts. I mean, I haven't
15 and that's going something -- that's going to
16 be something new to me. I do have a sense of
17 fairness that I think is probably what's drawn
18 me toward being a prosecutor. It's like
19 Senator Sabb said, I really -- you have the
20 ability to -- probably the closest thing,
21 that's why they call it administrator of
22 justice, it's the closest thing you can be to
23 being a judge without being a judge. You go
24 in neutral and you get to evaluate a case that
25 comes on your desk. And it's not a -- it's

1 not a client who says I've -- I've been
2 arrested, I've been sued, I need to sue.
3 You're actually neutral and you get to decide
4 what you think is the right thing to do. Does
5 this case even need to be prosecuted? You go
6 through that step is there enough information
7 to prosecute it, to prove it. Not just
8 beyond, I mean, not just probable cause,
9 because it doesn't take much of your probable
10 cause to get a warrant on somebody but to
11 actually convict somebody. And then what's
12 the appropriate thing to do. So I'd say even
13 though I don't have it in the -- I don't have
14 the civil experience I have all those
15 experiences in -- in my career of evaluating a
16 case neutrally, not as an advocate because
17 until I pick up the role and say this case is
18 worthy of prosecution I'm not an advocate.
19 Just because the police have made an arrest,
20 I'm not bound to prosecute that case. In
21 fact, numerous times I've -- I've dismissed
22 cases, I think, as a judge sitting in equity.
23 But I have been in those, not momentarily, I
24 have been in positions to make those kind of
25 decisions before. And I think that what drew

1 me to be a prosecutor of doing the right thing
2 I think would carry over and it would -- it
3 would be there for me in civil court as well.

4 MR. HOWARD: Thank you, Mr. Graham.

5 CHAIRMAN SMITH: Any questions?

6 (No response.)

7 CHAIRMAN SMITH: Mr. Graham, let me just
8 follow up with you on a couple of things.
9 When I look at your PDQ and you talk about
10 working at the defense firm in Charleston,
11 Barnwell Patterson Whaley, I know that's a
12 very successful firm down there. Why did you
13 just stay five months? Did you find a calling
14 for Solicitor's Office?

15 MR. GRAHAM: I had never -- during law
16 school the -- what I did, I never interned or
17 clerked with a civil law firm before.
18 Obviously, coming from IBM I was in the
19 business world. I went to law school and
20 during my time in law school I clerked one
21 time at the Fifth Circuit Solicitor's Office
22 and then I clerked for the South Carolina
23 Retirement System. And then my third year I
24 was an associate editor for the Real Property,
25 Probate and Trust Journal so I couldn't work.

1 I don't think I knew -- to me at the time, I
2 guess, and is why I -- why I became a
3 prosecutor and probably, honestly continue on
4 why I want to continue my career and believe
5 this is the right next step is it seemed and -
6 - and I'm being a candidate so you all know
7 who I am. The civil defense attorneys, I
8 mean, they -- they need to be there and it's
9 important, but it wasn't -- it wasn't what I
10 wanted to do. It seemed too much like
11 business and I was looking more, I guess, to
12 serve the public as a whole. So that's why I
13 got in there and as I started working on it
14 realized that they were very good advocates
15 for their clients which is exactly what their
16 clients deserve, but it really wasn't what I
17 was looking for.

18 CHAIRMAN SMITH: And so, and I guess what
19 I'm just wondering is, whether the civil law
20 was something that didn't interest you or was
21 that just, I guess, what you're saying it's
22 just a higher calling to go and prosecute?

23 MR. GRAHAM: Yes, Mr. Chairman, I wouldn't
24 say it's the law itself didn't interest me. I
25 think it's more of a calling. I -- I'm one of

1 the those people that like to learn to learn
2 things regardless of the subject matter.

3 CHAIRMAN SMITH: I've heard a number of
4 these questions being asked to you and, again,
5 I think some of those -- well, I look at, and
6 I call them isolated comments in your case, I
7 mean, but obviously we all know we've got
8 people who believe wholeheartedly that what
9 you do when you're a solicitor is the absolute
10 correct thing and you got people who I'll call
11 not even public defenders, but what I call the
12 true believers in the criminal defense and
13 their clients are never wrong and the win at
14 all cost is their belief too. So I always
15 take those with a grain of salt when I see
16 them. But I guess what I'm interested in is
17 when people come in here and say you've spent
18 all your time as a solicitor and that's what
19 you know is a solicitor's point of view, how
20 are you going to balance that with the other
21 side? Because you've got to make rulings
22 sometimes that obviously you've seen in some
23 Jackson v. Denno issues where there's the
24 suppression of the evidence or the confessions
25 that sometimes the law requires that and it

1 could be detrimental to a case or something
2 like that. So how do you balance the criminal
3 defense point perspective with what you have
4 done as a solicitor and more importantly
5 obviously sometimes you got to temper justice
6 with mercy --

7 MR. GRAHAM: No question.

8 CHAIRMAN SMITH: -- and so how do you
9 balance that when you are having to call --
10 when you're being called upon to sentence
11 people because obviously that's -- most of
12 these cases, you've even admitted, I know you
13 try more and more civil cases, but -- I mean,
14 criminal cases, but most of the times those
15 are guilty pleas that you're called in front
16 of. So what I think some concerns that would
17 be raised, and not in your case, but when I
18 talk to people who are completely solicitor
19 and visa versa they've spent the whole career
20 as a public defender that the problem is their
21 going to lean too far one way and sentence
22 people. If a solicitor sentenced people to
23 jail forever and if it's a public defender
24 then they're going to let everybody have
25 probation. So how do you temper those two if

1 you were successful in this candidacy?

2 MR. GRAHAM: I think the, of all the cases
3 I've tried, I've only had two cases that have
4 been overturned. One of those two is still on
5 appeal not counting the death penalty cases
6 that I assisted Solicitor Myers with.

7 CHAIRMAN SMITH: We won't hold you for
8 Solicitor Myers' appeals, how about that?

9 MR. GRAHAM: Thank you. The -- I don't
10 think -- I know I'm -- I'm not biased. And I
11 guess I point that out to the fact that when I
12 go -- by the time I've gotten to court I know
13 the -- the evidence I have. I don't want, and
14 the fact that they haven't been appealed, I
15 guess, or successfully appealed, I guess, I
16 point out to the fact that I don't press the
17 bounds of what the law and the facts show. By
18 the time I've gotten there the cases that
19 shouldn't have been tried have been weeded
20 out. I think through my whole career I've
21 only had -- I think I've had twenty-six
22 murder, manslaughter cases. I think of those,
23 the murder cases, I think only two of those
24 maybe three have gone down to a voluntary
25 manslaughter verdict. I've looked -- if I

1 believed -- I never -- I don't overcharge, I
2 guess, is what I'm saying. I go with what the
3 facts are. If it's voluntary manslaughter I
4 indict it as voluntary manslaughter regardless
5 of what law enforcement did.

6 CHAIRMAN SMITH: How about the sentencing
7 area, what --

8 MR. GRAHAM: The sentencing, you know,
9 when I -- I used to routinely put people into
10 PTI, I used to routinely reduce charges, I
11 used to routinely negotiate probation when I
12 could. The cases I've handled the last ten
13 years are just not the kind of cases I can do
14 that. But there are truly -- there are truly
15 few evil, evil people. Most people make
16 mistakes. People who make mistakes, people
17 who have problems, people who come up to the
18 court and like you said most would be guilty
19 pleas and they'd admit their guilt. I don't
20 think that I would have the reputation of
21 being a hammer and just putting people away.
22 It's not -- it isn't the right thing to do.
23 You know, you got -- people should only go
24 away to protect society and you look at what
25 you're protecting them from and what their

1 background is and what their history is, they
2 have proved that they can't be trusted. You
3 know, obviously the more times they mess up
4 and the more violent the offense the more than
5 likely they need to go in. But putting --
6 putting shoplifters and drug users in jail
7 doesn't accomplish anything. And it's not
8 right. It's not right. I really -- I don't
9 think -- I understand the concern of being a
10 prosecutor and of putting a prosecutor out
11 there, I understand the concern of this
12 Commission and every criminal defense
13 attorney. I really believe that I would,
14 given the chance, I think that I would be
15 known as being fair.

16 CHAIRMAN SMITH: And then, I think Senator
17 Sabb asked you this and I was interested in
18 this is the alternative courts and we're re-
19 engaging a sense of reform again and I think
20 when you talk about not making sense to do
21 some things that, we call it evidence-based
22 sentencing is what we need and more realizing
23 people are going to get out of prison and they
24 need to have a skill instead of locking them
25 up in a violent place where they become more

1 violent and is trying to have some skills.
2 And one thing that I'm interested in and I've
3 seen success around the state and you
4 referenced it is the alternative courts, the
5 Drug Courts, and you're talking about starting
6 a Mental Health Court. And I think here in
7 the Richland County they have a Veterans
8 Court. What do you see those, how they play a
9 role in the criminal justice system?

10 MR. GRAHAM: I think they're really
11 important and I'm glad that -- I'm glad that
12 they're there and I hope we expand them. You
13 know, the system, you can't lock up everybody.
14 It's not the right thing to do and financially
15 you can't do it. If it's not the right thing
16 for the person, it's not the right thing for
17 society. The people who were screened into
18 those programs, Drug Court for instance, I am
19 very familiar with Drug Court, I've had a lot
20 of people go there. Those are for people
21 whose crimes are committed because of drugs
22 whether it's selling drugs or theft or
23 something like that. If we can help, you
24 know, in a perfect world they would be able to
25 be cured of that addiction but even if we help

1 on that addiction and spread their time out
2 with law enforcement we've improved society
3 and we've improved their lives. Which is
4 what, if you can graduate from the program,
5 the success rate is very high and even for
6 people who relapse and get back in trouble
7 with the system, the number of times that
8 they've been involved with the -- with law
9 enforcement go down dramatically and the types
10 they have. But I do -- I think all those -- I
11 think the more programs we develop the better
12 -- the better for the defendant and I think
13 the better for our state and for its citizens.

14 CHAIRMAN SMITH: And lastly, I understand
15 about the concern that there's only someone
16 here that does criminal law or visa versa,
17 there's only someone that's done civil law,
18 but obviously trial attorneys have to try
19 cases and I presume you've tried over seventy
20 cases so you know the rules of evidence, you
21 understand the application of law towards the
22 facts of the case and just a matter of
23 bringing -- do you believe you could be
24 brought up to speed on the civil law if given
25 the opportunity?

1 MR. GRAHAM: I do. And I don't know the
2 exact number. You said over seventy, I say
3 close to seventy. I know it's between sixty-
4 six and seventy. I do. I've talked to four
5 different judges who I've appeared in front of
6 and I do -- I obviously for the rules of
7 evidence, I do know the rules of evidence
8 well. For all those cases I've got to know
9 what rule is going to let a piece of evidence
10 in and what case law, I mean, most case law
11 actually you can look at it, I don't know the
12 numbers, a lot of the case law on evidence
13 seem to be criminally related even if you use
14 it in a civil trial. So once admissible I
15 think I am familiar with and I do have a good
16 grasp of that and that would carry over
17 whether it's a civil jury or a non-jury. The
18 four judges that I've talked to each said that
19 they know me well enough, I've done enough,
20 I've appeared enough in front of them, they
21 all believe that I've got the skills to do
22 this. That I'm hardworking enough, prepared
23 enough, smart enough that I can learn what I
24 need to learn. And for me to transition from
25 criminal to civil and be able to do both is

1 something that I can do.

2 CHAIRMAN SMITH: And I think you answered
3 this question, but I wanted to ask this one.
4 I promise this will be the last question.
5 When you -- if you were successful with this
6 from time to time you would be called upon to
7 be the Chief Administrative Judge or either
8 have to continue cases. Where does the -- how
9 do you balance the courts need to dispose of
10 cases and move the docket along whether it's a
11 civil, criminal or motions roster to lawyers,
12 conflicts of trying to juggle the different
13 demands that they have with their schedule
14 with being in different courts or different
15 counties and even to the extent that it may
16 have some personal issues you have to, you
17 know, I have a child who has a game this
18 afternoon and I'd like to go see that or a
19 school program. How would you balance that as
20 a Circuit Court judge?

21 MR. GRAHAM: I would want to balance it.
22 You know, moving -- moving dockets, whichever
23 court, is important. Seeing that justice is
24 done is more important. But you do have to
25 balance the litigants and the attorneys, their

1 lives. I would just ask, I think, as a judge
2 that I get as much notice as possible. I
3 wouldn't, you know, if there was a date
4 certain trial, and somebody came up Sunday
5 night and said my son has a baseball game
6 tomorrow, you know, why didn't we talk about
7 this a week ago or two weeks ago. That would
8 be a question I'd ask. And then how much time
9 do you really need to go do that. I do think
10 it's important we do stuff with our families,
11 there's no question. There should be a
12 balance, a healthy balance, for all of us and
13 what we do in our careers in our -- in our
14 personal lives as well. You know, does it
15 mean that the whole trial has to be put off or
16 does it mean that we take a couple hours off
17 in the afternoon one day. Obviously, I would
18 want to know exact -- I mean, details but to
19 the extent that I could work with somebody and
20 could, I would.

21 CHAIRMAN SMITH: And finally I want to pay
22 you a compliment. I find a couple of people
23 and it's a testament to the judges that we
24 produce over in the Third Circuit but to use
25 Judge Tommy Cooper from Manning as a role

1 model I cannot tell you -- we grew up
2 practicing law over there, he was our judge,
3 and that's the perfect person, the consummate
4 gentleman, I've never seen him lose his temper
5 and he should lose his temper with some of the
6 shenanigans I've seen go on in the courtroom.
7 But he was always -- he was too much of a
8 gentleman to do that and would invite us back
9 in chambers and tell us he had to cool down
10 and that we need to think about our -- the way
11 we're acting in court. But I appreciate those
12 words because I don't -- I think throughout my
13 career I can't think of a judge I've ever
14 appeared in front of that was more of a
15 pleasure to try a case, did not interfere in a
16 case and always made sure that the lawyers
17 were protected during the case. I just always
18 say this is when he would say, "I understand
19 you object to this Mr. Smith, we're doing this
20 in limine or a Jackson Denno and you don't
21 have to renew your objection when it's on the
22 record, we're going to let the record reflect,
23 when it comes up, we're going to let the
24 record reflect that you have a running
25 objection through any testimony if anyone

1 rules against you." So that's a good person
2 to model yourself after. Thank you, Mr.
3 Graham. Any further questions? All right,
4 Mr. Graham, this concludes this portion of
5 your screening process. I want to take this
6 opportunity to remind you that pursuant to the
7 Commission's evaluative criteria the
8 Commission expects candidates to follow the
9 spirit as well the letter of the ethics laws,
10 and we will view any violations or the
11 appearance of impropriety as serious and
12 potentially deserving of heavy weight and
13 screening deliberations. On that note, and as
14 you know, the record will remain open
15 until the formal release of the report
16 of qualifications, and you may be called back
17 at such time if the need arises. I thank you
18 for offering for this position, and I thank
19 you for your service to the State of South
20 Carolina.

21 MR. GRAHAM: Thank you, Mr. Chairman,
22 members.

23 (The candidate is excused.)

24 CHAIRMAN SMITH: Ms. Keesley, if you'll
25 raise your right, please, ma'am.

1 (The candidate is sworn in.)

2 CHAIRMAN SMITH: Ms. Keesley, before you
3 is your personal data questionnaire and the
4 sworn statement. Are these documents that you
5 have submitted to the Commission?

6 MS. KEESLEY: They are.

7 CHAIRMAN SMITH: Are they both correct?

8 MS. KEESLEY: They are.

9 CHAIRMAN SMITH: To the best of your
10 knowledge?

11 MS. KEESLEY: There's one thing I wanted
12 to point out to you.

13 CHAIRMAN SMITH: All right.

14 MS. KEESLEY: In reading through all these
15 things, I believe, it may not even be in this.
16 Yes, in my personal data questionnaire, when I
17 was reading through these things last night, I
18 said that I've appeared in every county in the
19 state on behalf of a client. And I do not
20 know that I've ever actually gone to the
21 courthouse in Edgefield or McCormick and stood
22 up and made any kind of legal argument but I
23 have represented clients in both those
24 counties.

25 CHAIRMAN SMITH: All right. So we will

1 make those oral amendments, if that suits you?

2 MS. KEESLEY: That does.

3 CHAIRMAN SMITH: All right. Do you have
4 any objection to us making these documents and
5 your oral amendment a part of the record of
6 your sworn testimony?

7 MS. KEESLEY: I do not.

8 CHAIRMAN SMITH: All right. If you'll
9 hand those to Lindi, please, ma'am and we will
10 make those an exhibit to your sworn testimony.

11 [EXHIBIT NO.11, JUDICIAL MERIT
12 SELECTION COMMISSION PERSONAL DATA
13 QUESTIONNAIRE FOR KYLIENE LEE KEESLEY,
14 ADMITTED.]

15 [EXHIBIT NO. 12, SWORN STATEMENT FOR
16 KYLIENE LEE KEESLEY, ADMITTED.]

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

1 study of previous screenings and checks for
2 conflicts of interest.

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

7 MS. KEESLEY: A brief statement about my
8 qualifications?

9 CHAIRMAN SMITH: Anything you want to say
10 but I emphasize the word, brief.

11 MS. KEESLEY: I understand. And I know
12 that we're running behind today so I will be
13 glad to answer any questions that you all
14 have.

15 CHAIRMAN SMITH: Thank you very much.
16 Answer any questions that counsel may have,
17 please.

18 EXAMINATION

19 (By Ms. Benson)

20 **Q. Mr. Chairman, I note for the record that based on**
21 **the testimony contained in the candidate's PDQ,**
22 **which has been included in the record with the**
23 **candidate's consent, Ms. Keesley meets the**
24 **constitutional and statutory requirements for this**
25 **position regarding age, residence and years of**

1 **practice. Ms. Keesley, how do you feel your legal**
2 **and professional experience thus far renders you**
3 **qualified and will assist you to be an effective**
4 **Circuit Court judge?**

5 A. Well, as you all you know, I assume everybody has
6 seen the application. I was very thorough in my
7 application. Everything should be in there for
8 your consideration. But I have had years of
9 litigation experience and I have appeared in
10 Magistrate Court and Probate Court, Circuit Court
11 and Federal Court in our state and before the
12 Master-in-Equity. And I think that my experience
13 in litigation will help me to be an effective
14 circuit judge. I feel like I can relate to
15 litigators and lawyers and I can help aid the
16 judicial system in moving cases sufficiently,
17 effectively. I can benefit attorneys by being able
18 to relate to them and their plight and scheduling
19 and -- and managing the expectations of their
20 clients.

21 **Q. Thank you. Ms. Keesley, the Commission received**
22 **144 ballot box surveys concerning you and that**
23 **included 23 with additional comments. There were**
24 **many positive comments that called you, "fair,**
25 **reasonable, very intelligent, respectful,**

1 **courteous, an able trial attorney and one of the**
2 **best mediators I've ever used." Six of the**
3 **negative comments questioned your experience. What**
4 **would your response be to that concern that you do**
5 **not yet have enough experience?**

6 A. Well, if there are questions about my civil
7 experience, I have handled every kind of case that
8 I could handle in my current practice. Hundreds of
9 cases all over the state. I've handled every kind
10 of case that anyone in my firm handles from the
11 youngest associate to the oldest partner with the
12 exception of Workers' Comp. I have not had a
13 Workers' Comp case. But -- so I believe that have
14 the requisite civil experience. As for criminal
15 experience, the majority of my experience does
16 derive from my clerkship. I clerked for a Chief
17 Administrative Judge in Civil Court, but we had
18 many terms of Criminal Court and when I clerked I
19 had to be on the bench when he was on the bench and
20 I had to be in the office when he was meeting with
21 attorneys. So I got to see every aspect of
22 Criminal Court and I think that a lot of my
23 experience in civil will translate over to Criminal
24 Court, you know, the same rules of evidence apply.
25 And like I said earlier my ability to relate to

1 litigators that will transfer over to criminal as
2 well. So I'm aware of scheduling issues, I'm aware
3 of pre-trial and post-trial issues and I think that
4 I -- I definitely am confident that I have the
5 experience that is required for this job and I
6 think I can do a very good job if you all give me
7 the chance.

8 **Q. Thank you. Two of the negative comments expressed**
9 **concern about your demeanor and your mental**
10 **stability. What response would you give to those**
11 **concerns?**

12 A. Well, I'm aware of the mental stability comment.
13 And I was very taken aback by that when I heard it.
14 I have no idea where that could have come from. I
15 don't know of any interaction that I've ever had
16 with an attorney or a party that would have
17 resulted in that kind of an extreme comment. I
18 have thought over it and tried to figure out who
19 may have had that sort of experience with me
20 because based on the nature of the comment it
21 sounded like a reportable action and I really am at
22 a loss for who could have made that kind of -- kind
23 of report. It does strongly concern me that
24 someone would. And as far as any other demeanor
25 comments, I'm not aware. But I do mediate a lot

1 and my practice has grown and attorneys in town and
2 across the state wouldn't use me if they thought
3 that I couldn't communicate well with them and
4 their clients and if I couldn't remain calm and
5 impartial and give the appearance of fairness. So,
6 I guess, I would just defer to the good comments
7 and the letters of reference and my mediation
8 practice to convince you all that I have the
9 requisite demeanor for this job.

10 **Q. Thank you. And how do you think that your**
11 **mediation experience would benefit you if you were**
12 **selected for a judicial position?**

13 A. I don't want to repeat everything that you all have
14 already read in the application. I know I put in
15 there that I -- I can remain calm when people
16 become very emotional in certain situations and I
17 can remain fair and appear neutral despite whatever
18 personal opinions I may have. In mediation I make
19 sure everybody feels like they're heard and I'm
20 there for them. So I believe that the skills that
21 I have developed through growing my mediation
22 practice will help me in this job. One reason that
23 I'm applying is because I really do enjoy the
24 constant flow of issues and personalities and I have
25 a lot of different attorneys and people with

1 different causes of action coming through my office
2 on a regular basis and I enjoy that. It's not
3 boring. And I think that's one thing that this job
4 would offer. It would be a constant flow of
5 different parties, attorneys, legal issues and
6 that's one of the reasons I'm applying. And I
7 think that having had this mediation practice has
8 definitely encouraged me to run for this seat.

9 **Q. Thank you. Ms. Keesley, just a few housekeeping**
10 **issues. Are you aware that as a judicial candidate**
11 **you are bound by the Code of Judicial Conduct as**
12 **found in Rule 501 of the South Carolina Appellate**
13 **Court Rules?**

14 A. Yes.

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

18 A. I have not.

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

23 A. I have not.

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

1 **are you aware of anyone attempting to intervene in**
2 **this process on your behalf?**

3 A. I am not and as we discussed that was a pretty
4 difficult part of this process for me because I do
5 have so many attorneys coming in my office to
6 mediate and I am out there litigating every week.
7 So I go to roster meetings and people say, I'm
8 going to call this person for you and I have to say
9 you cannot do that and I have to tell people it's a
10 misdemeanor because they -- they don't like being
11 told that can't do something. So I have made every
12 effort to make sure that no one did anything on my
13 behalf that they were not supposed to do.

14 **Q. This is probably redundant but have you reviewed**
15 **and do you understand the Commission's guidelines**
16 **on pledging in the South Carolina Code Section 2-**
17 **19-70(E)?**

18 A. Yes, ma'am.

19 **Q. Thank you.**

20 MS. BENSON: Mr. Chairman, I would note
21 that the Midlands Citizens Committee reported
22 Ms. Keesley to be well qualified in the
23 evaluative criteria of ethical fitness,
24 professional and academic ability, character,
25 reputation and judicial temperament. And

1 qualified in the remaining evaluative criteria
2 of constitutional qualification, physical
3 health, mental stability and experience. The
4 Committee indicated that they enjoyed their
5 interview with Ms. Keesley and that she is
6 charming and outgoing individual. Despite her
7 being qualified there were some -- despite
8 them finding her as qualified there was some
9 concern as to her maturity and scant
10 experience in criminal law. Mr. Chairman, I
11 would note for the record that any concerns
12 raised during the investigation by staff
13 regarding the candidate were incorporated into
14 the questioning today. And I have no
15 further questions.

16 CHAIRMAN SMITH: Thank you very much. Any
17 questions for Ms. Keesley? Senator Young.

18 SENATOR YOUNG: Thank you, Mr. Chairman.
19 Ms. Keesley, thank you so much for your
20 interest in serving as a Circuit judge. You
21 obviously come from a strong pedigree in that
22 regard. And one of the questions I have for
23 you is how would you describe your judicial
24 philosophy with respect to the application of
25 the law to any facts that would be before you

1 if you were elected to serve on the Circuit
2 Court?

3 MS. KEESLEY: Well, to any facts? I'm not
4 sure I understand your question. I just want
5 to --

6 SENATOR YOUNG: All right. Let me ask it
7 to you this way. What is your position on
8 how, some people might refer to it as judicial
9 activism.

10 MS. KEESLEY: I -- okay.

11 SENATOR YOUNG: What is your view of the
12 application of the law? How should you view
13 the law?

14 MS. KEESLEY: I will apply the law as --
15 as it exists now. I have a government major -
16 - I was a government major in -- in college
17 and -- so I definitely understand the
18 separation of powers and I would do everything
19 that I could to apply the law as it exists
20 now. I know obviously there's circumstances
21 that arise where there may be no law or there
22 may be confusion and I would do my best with
23 all the resources that the job would offer to
24 come up with the best answer. I don't like
25 being wrong so I would do everything I could

1 to come up with the right answer. But I know
2 that you have to apply the law as it -- as it
3 applies today, as it exists now, and it's not
4 the role of judges to change the law or create
5 new law, not Circuit Court judges. So that's
6 how I feel about judicial activism. I
7 definitely would -- would do my part to
8 maintain separation of powers.

9 SENATOR YOUNG: How much of your current
10 practice is in the Eleventh Circuit?

11 MS. KEESLEY: Well, it's limited because I
12 can't appear before one of the judges over
13 there. But I have a lot of things that go
14 before Judge Spence and Probate Court over
15 there. We -- my firm does a lot of premises
16 liability and school cases so the majority of
17 my cases in the Eleventh Circuit are either
18 premises liability cases or automobile
19 negligence defense. So that's -- what
20 percentage of my practice has been over there
21 in the past? I've had hundreds and hundreds
22 of cases. Maybe ten percent of my cases are
23 in the Eleventh Circuit.

24 SENATOR YOUNG: Let me ask you how much of
25 your practice is -- I noticed that you do a

1 good many mediations.

2 MS. KEESLEY: I do.

3 SENATOR YOUNG: So how much of your time
4 do you think you spend mediating cases on a
5 monthly basis?

6 MS. KEESLEY: It's the majority of my
7 practice now. And that's because I have less
8 litigation files that people ask me to handle
9 because of my mediation practice. I -- I can
10 tell you that in the past couple of months my
11 litigation practice has been heavy and I
12 haven't had as many mediations. But in the
13 upcoming months between now and the end of
14 January -- well, it's hard to see past next
15 week. I had a case on the trial roster next
16 week in Richland County so I've been building
17 up to that so I haven't really been focusing
18 on what mediations have been schedule but I
19 know that I have a good many scheduled in
20 December. I've been trying to hold off on
21 scheduling things for this so I have a list of
22 potential mediations to handle later on this
23 week. But my litigation practice has
24 definitely dwindled in the past four years.
25 I've been mediating longer but have I answered

1 your question?

2 SENATOR YOUNG: In your civil practice --
3 it sounds like it's not as, because of your
4 mediation practice having grown, it's not as
5 active as it was. But you've handled a lot of
6 cases in terms of the motions in Circuit Court
7 --

8 MS. KEESLEY: Oh yes.

9 SENATOR YOUNG: -- non-jury roster --

10 MS. KEESLEY: Oh yes.

11 SENATOR YOUNG: -- dealing with all the
12 different rules. You're very familiar with
13 all those on the civil side?

14 MS. KEESLEY: Oh yes. I've had -- I put
15 in the application hundreds, but I may have
16 had thousands of cases. I just -- I didn't
17 take the time to go back and quantify it. But
18 when I first started practicing, we don't have
19 teams in my law firm, everybody works
20 together, obviously, and they're there to help
21 everybody out. But I had cases that I handled
22 on my own start to finish from day one and I
23 had clerked so I think people relied on my
24 experience from that to rely on me to handle
25 litigation. But I have had car wreck cases

1 and premises liability cases, contract cases,
2 legal malpractice, professional negligence,
3 hundreds and hundreds of cases. And I have
4 gone to hundreds of motion hearings and court
5 appearances. I couldn't -- I couldn't even
6 begin to quantify it. I'd have to take out
7 all my calendars from the past and -- and
8 count. But I think I put in my application
9 that it was weekly, now it's probably monthly,
10 maybe a couple times a month, maybe a little
11 bit more than that some months. In the past -
12 - the past two months I've been in court
13 weekly. So yes, I'm very familiar with all
14 the -- all of the rules of court and what
15 litigation involves.

16 SENATOR YOUNG: How familiar are you with
17 the challenges of lawyers in smaller practices
18 who appear in both civil and criminal or
19 predominantly in one or the other being pulled
20 from one court to the next, you know, county
21 to county or Magistrate Court to back to
22 Circuit Court and visa versa, are you familiar
23 with --

24 MS. KEESLEY: I am.

25 SENATOR YOUNG: -- what those lawyers --

1 MS. KEESLEY: We're having the same
2 problem now. My -- my firm, I think I told
3 somebody earlier today, has less attorneys in
4 it than -- than we had since I started. So
5 scheduling is -- is an issue and especially
6 when you're on the court schedule in one
7 county and another court schedule in another
8 county, I -- I completely understand. I've
9 been on different rosters in different
10 counties in the same week, same day, so I am
11 very familiar with it. And that's one thing
12 that I was mentioning earlier, I think that my
13 familiarity with the scheduling concerns and
14 the issues that arise with your clients and
15 their demands when you represent people in a
16 multitude of cases at one -- one time when you
17 have a heavy caseload, I think that I could
18 assist attorneys in a beneficial way in
19 getting cases moved and -- and taking care of
20 scheduling because I know it's an issue. And
21 I know, I don't know what all you're going to
22 ask me, but I also, as a judge, would try to
23 be accessible because I know that, that is key
24 in making sure that attorneys are able to
25 appear when they need to appear and aren't

1 called for three trials in one week and don't
2 have motion hearings going on while they're
3 supposed to be trying a case, your client
4 isn't always understanding of that, so to help
5 -- help attorneys perform their jobs in a way
6 that is effective for them and accepted by
7 their clients I think I'm very attune to that
8 and I would try to be sensitive to those
9 needs. I know, you mentioned small town
10 attorneys and people in the more rural
11 counties, I'm very familiar with that because
12 of where I'm from, but I do have that
13 experience somewhat now because we don't have
14 that many attorneys in our firm. And we've
15 had some people with some health problems
16 lately so scheduling has been a big issue that
17 I've had to deal with in my practice.

18 SENATOR YOUNG: Have you always handled
19 just civil defense or have you done any other
20 types of work?

21 MS. KEESLEY: Now, I have some plaintiff's
22 cases. I have a plaintiff's personal injury
23 case that I have to file next week which is --
24 may not be the first, and I've had to
25 represent some of my clients on breach of

1 contract cases as a plaintiff. So I would say
2 half of the cases that I have now on my shelf,
3 half of the filed cases that are on my shelf
4 right now are -- I'm representing the
5 plaintiff on. And then I have clients that I
6 have filings on and I've associated attorneys
7 for foreclosure actions because I've been
8 building my mediation practice so I haven't
9 ventured into that so much. But I -- I do
10 have some -- some community association work
11 that's come in that I've been handling. It's
12 a wide variety of cases that I handle. My --
13 my defense practice is general defense. So
14 the only thing I don't do really that I know
15 of is medical malpractice. But I handle
16 contract issues for clients and I've done a
17 lot of guardian ad litem work. Because when I
18 first started, I mean, I know this is separate
19 but when I first started our firm, we still
20 don't, we don't farm out the appointments, but
21 when I first started we were pretty heavily
22 inundated with the appointments so I had to
23 serve as guardian ad litem and attorney on a
24 lot Family Court cases. I shouldn't say a
25 lot, but a lot for me. I had -- had to look

1 up the rule because I was appointed three
2 months in a row and I had to go and look up
3 the rule to see exactly how many times you
4 could be appointed because I was -- I was
5 thinking they had -- had breached that rule by
6 appointing me three times in a row. But no,
7 they -- they can do that so I have had a lot
8 of that. I've just had a pretty general
9 practice even though it is focused primarily
10 on civil defense but now it's venturing into
11 other areas.

12 SENATOR YOUNG: Thank you very much.

13 MS. KEESLEY: Thank you.

14 CHAIRMAN SMITH: Senator Rankin.

15 SENATOR RANKIN: Thank you. I'm curious
16 to know about the mediation practice and it
17 looks like you got certified in 2011; is that
18 correct or did I read that --

19 MS. KEESLEY: That sounds right. Six
20 years.

21 SENATOR RANKIN: And that obviously has
22 grown each year?

23 MS. KEESLEY: When I first got into it I -
24 - I will tell you all there is an attorney who
25 filed more cases in Richland County than any

1 other attorney. Some of you know him. And
2 the person that he was using for his
3 mediations quit practicing law altogether.
4 And so I knew that there was a -- a pocket of
5 business there so I went and took the
6 mediation training and got certified and I
7 started mediating for him. And ever since
8 then it's just seemed to snowball and grow and
9 a lot of the same attorneys use me repeatedly
10 that they -- they -- a lot of them don't have
11 very much patience for the process so that's
12 one hurdle to get over.

13 SENATOR RANKIN: The mediators don't have
14 patience or the --

15 MS. KEESLEY: A lot of the attorneys don't
16 have patience for the process because
17 mediation has not been mandatory for the
18 majority of their career so I have to manage
19 that and make people stay there and engage in
20 the process. It's one more aspect of patience
21 that I have learned not just with the parties,
22 it's definitely with the lawyers sometimes.
23 But it has definitely grown. I have -- I have
24 a couple civil defense firms in town that
25 their assistants email me multiple times a

1 week asking for mediations and then the
2 Plaintiff's Bar there's certain attorneys that
3 like to use me. They think I communicate
4 well.

5 SENATOR RANKIN: But the subject of these
6 mediations is across the board not --

7 MS. KEESLEY: The majority of them are car
8 wrecks or premises liability cases but then I
9 have had med mal, I have had some contract
10 issues. It's not been incredibly broad
11 because of -- most of the cases I mediate are
12 in Richland and Lexington County. I do
13 mediate cases in other counties, you know,
14 Sumter, Fairfield. I've had some Hampton and
15 Aiken. So I've been -- I have had a variety
16 of attorneys and issues but it's mostly those,
17 just because that's the majority of cases that
18 are filed in this area.

19 SENATOR RANKIN: Is, and it seems to be
20 counter to, and I'm not trying to get too much
21 in your business, but counter to the idea of
22 being in a firm that has a book of business
23 and you mentioned not having teams, it's
24 almost as if you were on your own doing the
25 mediation side which perhaps is helpful to the

1 defense firm business model, but -- and don't
2 get deep there and don't spend much time, but
3 are they not opposite or counter pursuits?

4 MS. KEESLEY: Well, I'm still practicing
5 because, you know, you have to keep the firm
6 going but I'm here applying for this job and
7 this seat. I would like to move into this
8 realm. It -- it does get taxing when you have
9 motions hearings to cover, roster meetings,
10 cases on a trial roster and you also have
11 three mediations scheduled that week. It --
12 it's not come to a head yet for me. I try to
13 keep very good tabs on where I'm supposed to
14 be and when. And you know mediations a lot of
15 times they settle before they get there or
16 they end up on a trial rosters, the attorneys,
17 and so they have to move their mediation and
18 when that happens I'm freed up to cover
19 something for somebody else. We don't have as
20 much -- well, I shouldn't say that. I can't
21 really speak to what all cases are coming in
22 for every attorney in the firm, but I don't
23 have as many car wreck cases as I used to
24 have. I still have a few, but it -- it is --
25 it's just the line I have to walk in that job

1 and that's -- I enjoy the mediation. I do
2 still like to get out and do some of the
3 litigation activities. I mean, I haven't
4 taken a deposition in a while but I -- if
5 somebody wants me to go to it tomorrow I will.
6 I do enjoy getting out and doing that to have
7 some variety in what I'm doing on a weekly
8 basis.

9 SENATOR RANKIN: And we're up here looking
10 and asking and your father obviously started,
11 was elected to the judgeship perhaps a few
12 years younger than you if I'm doing my math
13 correctly.

14 MS. KEESLEY: If I -- if I am elected I'll
15 be older than he was.

16 SENATOR RANKIN: By two years?

17 MS. KEESLEY: That's what I was trying to
18 figure out. I think it's either one or two
19 years.

20 SENATOR RANKIN: And to the rap perhaps
21 now and would have been the case when he ran
22 though not screened back then, I don't -- or
23 maybe they were, I don't recall, at least not
24 screened as aggressively or thoroughly as we
25 are now, but the rap on you some concern about

1 your maturity --

2 MS. KEESLEY: All I can tell you is --

3 SENATOR RANKIN: -- that might be age
4 only. Maybe someone's jealous of your age and
5 your offering for this and they're older and
6 don't have the fortitude to do it.

7 MS. KEESLEY: I would hope that it
8 wouldn't be based on age. I think that
9 obviously when my father went through he had a
10 different kind of practice than what I have
11 now. But I feel like I have handled a lot of
12 cases, a lot of different clients, a lot of
13 different parties, I've been exposed to a lot
14 of different judges and a lot of different
15 courts and I think that I have the experience
16 that it takes. If that's from the Citizens
17 Committee I think I told Ms. Benson I was
18 extremely nervous when I went in there that
19 morning. I just could not shake the nerves
20 and I don't know if that may have had some
21 part to play in their opinion. I know a
22 couple of people in the Citizens Committee but
23 they excused themselves from the vote on me so
24 --

25 SENATOR RANKIN: And that process versus

1 this entire process do you believe that this
2 is the best way that we have to vet, to
3 screen, to hear, consider all --

4 MS. KEESLEY: I grew up near Augusta,
5 Georgia so I saw the campaign ads for the
6 judges so I'm glad that we have the process
7 that we have instead of that process. It is
8 not an easy process to go through I'll tell
9 you that. But -- and, you know, I hope that
10 people aren't dissuaded from running that
11 would be good at the job because of the
12 process. I'm here. I knew that it was not
13 going to be so much enjoyable but I definitely
14 think that you have to go through significant
15 vetting to get good judges. And I'm
16 definitely invested in -- in our -- our
17 judicial process and having qualified
18 intelligent, accessible good judges. So I --
19 I appreciate the process that we have even
20 though it's --

21 SENATOR RANKIN: The ballot -- and I'm --

22 MS. KEESLEY: Go ahead.

23 SENATOR RANKIN: The ballot box anonymous
24 surveys, do you think that they provide a
25 valuable tool?

1 MS. KEESLEY: Well, I never expected the
2 negative comment that I got. I -- I told --
3 it's the first thing I told people when I told
4 them I was applying, I said, "At least I don't
5 have any enemies." So I don't have to worry
6 about that ballot box survey. And then I --
7 we discussed the negatives. I -- I knew that
8 people would question my criminal experience
9 and not everybody -- I know a lot of attorneys
10 but not everybody knows what my practice is.
11 So that didn't surprise me at all. It is
12 concerning that a -- a lawyer, a licensed
13 attorney in South Carolina, got on there and
14 behind the veil of anonymity posted that
15 comment about me. But I think I had enough
16 other positive comments to counter that. I
17 don't know what anyone else's experience has
18 been.

19 SENATOR RANKIN: Should we consider those
20 positive comments, too?

21 MS. KEESLEY: Absolutely. You should
22 consider the positives. I -- I would love for
23 you to just throw out the worst and best and
24 then take the rest.

25 SENATOR RANKIN: All right. Thank you.

1 MS. KEESLEY: Thank you.

2 CHAIRMAN SMITH: Any further questions?

3 Representative Rutherford.

4 REPRESENTATIVE RUTHERFORD: Kyliene, I've
5 known you for, I think it's decades now, I
6 hate to say that. But you come across much
7 more poised than I ever thought and I'm very
8 impressed. I thought I would tell you that.
9 I didn't know what we were going get. I've
10 read the comments and I only see you socially,
11 but I can tell you professionally you came
12 across very well. I just wanted to tell you
13 that.

14 MS. KEESLEY: Well, I wanted you to know
15 it may go back to that Citizens Committee, you
16 know, I do know a lot of attorneys and do
17 interact socially with a lot of attorneys and
18 they don't know what my practice is, they
19 don't know how I appear in court unless
20 they've been there so I think I may have been
21 too friendly, smiled a little too much and
22 maybe that's what resulted that comment. I
23 don't know. But I appreciate it. Thank you.

24 REPRESENTATIVE RUTHERFORD: Thank you.

25 CHAIRMAN SMITH: Any further questions?

1 (No response.)

2 CHAIRMAN SMITH: Let me just ask you a
3 couple questions. When I looked through this
4 and I read the comments and we run across each
5 other at docket meetings from time to time so
6 I know your civil experience. The criminal
7 experience, how would you compensate for the
8 lack of criminal experience? I see you say
9 that you clerked with Judge Barber, I believe,
10 and you watched him handle some trials and
11 guilty pleas, some probation violations but
12 that was twelve, thirteen years ago. How
13 would you handle General Sessions?

14 MS. KEESLEY: Well, he made a big
15 impression.

16 CHAIRMAN SMITH: I'm sure he did. He did
17 with everybody. Especially Mr. Rutherford.
18 He always liked to talk about Mr. Rutherford
19 when I came in his courtroom.

20 REPRESENTATIVE RUTHERFORD: He only
21 threatened to put me in once.

22 MS. KEESLEY: He only threatened to put me
23 in jail once. I think I did learn a lot in
24 that experience and I talked to some people
25 about what I could do to get some additional

1 criminal experience. I didn't want to do
2 anything that was professionally irresponsible
3 just to be able to come here and tell you all
4 that I had done something. Some opportunities
5 did come open but I do defend professional
6 negligence cases so I -- I -- I kind of shied
7 away from those. But I think that anything
8 that I would need to learn or re-familiarize
9 myself with I would be able to do that
10 quickly. Criminal law is interesting, I don't
11 have any problem reading it, it's a lot more
12 interesting than the civil stuff I end up
13 doing daily. So I think between now and July
14 which is when this job would start, I -- I
15 would do a lot of studying and I think that
16 the resources available to me would be greatly
17 beneficial in helping -- helping me with any
18 gaps in -- in knowledge or information that I
19 need. But I do think that my clerkship
20 definitely was very informative. Now, I do --
21 I do have a little bit of experience with
22 research in criminal matters and in my civil
23 practice we do tort claims act cases and a lot
24 of my tort claims act cases involve crimes
25 committed by employees so I have to consider

1 how the investigation and how discovery in my
2 civil cases will affect the criminal matter.
3 I have to consider how any settlement document
4 language is going to affect any potential
5 restitution. So I do have to read up on -- on
6 that sometimes but I'm -- I'm confident that
7 anything that I need to learn I will be able
8 to pick up on, read through, re-familiarize
9 myself with very quickly.

10 CHAIRMAN SMITH: And looking through some
11 of your PDQ answers and I know you learned a
12 lot when you clerked at the House of
13 Representatives, I would presume.

14 MS. KEESLEY: I was over here.

15 CHAIRMAN SMITH: I think you know all --
16 with all of us over here. When I look at your
17 practice and you're with a reputable law firm,
18 a good law firm and do that and your practice,
19 you've been over there for thirteen years,
20 give or take some, and developing a good
21 mediation practice. At this point while
22 you're on the uptick of your career why make
23 the change to offer for this Circuit Court
24 judge?

25 MS. KEESLEY: Well, I think I would just

1 continue doing more of what I'm doing now. I
2 feel like I've had a lot of experience with
3 litigation, I had a decent experience now with
4 mediation, I enjoy it, but all the aspects of
5 those things that I enjoy would be magnified
6 if I had a judgeship. I would get to see a
7 variety of attorneys and parties, I'd have a
8 lot of different issues come -- come up and I
9 get to travel to circuits and see a lot of
10 different attorneys and different venues.
11 That's one part of my job that I do enjoy that
12 I don't have so much of now that I'm -- I'm a
13 mediator, I don't get to travel as much as I
14 used to. So I would look forward to those
15 things. And I just feel like at this point,
16 I've had people encouraging me to run for
17 several years, so it's a public service job
18 and I had to sit down and weigh the positives
19 and the negatives of -- of what I was going to
20 do and at this point in my life the positives
21 just greatly outweigh the negatives. And I
22 think it's time for me to get invested more in
23 the judicial process than I am now. And
24 that's why I'm running.

25 CHAIRMAN SMITH: When I listened to what

1 you said earlier and talking about being at
2 docket meetings at the same time, trial
3 rosters and depositions and obviously you
4 understand the conflicts that are created with
5 attorneys and when you are, if you are
6 successful in this candidacy and you become a
7 judge, you're going to obviously be up there
8 having to make decisions about how to handle
9 those conflicts. Conflicts from legal
10 practice to the conflicts of personal
11 conflicts with attorneys who have got health
12 issues as you mentioned or have a doctor's
13 appointment or has a child that has a school
14 program this morning or would like to go to
15 their basketball, baseball game. How are you
16 going to handle that? What would be
17 philosophy on how you balance these conflicts
18 versus the lawyers quality of life or knowing
19 that they have obligations to other besides
20 the practice of law?

21 MS. KEESLEY: Well, you know, you have to
22 keep control over things and not let people
23 run all over you. But in my practice I
24 encourage people to request protection if they
25 know they're going to have something coming

1 up. So I think I'd be pretty open to a
2 request for protection and granting those.
3 People have vacation. I -- I didn't take a
4 vacation for my first six years of practice so
5 I'm very -- I'm very aware that attorneys need
6 a break and I think I'd be open to request for
7 protection. Obviously, we all have issues
8 with family and health always becomes a
9 problem for people unfortunately so I would be
10 very aware of that. I'm not going to force
11 anybody to be in court when they have a family
12 obligation. I have -- I had also experienced
13 attorneys that, you know, they'll tell you
14 that they have something going on when really
15 it's just a delay tactic. And so I try to be
16 as aware of that fact as I could but because
17 of the years of litigation practice I have had
18 health problems with my family members, I've
19 had health problems with people in my office.
20 I think I'd be very lenient on that, but I do
21 think there are ways to work around people's
22 schedules to make sure that things get set
23 fairly quickly if they're able to be. I like
24 scheduling orders. I know some judges don't
25 like scheduling orders, but I think I would

1 use whatever tools I had to try to work around
2 somebody's scheduling conflict.

3 CHAIRMAN SMITH: When you look over judges
4 you've been in the courtroom a lot, what's the
5 ideal temperament for a judge and who would
6 you, if any, pattern yourself after or the
7 temperament and the way they handled their
8 courtroom?

9 MS. KEESLEY: Well, I don't know. I think
10 Tommy Cooper from Manning is who I would like
11 to mimic myself after because he seems to be
12 very calm, very fair, very studious. I have
13 been in court a number of times when I thought
14 that what was said to the attorneys was not
15 only going to affect them personally but going
16 to affect their relationship with their
17 client. And so I would be very aware of that.
18 I think that you have to remain calm. I know
19 that -- that judges sometimes get frustrated
20 with attorneys and delay, but I've very aware
21 of the effect that a negative temperament can
22 have on the attorneys and not only how they
23 feel about their job and doing their job, but
24 how, you know, what business they get and if
25 their client continues to use them if they're

1 berated in court. So I'm very aware of the
2 issues with temperament and I would be very
3 cautious in expressing any frustration with an
4 attorney especially if they have a client in
5 the courtroom.

6 CHAIRMAN SMITH: One last thing. We had
7 your father up here. I would be remiss to
8 tell you if your father wouldn't be someone
9 you ought to pattern yourself after. We were
10 very impressed that he served up there since
11 1991 and he had zero negative comments on his
12 ballot box.

13 MS. KEESLEY: Really.

14 CHAIRMAN SMITH: So if you're successful
15 in this candidacy I would urge you to match
16 that reputation he has.

17 MS. KEESLEY: Well, he -- he works very
18 hard and -- and that's something I'm aware of.
19 That's why I said it's a public service job
20 because I have seen the public service side of
21 it and -- and the work on weekends and the
22 work through vacation and the work on holidays
23 so I am aware of how -- what difficulties I
24 might encounter and I would definitely try to
25 pattern my diligence and my commitment to the

1 job after him, but I don't think that's going
2 to be an issue. We share the genes.

3 CHAIRMAN SMITH: Any further questions for
4 Ms. Keesley?

5 (No response.)

6 CHAIRMAN SMITH: All right, Ms. Keesley,
7 thank you for your testimony and being here
8 today. This concludes this portion of our
9 screening process. I want to take this
10 opportunity to remind you that pursuant to the
11 Commission's evaluative criteria the
12 Commission expects candidates to follow the
13 spirit as well the letter of the ethics laws,
14 and we will view violations or the appearance
15 of impropriety as serious and potentially
16 deserving of heavy weight in the screening
17 deliberations. On that note, and as you know,
18 the record will remain open until the formal
19 release of the report of qualifications, and
20 you may be called back at such time if the
21 need arises. I thank you for offering for
22 this position, and I thank you for your
23 service to the state.

24 MS. KEESLEY: Thank you.

25 (The candidate is excused.)

1 CHAIRMAN SMITH: Mr. McLeod, if you will
2 raise your right, please, sir.

3 (The candidate is sworn in.)

4 CHAIRMAN SMITH: Mr. McLeod, you have
5 before you the personal data questionnaire and
6 the sworn statement. Are these both documents
7 that you've submitted to the Commission?

8 MR. MCLEOD: Yes, sir.

9 CHAIRMAN SMITH: Are they both correct?

10 MR. MCLEOD: Yes, sir.

11 CHAIRMAN SMITH: Anything that needs to be
12 changed?

13 MR. MCLEOD: No, sir.

14 CHAIRMAN SMITH: Do you have any objection
15 to us making these documents and any
16 amendments a part of the record of your sworn
17 testimony?

18 MR. MCLEOD: I have no objection.

19 CHAIRMAN SMITH: All right. If you'll
20 hand those to Lindi, please and we'll make
21 those an exhibit to your sworn testimony.

22 [EXHIBIT NO. 13, JUDICIAL MERIT
23 SELECTION COMMISSION PERSONAL DATA
24 QUESTIONNAIRE FOR WALTON J. MCLEOD IV,
25 ADMITTED.]

1 [EXHIBIT NO. 14, SWORN STATEMENT FOR
2 WALTON J. MCLEOD IV, ADMITTED.]

3 [EXHIBIT NO. 15, AMENDED PERSONAL DATA
4 QUESTIONNAIRE FOR WALTON J. MCLEOD IV,
5 ADMITTED.]

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

17 We have received no affidavits today
18 filed in opposition to your election and there
19 are no witnesses here to testify. Do you wish
20 to make a brief opening statement to the
21 Commission?

22 MR. MCLEOD: Nothing in addition to my
23 affidavit, Mr. Chairman, other than I'm
24 honored to be here today and I appreciate the
25 opportunity to appear before this body.

1 CHAIRMAN SMITH: Thank you very much.
2 Please answer any questions that counsel may
3 have.

4 EXAMINATION

5 (By Ms. Benson)

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

16 **A.** I was fortunate after graduating law school to have
17 the opportunity to go clerk for a Circuit Court
18 judge. The value that I -- arose from that year
19 working with the bench serves me well to this day.
20 Being able to be a part of the civil justice system
21 and criminal justice system, trials, jury motion
22 and non-jury hearings, pleas, probation
23 revocations, PCRs, more status conferences than you
24 can count, it really was a wonderful experience to
25 see the total system at work and to be a part of --

1 of the system. It kind of is a part of the wheel
2 that is our civil justice system and criminal
3 justice system. It was a wonderful experience and
4 back -- even looking back that far I knew then and
5 there that, that was the type of way that I could
6 serve the profession and the state in a way that I
7 thought would -- would be -- would suit me well.
8 It suits my type of personality and my -- my ethics
9 and I -- I never have forgotten that time and
10 that's -- that's why I'm here before you today.

11 **Q. Thank you. Mr. McLeod, the Commission received 130**
12 **ballot box surveys regarding you and among those**
13 **they included 13 additional comments, three of**
14 **which were negative and those three indicated that**
15 **you needed some more experience. It's worth noting**
16 **that quite a number of the responses directly**
17 **conflicted with those and they would find you amply**
18 **qualified. So Mr. McLeod, what response do you**
19 **give to the negative -- the three negative comments**
20 **that said you needed more experience?**

21 **A.** I think it's fair for anyone to have that opinion,
22 but you know, my -- my practice to this point is
23 I've been exposed to a variety of different areas.
24 If I had to address something specifically, I
25 haven't had as much -- I wouldn't describe myself

1 as a criminal practitioner. I've certainly handled
2 some criminal cases, but if any -- any -- any of
3 that perceived lack of experience I know that I'm
4 fully capable of immersing myself into criminal law
5 and I know that I would be an effective Circuit
6 Court judge nonetheless, if that answers your
7 question.

8 **Q. Yes, sir. Thank you. Mr. McLeod, you disclosed**
9 **that you're the owner of a -- you are an owner of a**
10 **parcel in Edisto Beach that's currently involved in**
11 **pending litigation. Newspaper research indicated**
12 **that you had attended a town hall meeting**
13 **pertaining to the dispute. You spoke out about the**
14 **zoning ordinance that might affect your property.**
15 **In addition you've amended your PDQ concerning this**
16 **pending litigation. Could you please tell the**
17 **Commission about the pending litigation with which**
18 **you're involved and what you might do if you were**
19 **on the bench and this pending litigation were still**
20 **in process.**

21 **A. Thank you. And to be clear that pending litigation**
22 **at Edisto Beach, I'm not a named party but I would**
23 **describe myself as an interested party. I believe**
24 **-- I believe the matter will resolve soon. I can**
25 **assure this body that were any portion of that case**

1 to come before me as a Circuit Court judge I would
2 certainly disqualify myself obviously because I
3 have an interest in it. Regarding your -- the
4 amendment you spoke of the PDQ, that is for a
5 separate matter. That is a -- I'm the named
6 petitioner in a case before the U.S. Court of --
7 U.S. Court of Appeals for Veteran's Claims which is
8 really an administrative body in Article I Court
9 involving really a matter about the way that the
10 Secretary is handling the disbursement of fees.
11 It's -- it's not your typical civil action. It's
12 not a damages case but I wanted to make sure I
13 disclosed it because it came into life after I
14 submitted my application. But it's not your
15 typical civil or criminal case like we talk about
16 in the PDQ but I wanted to make sure I disclosed it
17 --

18 **Q. Thank you.**

19 **A. -- if that answers your question.**

20 **Q. I appreciate and I'm sorry for the confusion about**
21 **that. Is there anything more that you'd like to**
22 **say about that amendment that you made to the PDQ?**
23 **Any more -- you've stated what the case is about.**

24 **A. I believe so. If I answered your question, please**
25 **let me know.**

1 Q. Very good. Thank you. Mr. McLeod, we spoke
2 whenever you were in the office about your Navy
3 background and you've spoken today about your
4 clerking experience. And I wondered if you'd
5 comment further about your background in the Navy
6 and also your clerking experience. How did they
7 prepare you for an election to a judicial position.

8 A. Well, without going through the clerkship and my
9 legal experience to date obviously that has
10 importance but really my service in the Navy after
11 college, the more time goes by the more valuable it
12 gets because you really have the opportunity to
13 look back and you see the opportunities that you
14 had to serve in leadership roles, to be put in some
15 stressful situations at a very young age. I was
16 charged with the safe navigation of a 9,000 ton
17 guided missile destroyer and that was a -- a long
18 tour from the standpoint that there was not as much
19 sleep as the first tour I had. And -- but what I
20 would say is the -- the responsibility that I had
21 as a Naval Officer served me well, but -- and it
22 served me well as an attorney by dealing with those
23 types of scenarios where there's not always a good
24 solution. You have to make some hard decisions and
25 I'm -- I'm -- I'm certain it would serve me well as

1 a Circuit Court judge.

2 Q. Thank you. Mr. McLeod, a few housekeeping issues.
3 Are you aware that as a judicial candidate you are
4 bound by the Code of Judicial Conduct as found in
5 Rule 501 of the South Carolina Appellate Court
6 Rules?

7 A. I am.

8 Q. Since submitting your letter of intent, have you
9 contacted any members of the Commission about your
10 candidacy?

11 A. No, I have not.

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

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

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

21 A. No.

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

1 A. Yes, ma'am.

2 **Q. Thank you.**

3 MS. BENSON: Mr. Chairman, I would note
4 for the record that the Midlands Citizens
5 Committee reported Mr. McLeod to be well
6 qualified in the evaluative criteria
7 of ethical fitness, professional and academic
8 ability, character, reputation and judicial
9 temperament. And qualified in the criteria
10 of constitutional qualifications, physical
11 health, mental stability and experience. The
12 Committee described Mr. McLeod as "A very
13 impressive individual, he scores very high on
14 intellect and temperament. Despite his
15 relative youth we believe his life
16 experiences, four years a U.S. Navy Officer,
17 have given him a maturity beyond his years.
18 He does however suffer from a lack of criminal
19 law experience." In summary the Committee
20 stated, "Mr. McLeod would make an exceptional
21 Circuit Court judge with some concern for his
22 lack of criminal experience." Mr. Chairman, I
23 would note for the record that any concerns
24 raised during the investigation by staff
25 regarding the candidate were incorporated into

1 the questioning of the candidate today. And
2 Mr. Chairman, I have no further questions.

3 CHAIRMAN SMITH: Thank you very much.
4 Senator Hayes.

5 MR. HAYES: Thank you. Appreciate your
6 willingness to serve. You had four years
7 active duty?

8 MR. MCLEOD: Yes, sir.

9 MR. HAYES: Did you consider the Reserves
10 when you came out?

11 MR. MCLEOD: I did. And the Army Reserve
12 works a little different than Naval Reserve
13 these days. I tried several ways to try to
14 get back in the Navy Reserve. My father was a
15 reservist for a lifetime and he enjoyed every
16 minute of it and I -- it just, for example,
17 you couldn't do the JAG Corps, you couldn't do
18 some of things -- I couldn't be a Surface
19 Warfare Officer anymore. I could go and do
20 things that really wouldn't have appealed to
21 me much so in the end I -- I finished my four
22 years in the Individual Ready Reserve and then
23 I was done.

24 MR. HAYES: The Midlands Committee seemed
25 to cite you for lack of criminal experience

1 but looks -- I was looking at your bio, maybe
2 I'm looking at the wrong one, but what is your
3 job now?

4 MR. MCLEOD: I'm a litigation attorney for
5 McLeod Law Group. My practice consists mainly
6 of civil litigation. I do have some criminal
7 experience. My criminal experience has been
8 representing a few DUI cases, one General
9 Sessions case, maybe two. I worked part-time
10 or I volunteered as a pro bono prosecutor for
11 the Attorney General's CDV program from 2011
12 to '14, I believe. So the criminal justice
13 system is certainly not foreign to me but I
14 want to be careful not to say that I'm a
15 criminal practitioner. If I, you know, if I
16 were to get a case then ordinarily that might
17 be referred to someone who I know did that on
18 a daily basis.

19 MR. HAYES: Just one other question. If
20 you, putting aside your experience issue, what
21 part of your character or your experience
22 would put you in good stead as a judge and
23 maybe what part of your character and
24 background might be a hindrance on you being a
25 judge?

1 MR. MCLEOD: Well, Senator, I don't think
2 I have a character hindrance with being a
3 Circuit Court judge.

4 MR. HAYES: For experience in.

5 MR. MCLEOD: Okay. Outside of experience.

6 MR. HAYES: Yeah, and outside of --

7 MR. MCLEOD: I understand your question.
8 But if I understand you correctly, my -- my
9 overall background, when you couple my legal
10 experience with my military experience I think
11 it is a very, very good mix of real life
12 experience that I know will serve -- help me
13 be a successful Circuit Court judge.

14 MR. HAYES: Any negatives in the
15 background that might be a hindrance from you
16 being a judge or anything?

17 MR. MCLEOD: I want to make sure I
18 understand that. Any negatives?

19 MR. HAYES: Anything that in your, as far
20 as in your background or your -- character is
21 not a good word, but maybe just in your
22 personality that might be a hindrance for
23 being a judge.

24 MR. MCLEOD: To be -- to be frank, I think
25 I have a good temperament. I think I would do

1 very well as a Circuit Court judge. Now, I'm
2 a human being, is -- is it possible that I
3 could get frustrated? That -- that's just not
4 -- that's just really not how I am. I think
5 any person given the right circumstances could
6 have a -- could lose their voice under certain
7 circumstances, but Senator I don't think I'm
8 going to have any issues from a character
9 standpoint or a temperament standpoint doing
10 this job effectively.

11 MR. HAYES: From that lawsuit that you
12 mentioned you were involved in I take it you
13 represented VA claims?

14 MR. MCLEOD: Yes, sir. I represent VA
15 Disability, particularly denials, in the
16 appellate process. That case is specific in
17 that it's sort of case within a case. And the
18 -- if I could describe the suit. It's really
19 akin to -- imagine a rule, a motion to compel
20 in the civil system under the rules where you,
21 it's not equity in a sense but you're --
22 you're asking Secretary you have a procedure
23 and you're asking the court to say tell them
24 to follow it. And a lot of times there's
25 correspondence back and forth between the

1 Secretary and the attorney and there will be
2 months of delays. So the purpose of my
3 petition with the Court of Appeals and Veteran
4 Claims is to essentially A, inform the court
5 that, that delay is going on, or B, inform the
6 court it's something that really demands
7 immediate attention if there's not a --
8 they're not following their own procedures.
9 So it's -- if that answers your question?

10 MR. HAYES: It does. Thank you.

11 CHAIRMAN SMITH: Any further questions.
12 Senator Young.

13 SENATOR YOUNG: Thank you, Mr. Chairman.
14 Mr. McLeod.

15 MR. MCLEOD: Senator.

16 SENATOR YOUNG: Thank you so much for your
17 interest in serving as a Circuit Court judge.
18 I have a few questions. One is how would you
19 describe your judicial philosophy with respect
20 to the application of the law to any facts
21 that would be before you as a Circuit judge?

22 MR. MCLEOD: How would I apply the --

23 SENATOR YOUNG: How would you describe
24 your judicial philosophy in terms of reading
25 the law and then applying the law to the

1 facts?

2 MR. MCLEOD: If I -- if I understand you
3 correctly, Senator, my philosophy would be
4 that the law is written clearly and it's, as a
5 judge, I don't think it's the courts -- I
6 don't think it's up to the court to change the
7 clear meaning of the statute if I understand
8 you correctly, Senator. Enforce the law as it
9 is written would be my answer. If I'm
10 understanding you correctly.

11 SENATOR YOUNG: That's the question.
12 You've understood it correctly. So another
13 question I would have is you are in a smaller
14 practice; is that right? In your Columbia
15 office?

16 MR. MCLEOD: In our Columbia office, yes.
17 Now, we have obviously a Charleston office as
18 well with five attorneys there so while I have
19 a -- I manage a small office here we're also
20 part of a larger -- part of a larger team.

21 SENATOR YOUNG: In the practices that
22 you've been involved in are you familiar with
23 the challenges that face lawyers who practice
24 in smaller firms, either solo practitioners or
25 smaller firms, with their time covering all

1 the different types of cases and demands they
2 have with different courts and be in one place
3 and many times you might have stuff scheduled
4 the same day, same time. Are you familiar
5 with those challenges?

6 MR. MCLEOD: Very much so, Senator.

7 SENATOR YOUNG: If you were elected to
8 Circuit Court how would you handle attorneys
9 who appear before you who have scheduling
10 conflicts due to their -- or make a request
11 for a continuance?

12 MR. MCLEOD: Well, attorneys can't be in
13 two places at once, we know that. So often
14 times attorneys move for protection based upon
15 their schedule and I know as a clerk and years
16 of practice most of the time those are
17 granted, usually no one ever objects. While
18 we want to move the docket, of course, we also
19 need to be considerate of attorneys'
20 schedules. Now, the flip side is as attorneys
21 we also have to make sure that we're not
22 overloading ourselves to the detriment of
23 ourselves or our clients. But I, you know,
24 barring repeated -- I guess it would be a
25 case-by-case basis, Senator. If -- if there's

1 an attorney who has habitually shows up for a
2 roster meetings and has six reasons why we
3 need a continuance, I'm rambling a little bit
4 here, for a request for continuance, I would
5 ask why and I would want to know more about
6 the case. I would take an interest in knowing
7 what do we need the continuance for, how much
8 time do you need, and make a decision that --
9 where you try to help the attorney, but you're
10 also keeping the case moving.

11 SENATOR YOUNG: I want to thank you for
12 your service in the military.

13 MR. MCLEOD: Thank you, Senator.

14 SENATOR YOUNG: You served four years
15 before you went to law school; is that right?

16 MR. MCLEOD: That's correct.

17 SENATOR YOUNG: How do you think your
18 service in the military would differentiate
19 you from the other candidates for the Circuit
20 Court?

21 MR. MCLEOD: Well, for starters, it's an
22 experience that cannot be duplicated. You
23 can't recreate military experience in a
24 civilian world. There's been some times in
25 litigation where schedules have gotten so

1 clogged up that it almost feels somewhat
2 military. But the experience and responsibly
3 of one, being in charge of people at an early
4 age, being in charge of their safety. I was
5 twenty-two years old and I had the first --
6 the first qualification to get on a ship is
7 called the aft-steering. It's not anything
8 that any officer gives a high five when they
9 get the qualification because it means you've
10 got to sit in the bow of the ship and you are
11 coming into a port and you're in charge. If
12 there is a steering casualty, which in light
13 of some recent events in the fleet, it's --
14 looking back even now, that has value. If
15 there is some sort of engineering casualty
16 you've got to be ready to go. You got to be
17 ready to take orders, you got to be able to
18 steer that ship, even though you don't know
19 where you're going, you've got to work with
20 your team and do what has to be done. That
21 type -- and there are many incidences like
22 that. So that type of experience at that
23 young age -- when you're there you don't, you
24 can't possibly appreciate it. But I know as a
25 lawyer it has helped me on numerous occasions

1 and I think, I know, it would be -- it would
2 help me as a Circuit Court judge.

3 SENATOR YOUNG: I also noticed that you're
4 an Eagle Scout. I saw that in your PDQ. I
5 want to involve that as well. Do you think
6 that -- how would you go about becoming more
7 familiar with the requirements of a Circuit
8 judge in the criminal arena? We've now sat
9 through these, this is, I think, our fourth
10 full day of hearings. What we've heard
11 repeatedly from the judges who are already on
12 the bench who come back before us to be
13 screened is that the number of cases that are
14 on the civil side that are going to trial have
15 -- I think Chief Justice Kittredge said that
16 it's maybe thirty-five percent of what it was
17 twenty years ago, but the criminal cases the
18 volume has increased. And maybe he didn't say
19 that about criminal but somebody else did.
20 How would you go about becoming more familiar
21 with the criminal laws and criminal procedure
22 and the things that you would have to know in
23 the Circuit Court on the criminal side?

24 MR. MCLEOD: Well, for starters I at least
25 have some experience of seeing the criminal

1 system work from clerking for the court for a
2 year. I think the first thing you do is you
3 need to be familiar with the law and that's --
4 that's somebody who has a distinguished career
5 in the criminal law. I would be motivated and
6 I would immerse myself reading and studying
7 that law, that body of law. Now, at the end
8 of the day we do still learn the same rules of
9 evidence which I'm fine with and I, you know,
10 the criminal procedure and a lot of the things
11 that, you know, civil practitioners don't deal
12 with as often. On the basis, I would just
13 attack that in a very motivated manner to
14 become as knowledgeable as possible as quickly
15 as possible. In the interim between, if
16 elected judge, before taking office I would
17 spend every available moment I could in the
18 courtroom particularly on criminal matters.

19 SENATOR YOUNG: Thank you very much.

20 CHAIRMAN SMITH: Senator Rankin.

21 SENATOR RANKIN: Just briefly. I don't
22 want to repeat everything, every accolade that
23 you've been given and certainly earned but
24 it's been highlighted by Senator Young. But
25 your father, I want to comment about his

1 statesmanship. I've been in elective office
2 in the Senate since '92 and he is ever ready,
3 ever informed, ever, I think, statesman-like.
4 Now, there may be some in the House that would
5 say differently but from the Senate my
6 observations of him have been nothing but
7 exemplary. So I'm tickled to see that you're
8 offering to continue public service. You've
9 given to your country, you've given to the
10 Scout service earning the distinction as an
11 Eagle Scout. And the comments that you've
12 gotten. I don't know that there's ever a
13 perfect candidate. Either one or two before
14 you was asked about is there a perfect
15 candidate that could offer one that has
16 experience in all realms of court. Your rap
17 is that you don't have enough criminal
18 experience, but anyway, the comments that
19 folks made and the effectively unblemished
20 negative commentary about you is exemplary.

21 MR. MCLEOD: Thank you, Senator.

22 SENATOR RANKIN: Anyway, you have no
23 blemishes on you it appears except strong
24 credentials and a lack of criminal experience.
25 So there's no question there.

1 MR. MCLEOD: Thank you, Senator.

2 SENATOR RANKIN: My compliments to your
3 dad.

4 MR. MCLEOD: Thank you, Senator.

5 CHAIRMAN SMITH: Any further questions?

6 (No response.)

7 CHAIRMAN SMITH: Mr. McLeod, let me just
8 ask you about a couple issues. Obviously, you
9 mentioned you have some limited criminal
10 experience. Obviously, you would have to gain
11 some more. How would you handle, if you were
12 elected to this position, how would you
13 prepare yourself for General Sessions Court?

14 MR. MCLEOD: Well, I -- Mr. Chairman, if
15 elected I, as I was just explaining, I think,
16 to Senator Young, I'm going to get invested in
17 criminal law. That's -- and to be clear, I've
18 taken measures already to -- to bone up on
19 that but I'll do everything in my ability to
20 ensure that the moment I hold court I'm ready
21 to go.

22 CHAIRMAN SMITH: In regards to General
23 Sessions as you see more and more alternative
24 courts, is what we call them, the Drug Court,
25 the Mental Health Court, I mean, we've got a

1 veterans court here in Richland County, but
2 what's your philosophy and what would you do
3 to work with those or improve them or how
4 would you handle that?

5 MR. MCLEOD: Well, I'd certainly work with
6 the solicitor in any way I could to -- the
7 criminal docket you need to have a trial, a
8 plea or a diversion or a dismissal. The
9 solicitor has the call on most of those. So
10 anyway that I could assist the solicitor and
11 create a more efficient and productive
12 criminal docket that's what I would want to
13 do, that would be my goal, Mr. Chairman. But
14 my paramount goal would be ready to try
15 criminal cases on day one.

16 CHAIRMAN SMITH: But as it relates to
17 these alternative courts, are you --

18 MR. MCLEOD: Oh, I'm sorry.

19 CHAIRMAN SMITH: Yeah. As it relates to
20 alternative courts is that something that you
21 feel is beneficial to the criminal justice
22 system something that could -- that helps with
23 the timely disposition of cases and placing
24 people in the appropriate places?

25 MR. MCLEOD: To the extent that we help

1 people get their life together that we -- if
2 there's a way for PTI or if there's some other
3 diversionary program, mental health, Veterans
4 Court, if there's a way that we can -- the
5 criminal justice system can help people and
6 not keep them behind -- not put somebody
7 behind bars, I -- I think that's certainly a
8 laudable thing to do. If that -- if I
9 understand your question correctly, Mr.
10 Chairman.

11 CHAIRMAN SMITH: Yeah.

12 MR. MCLEOD: The only thing I would -- I
13 have -- I have not had exposure to the Mental
14 Health Court or the Veterans Court
15 specifically, but I would be interested in
16 helping those diversionary programs in any way
17 I could.

18 CHAIRMAN SMITH: I'm just looking through
19 your record and same question that asked the
20 candidates that have appeared before us today
21 is it looks like you're starting off your law
22 career and you graduated in 2008 and clerked
23 and you're with a good law firm, and I got to
24 know your law firm and know the attorneys down
25 there. Why offer at this point in your

1 career?

2 MR. MCLEOD: Well, it goes back -- it
3 begins with my time as a clerkship. It begins
4 seeing it up close and personal as my career
5 began and frankly when -- when I saw that
6 Judge McMahon was not going to reapply, you
7 know, Lexington County is where I live, it's
8 where my kids go to school, it's where -- it's
9 where I want to be and I thought that was just
10 an optimum way for me to serve the profession
11 and the State of South Carolina. And when I -
12 - when I saw the opportunity was there I
13 simply just couldn't not do it.

14 CHAIRMAN SMITH: Mr. McLeod, we've asked a
15 couple of people to look through this and look
16 through your ballot box surveys and it comes
17 back as excellent and well qualified
18 throughout all this and no negative comments
19 so that's obviously a testament. You hear
20 people ask you tough questions but also I
21 think it's part of our job to compliment you
22 when you have practiced law and have been in
23 adversarial positions and you have nobody back
24 here criticizing the way you conduct yourself
25 as an attorney speaks volumes of how you carry

1 yourself and how you practice. So I wanted to
2 compliment you on that and appreciate it. And
3 I would be remiss if I did not say that your
4 father and I always served together and he
5 always called me judge and now I have his son
6 appearing before us wanting to be a judge so I
7 find that a little ironic. He always would
8 encourage me to run for the Circuit Court, but
9 as Mr. Rutherford said --

10 REPRESENTATIVE RUTHERFORD: He was just
11 being kind though.

12 CHAIRMAN SMITH: I'm an unpleasant person
13 so that would not serve us well according to
14 Mr. Rutherford. Make sure I never get put on
15 the bench. So but I enjoyed the time served.
16 You dad is probably one of the most
17 intellectual and brilliant people that have
18 ever graced the halls of this Capitol in my
19 service up here. And I tell you I always
20 enjoyed serving with him and I know if you're
21 half the lawyer and half the intellect he is
22 then you're good shape.

23 MR. MCLEOD: Thank you, sir.

24 CHAIRMAN SMITH: Any other questions?

25 (No response.)

1 CHAIRMAN SMITH: All right, Mr. McLeod,
2 thank you so much. This concludes this
3 portion of our screening process. I want to
4 take this opportunity to remind you that
5 pursuant to the Commission's evaluative
6 criteria the Commission expects candidates to
7 follow the spirit as well the letter of the
8 ethics laws, and we will view violations or
9 the appearance of impropriety as serious and
10 potentially deserving of heavy weight in the
11 screening deliberations. On that note, and as
12 you know, the record will remain open
13 until the formal release of the report
14 of qualifications, and you may be called back
15 at such time if the need arises. I thank you
16 for offering for this position, and I thank
17 you for your service to the state and to this
18 country.

19 MR. MCLEOD: Thank you, Mr. Chairman.
20 Thank you all.

21 (The candidate is excused.)

22 CHAIRMAN SMITH: You have the distinct
23 pleasure of being our last candidate today.

24 MR. MADSEN: Thank you.

25 CHAIRMAN SMITH: You brought someone with

1 you. Would you like to introduce her to the
2 Commission?

3 MR. MADSEN: I would. This is my wife,
4 Jennifer Madsen. We've been married for
5 twenty years. We actually met in the law
6 school library.

7 CHAIRMAN SMITH: Welcome, Jennifer. Nice
8 to see you. Appreciate you being here today.
9 Mr. Madsen, will you raise your right hand,
10 please, sir.

11 (The candidate is sworn in.)

12 CHAIRMAN SMITH: Mr. Madsen, before you is
13 your personal data questionnaire and the sworn
14 statement. Are these documents that you
15 submitted to the Commission?

16 MR. MADSEN: Yes, sir.

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

19 MR. MADSEN: Yes, sir.

20 CHAIRMAN SMITH: Are there any changes or
21 updates that you make at this time?

22 MR. MADSEN: I do not believe so.

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

1 MR. MADSEN: No, sir. I do not.

2 CHAIRMAN SMITH: If you'll hand them to
3 Lindi for me, please, sir and we're going to
4 mark those as an exhibit to your testimony.

5 [EXHIBIT NO. 16, JUDICIAL MERIT
6 SELECTION COMMISSION PERSONAL DATA
7 QUESTIONNAIRE FOR ROBERT MICHAEL MADSEN,
8 ADMITTED.]

9 [EXHIBIT NO. 17, SWORN STATEMENT FOR
10 ROBERT MICHAEL MADSEN, ADMITTED.]

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

22 We have received no affidavits filed in
23 opposition to your candidacy and no witnesses
24 are present to testify. Do you wish to make a
25 brief statement -- opening statement to the

1 Commission?

2 MR. MADSEN: I appreciate you all having
3 me. I know that it's certainly been a long
4 day. I'm willing to answer any questions. I
5 feel that if given the opportunity that I
6 would make South Carolina proud and be a
7 diligent, hardworking, intelligent, Circuit
8 Court judge.

9 CHAIRMAN SMITH: Thank you. Will you
10 answer questions that counsel may have,
11 please, sir?

12 EXAMINATION

13 (By Mr. Franklin)

14 **Q. Thank you, Mr. Chairman, I note for the record that**
15 **based on the testimony contained in the candidate's**
16 **PDQ, which has been included in the record with the**
17 **candidate's consent, Mr. Madsen meets the**
18 **constitutional and statutory requirements for this**
19 **position regarding age, residence and years of**
20 **experience. Good afternoon, Mr. Madsen.**

21 **A. Good afternoon.**

22 **Q. How do you feel your legal and professional**
23 **experience thus far renders you qualified and will**
24 **assist you to be an effective Circuit Court judge?**

25 **A. During my entire career I have spent the majority**

1 of it as a trial lawyer. Mostly as a prosecutor
2 and then for the last nine years as a public
3 defender. So I am certainly aware of all aspects
4 of court. I've tried numerous cases from the
5 highest level down all the way to DUI. I believe
6 that I have the intelligence, a work ethic, and the
7 ability to -- to be a good Circuit Court judge.

8 Q. Mr. Madsen, the Commission received 109 ballot box
9 surveys regarding you with 18 additional comments.
10 The ballot box survey for example contained the
11 following positive comments. "Robert Madsen is
12 smart, approachable and of high character and would
13 be a great fit for the bench." "Robert Madsen is
14 well qualified to be a Circuit Court judge. He is
15 well reasoned and has an excellent demeanor." And
16 also, "Mr. Madsen has an excellent blend of
17 background experience that will certainly make him
18 an excellent judge. He has an excellent
19 temperament and has proven himself to be a terrific
20 worker. He would be an asset to any office or
21 practice area." However, two of the written
22 comments expressed concerns indicating that you are
23 easily manipulated and are not fair and impartial.
24 What response would you offer to those concerns?

25 A. I've always certainly tried to be fair and

1 impartial in dealing with individuals. However,
2 I've always had a job where I've been an advocate
3 for one side or the other. While you generally end
4 up differing in that sense I've always tried to
5 treat the other side -- or other side fairly in my
6 dealings. And that's it.

7 **Q. Another of the written comments expressed concern**
8 **about your alleged lack of experience in the area**
9 **of civil law. How would you respond to that**
10 **criticism?**

11 A. I did civil law initially coming out of law school
12 with a small general practice. That didn't turn
13 out so well because I ended up having to report my
14 boss to the Supreme Court and the FBI. He was
15 later prosecuted for stealing money out of our
16 trust account. I ended up going into the
17 Solicitor's Office in Aiken, mainly in Barnwell and
18 Bamberg, after that. But I did have some
19 experience, it will be twenty years ago, in filing
20 motions, preparing certain things, but I am
21 familiar with all aspects of the rules of evidence.
22 I am an extremely deliberate individual, in other
23 words, if I get a murder case today, I start off, I
24 pull the statutes, I might pull self-defense if
25 that's the defense, I re-review the law. So I'm an

1 extremely deliberate person who likes to be
2 thoroughly prepared. Within the civil realm because
3 of the fact that I've got the extensive trial
4 experience and have the -- and have experience with
5 the rules of evidence I think that I would be able
6 to make a seamless transition to civil law because
7 I am a person that believes in preparation on the
8 front end.

9 **Q. Mr. Madsen, you indicated in your PDQ that in 2017**
10 **you were named as a defendant in a lawsuit filed in**
11 **the District Court entitled Brown v. Lexington**
12 **County. In that lawsuit you were named in your**
13 **capacity as Circuit Public Defender for the**
14 **Eleventh Judicial Circuit of South Carolina; is**
15 **that correct?**

16 A. Yes, sir.

17 **Q. Is that case still ongoing?**

18 A. It is.

19 **Q. Are there any other comments that you'd like to**
20 **offer about that case?**

21 A. That's -- it's interesting in that, that's five
22 individuals that our office did not -- was never
23 appointed to so we did not represent. I am kind of
24 sued in my capacity as a public defender. Part of
25 their allegations are that I did not ask for enough

1 money from Lexington County in the past which I
2 didn't, but quite honestly, I kind of have an idea
3 what I'm going to get or when I'm going get it.
4 And sometimes it's smarter, you know, not to ask
5 for eight hundred thousand dollars when you know
6 you're not going to get it because next year if you
7 need a hundred thousand dollars they're just going
8 to tune you out. And so I am sued because I -- we
9 are underfunded as a county as compared to counties
10 that are the same size from Lexington County but
11 that seems to be the capacity that I am being sued
12 in right now. But like I said we did not represent
13 any of those five individuals when they were
14 appointed by -- or by the court.

15 **Q. Mr. Madsen, just for the record, my understanding**
16 **is that there was some sort of mixup regarding the**
17 **scheduling of your interview before the Citizens**
18 **Committee. Could you comment on that?**

19 **A.** I am someone that always tries to make sure that I
20 am early instead of late. That is one of my pet
21 peeves. I had gotten an email indicating what or
22 the days that we are -- that we were supposed to
23 have an interview. I emailed back and said that I
24 was available at any point in time. I will tell
25 you that I did not realize that there were two

1 separate interviews, a Citizens Committee and then
2 a Bar that was going to be on the same dates and
3 the same location. I thought that there was only
4 one. I will tell you when I went back through
5 there was another candidate that I noticed that
6 they had messed up his email so I don't know if he
7 ever got the email. I contacted him to make sure
8 but they were nice enough to reschedule it. But I
9 am someone that it bugs the dickens out of me to be
10 late. I take pride in making sure that I am early
11 instead of late.

12 **Q. Thank you. And as a Circuit Court judge, what**
13 **strategies would you utilize to ensure that orders**
14 **are issued in a timely manner?**

15 A. I am someone that likes to calendar things. I
16 start on my calendar things a number of different
17 ways. I have a desk calendar that I write on, I
18 then use Outlook to calendar things which flows
19 through to my phone and then I am certainly willing
20 if the judicial department has any kind of calendar
21 and software to utilize that. We just got iPads in
22 our office and we're starting to use those. I am
23 slowly trying to transition to that although having
24 started and doing just paper that transition hasn't
25 been as quick as possible. But I would -- I like

1 to stay on top of my work because if you don't stay
2 on top of it, it has a tendency to kind of spiral
3 on you and put you behind the eight ball and I am
4 not that type of person.

5 **Q. Thank you. Now, for a few housekeeping issues.**
6 **Mr. Madsen, are you aware that as a judicial**
7 **candidate you are bound by the Code of Judicial**
8 **Conduct as found in Rule 501 of the South Carolina**
9 **Appellate Court rules?**

10 A. Yes, sir. I am.

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

14 A. 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 of**
18 **your screening?**

19 A. No, sir. 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 in**
23 **this process on your behalf?**

24 A. No, sir.

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. Yes, sir. I am.

4 MR. FRANKLIN: I would note that the
5 Midlands Citizens Committee reported that Mr.
6 Madsen is qualified in the evaluative criteria
7 of constitutional qualification, physical
8 health and mental stability. And well
9 qualified in the remaining evaluative criteria
10 of ethical fitness, character, professional
11 and academic ability, reputation, experience
12 and judicial temperament. The Committee
13 commented that "Mr. Madsen scores high on
14 temperament and criminal trial experience. He
15 has some civil court experience but it was
16 quite a while ago. He has superior intellect
17 and is well liked by the bench and the Bar.
18 He is a well qualified candidate with some
19 concerns about his civil court experience."
20 The Committee notes further that Mr. Madsen,
21 "Was screened by four committee members
22 because he missed his interview due to a
23 mixup", which we explained. Mr. Chairman, I
24 would note for the record that any concerns
25 raised during the investigation by staff

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

4 CHAIRMAN SMITH: All right. Thank you.
5 Any questions for Mr. Madsen? Senator Young.

6 SENATOR YOUNG: Thank you, Mr. Chairman.
7 Mr. Madsen, thank you so much for your
8 interest in serving the Circuit Court --

9 MR. MADSEN: Thank you.

10 SENATOR YOUNG: -- and the state. And my
11 first question to you is how would you
12 describe your judicial philosophy with respect
13 to how would you apply the law to any facts
14 that would be before you in your role as a
15 Circuit judge?

16 MR. MADSEN: I am someone who certainly
17 believes that the Legislator is the one who
18 creates the law. It is the judiciary's
19 responsibility to interpret the laws giving
20 the legislative intent. And so I -- I would
21 kind of consider myself a constructionist. I
22 don't believe in legislating from the bench.
23 I believe that you follow the laws as written
24 by the Legislator.

25 SENATOR YOUNG: You have practiced most of

1 your career either in the Solicitor's Office
2 or the Public Defender's Office.

3 MR. MADSEN: Yes, sir.

4 SENATOR YOUNG: How familiar are you with
5 the challenges that face lawyers who practice
6 either by themselves or solo practitioners or
7 small firms especially as to their time and
8 appearing in multiple courts, handling
9 multiple cases in multiple courts, and they're
10 being pulled, they may have to have a request
11 for a protection or a continuance. Are you
12 sensitive to that?

13 MR. MADSEN: I am. I clerked for two
14 years with a small practice and then started
15 off in a small practice until about April when
16 kind of the wheels fell off so I am familiar
17 with that because we were a general practice
18 that did Family Court, civil plaintiff work,
19 some criminal and some civil defense and then
20 also real estate and tax. So we could be
21 pulled multiple ways and I helped coordinate
22 that with the attorney.

23 SENATOR YOUNG: How do you think your
24 experience in the Public Defender's Office
25 could differentiate you from any other

1 candidates in your particular Circuit Court
2 race?

3 MR. MADSEN: You know, it's a -- it's
4 certainly different being there. You now,
5 while I was at the Solicitor's Office I did
6 enjoy it. And the nice part about it is you
7 do get to kind of schedule what's going on.
8 So I would know what my schedule is four to
9 six months out because I would -- the trials
10 that I would have scheduled I would have them
11 on my board and I could work towards those
12 goals. When you become a public defender it's
13 an entirely different -- I can't tell you ten
14 days from now what I'm going to be doing
15 because I could receive a notice saying you're
16 trying this murder case or you doing this or
17 you doing that. And so it's a lot more trial
18 by ambush because you have a limited amount of
19 time to get ready which means that as the
20 course of the time goes on you're having to
21 prepare those things and be ready to go at a
22 moment's notice because you don't necessarily
23 get the choice of when you're going to try a
24 particular case. I don't know if any of the
25 other candidates have that experience, but I

1 think that is something that is certainly
2 valuable.

3 SENATOR YOUNG: Thank you.

4 CHAIRMAN SMITH: Mr. Safran.

5 MR. SAFRAN: I would echo Senator Young's
6 comments about how we do appreciate the fact
7 that it's not an easy thing to come up here
8 and talk to us. I know that necessarily
9 you're assuming you're here to be grilled, but
10 I do think that it's also important to commend
11 folks and some of the responses we got here in
12 terms of things that we value like temperament
13 and industry are certainly telling. It does
14 seem like from what your experience is kind of
15 generated that you have seen both sides of the
16 fence. Just comment for me quickly about,
17 just taking from where you left off, how being
18 someone who saw it from the solicitor's side,
19 you can plan and prepare and really didn't
20 have too many concerns about being caught
21 short on anything versus what you're in now
22 kind of give you a little greater empathy for
23 what these small practitioners particularly on
24 the defense side are going to see when they
25 come into court. And also, you know, how it

1 would also, I guess, impact you in a civil
2 context where again you've got so many other
3 things going on that people sometimes have a
4 hard time making sure that they're keeping up
5 on all fronts.

6 MR. MADSEN: Well, it certainly has
7 developed like you said, empathy, for someone
8 that is extremely busy. Now, saying that,
9 obviously you always have work that needs to
10 be done and needs to be done in a timely
11 manner, but you know, especially with being,
12 even my office, I encourage my attorneys to
13 make sure that they don't overwork themselves.
14 We've actually had that happen with an
15 individual. And while our jobs are certainly
16 important and there are certain things that
17 need to get done at the same time there needs
18 to be, you know, a life outside of the office
19 or internally you'll kind of kill yourself.
20 And like I said, we unfortunately had that
21 happen so I'll go into the office sometimes it
22 will be seven-thirty at night and I'll have
23 attorneys still working there. I love that
24 part about the attorneys that we have in our
25 current office but at the same time I tell

1 them go home. You've got families, you don't
2 want to be burned out, but at the same time
3 you want to make sure that you get your work
4 done. Like I said that's -- I've enjoyed both
5 of the things that I have done as a solicitor
6 and as a public defender. They are entirely
7 different perspectives. You know, as a
8 solicitor I took it extremely seriously to
9 make sure that I was doing my due diligence to
10 try to make the community that I was in safer.
11 At the same time as a public defender I have
12 taken it extremely seriously to make sure that
13 my client's rights are protected and all the
14 way through the process. And even if it ends
15 up being a guilty plea or something like that
16 you are hoping that if it ends up being a
17 guilty plea that the person gets through this
18 and gets their life back on track. And I can
19 tell you from a public defender one of things
20 that has just been wonderful for me is, you
21 know, I was at the football game in Lexington
22 a couple of months ago and a fellow who I
23 represented on some really serious things that
24 could have led to his incarceration for a long
25 period of time, he still got jail, but he came

1 up to me and he's doing well, he had his
2 daughter with him who was seven years of age,
3 he's got a job now, he's got a stable
4 residence, you know, that's a wonderful thing
5 to think that you have someone that while they
6 might have veered off the path for a little
7 bit is now productive. And that happens quite
8 a bit whether it's at the bowling alley or
9 something like that. And so you get a little
10 bit of that on the solicitor side, but it's
11 more thank you for helping us find justice.
12 You get a lot as a public defender more of the
13 individual about "Hey, I was so worried that
14 this was going to happen to me and that I was
15 never going to come out of prison and you
16 helped me get probation and everything's going
17 well for me now." That's a very rewarding
18 aspect of my current position.

19 MR. SAFRAN: And I'm assuming this same
20 type of experience that you've gained in the
21 criminal context is going to be able to be
22 able to translate over to the civil side
23 because people have the same demands, don't
24 they?

25 MR. MADSEN: Yes. Yes, and having like I

1 said, it's been a while, although quite
2 honestly it doesn't seem like it's been twenty
3 years. But dealing with individuals then that
4 we represented on different types of cases
5 from, like I said, we defended a few people in
6 criminal cases, we defended civil, more
7 plaintiff's worked than civil and a lot of
8 family court law back then is what seemed to
9 walk through our door a lot. As I said, there
10 were some problems with the previous attorney,
11 thank goodness I didn't do any real estate
12 back then and had no access to our trust
13 accounts.

14 MR. SAFRAN: Thank you.

15 MR. MADSEN: Thank you.

16 CHAIRMAN SMITH: Senator Rankin.

17 SENATOR RANKIN: I hate to delve back on
18 the negative and I -- and that being the
19 experience that you just referenced again not
20 having access to the trust accounts. What law
21 firm were with at the time and who was the
22 person, the lawyer disbarred and who had to
23 serve time?

24 MR. MADSEN: I was -- I was in Lower
25 Richland with Ben Wofford. It was a sole

1 practitioner. I clerked with him through law
2 school. Like I said, I had come out and he
3 had hired me as a lawyer. I ended up -- one
4 day something just did not seem right. He --
5 in fact we had done a plea from a lewd act to
6 a CDV in Richland County. He didn't come in
7 for the next couple of days. Our runner who
8 would take the money for the trust account, I
9 asked him to go check and see how much money
10 we had in our trust account. There was only
11 four thousand dollars in there. I knew I had
12 a domestic where we had placed a hundred and
13 eighty thousand dollars. I knew that he had
14 recently closed a loan for our secretary and
15 that was about two hundred thousand dollars.
16 I, you know, I immediately -- I was six months
17 out of law school if that. Called the Supreme
18 Court and said, "Okay, I got this." And
19 pretty soon after that the FBI was in there, I
20 believe it was Chicago Title was our title
21 insurance, was in there kind of auditing
22 books. It was a terrible thing to happen
23 straight out of law school but quite honestly
24 it was one of the best things that had
25 happened to me. First of all, I was able to

1 take a lot of those civil clients that I was
2 working for someone and sign them up as my own
3 civil clients and -- and made more money quite
4 honestly then I would have if I would have
5 been with the law firm. But it ended up
6 leading me down the path that I have gone
7 since then. I found a job at the Solicitor's
8 Office in Aiken, went there to get that, and
9 they said, "Hey, do you know where Barnwell
10 and Bamberg is?" I did not. My wife's from
11 Hampton County and so she said, "well, we
12 drive right through it." Was there for six
13 years. The great part about that is, you
14 know, I was kind of a one man show so I got
15 trial by fire. I tried my first case two days
16 after starting.

17 SENATOR RANKIN: And you finished in '96?

18 MR. MADSEN: Yes, sir.

19 SENATOR RANKIN: Took the Bar in -- would
20 have been when?

21 MR. MADSEN: Well, I was --

22 SENATOR RANKIN: Obviously, you would have
23 taken it --

24 MR. MADSEN: I took it over the summer.

25 SENATOR RANKIN: You got the results about

1 Halloween, right?

2 MR. MADSEN: Yes, I took it over the
3 summer and we graduated in '96 so I would have
4 been sworn in, in November of '96, I believe.

5 SENATOR RANKIN: And then you practiced
6 through April of '97 and the Wofford Law Firm
7 is what your --

8 MR. MADSEN: Yes, sir.

9 SENATOR RANKIN: -- PDQ says or -- yeah.
10 And so you anticipated my question. The
11 learning experience from the worst of times to
12 perhaps the best of times.

13 MR. MADSEN: It was -- it was nerve
14 racking at the time because we're trying to
15 pay law school loans, I can't remember if my
16 wife had gotten her job at the Court of
17 Appeals by that point in time, but yeah, you
18 know, I was looking for a job. We had
19 intended to stay in Columbia at that point in
20 time but once I got the job at the Solicitor's
21 Office in Barnwell and Bamberg we were
22 required to live within the circuit so we
23 drove into Aiken, the first road, found a
24 house about two miles down the road and really
25 enjoyed it. They're really good people to

1 work with there.

2 SENATOR RANKIN: And you're an Ohio State
3 undergrad graduate?

4 MR. MADSEN: Yes, sir.

5 SENATOR RANKIN: So last Ohio State,
6 Clemson game, who were you pulling for?

7 MR. MADSEN: There is no doubt that I was
8 pulling for Ohio State.

9 SENATOR RANKIN: That's not a bad answer.
10 And your wife, she works for the Court of
11 Appeals now?

12 MR. MADSEN: Yes, sir.

13 SENATOR RANKIN: Okay. Very good. Well,
14 thank you for your evolution from the worst of
15 times to both the Solicitor's Office, now, the
16 Public Defender's Office and now running for
17 judgeship.

18 MR. MADSEN: Thank you.

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

21 SENATOR YOUNG: Thank you, Mr. Chairman.
22 One question I have is, how would you become
23 up to speed on civil laws and motions and the
24 civil rules and the application of those to
25 cases that are on the roster if you were

1 elected to the Circuit Court and you started
2 handling non-jury matters within two months of
3 being sworn in?

4 MR. MADSEN: Well, you know, I've gotten a
5 few things in the interim taking a look at
6 them trying -- I always read the advance
7 sheets but just going back, looking at
8 publications. Like I said, I'm very much a
9 prep person even on things like a murder or a
10 self-defense case I start by going back to the
11 law because obviously the law always kind of
12 morphs and changes over a period of time. I
13 am very much a prep person on the front end.
14 That is what I feel most comfortable when I am
15 prepared and that's how would handle civil
16 also. Pulling it, reviewing cases, any
17 statutory things that need to be taken a look
18 at but I would be taking a look at those on
19 the front end to make sure I was comfortable
20 with every aspect or as comfortable as
21 possible.

22 SENATOR YOUNG: So you would do a lot of
23 homework a head of time for hearings that you
24 had coming up on non-jury matters?

25 MR. MADSEN: I always do that. I am not a

1 fly by the seat of your pants kind of guy.
2 Now, as a trial attorney, sometimes that has
3 to happen. Curve balls get thrown that you
4 don't expect and you have to do that but I am
5 very much a person that believes in
6 preparation.

7 SENATOR YOUNG: You were also lauded in
8 the Bar comments for -- a lot of people
9 commented on your demeanor and you have a very
10 good demeanor, at least that's what most of
11 your colleagues that have cases with you that
12 have responded and said. Do you think that
13 having a good demeanor is a significant
14 attribute that a Circuit judge should have?

15 MR. MADSEN: Yes, sir. You know, I was
16 someone who in Barnwell and Bamberg we had
17 some old-school Circuit Court judges who were
18 down there that were a little bit tougher than
19 some other Circuit Court judges and offices
20 were right across from mine. And so I do
21 think it's a very important attribute because
22 whenever you're dealing with the judiciary or
23 in court you certainly want a judge that has a
24 low-key, easy to get along with demeanor.
25 Now, there are times that you certainly need

1 to be stern I think in court. But for the
2 general everybody ought to be treated
3 respectfully.

4 SENATOR YOUNG: Thank you.

5 CHAIRMAN SMITH: Representative
6 Rutherford.

7 REPRESENTATIVE RUTHERFORD: Robert, it's
8 been a pleasure to work with you both when you
9 were a solicitor in Lexington County and now,
10 as a public defender. There's a lot of
11 concern as you well know when you took the
12 public defender spot that you were just going
13 to be a patsy so to speak for the solicitor.
14 And you have ended up not being that, and I
15 don't think anyone would voice that concern
16 now. So congratulations and kudos to you for
17 doing a great job where you are. If you were
18 elected to be a judge in the Eleventh Circuit,
19 Solicitor Hubbard has been working to try and
20 change some of things like the, as small as it
21 is for the paper to come from the jail to the
22 Solicitor's Office and the fact that they just
23 seem to say, well, that's just the order of
24 the day and you just have to deal with it.
25 What other things would you change about the

1 way that business is done in Lexington County
2 if you were elected to be judge?

3 MR. MADSEN: You know, we don't
4 necessarily follow any kind of deferential
5 case management. I certainly think that there
6 are aspects of that. I like the idea, and I
7 tried to kind of talk with him, Rick and I
8 have talked, and he's still quite honestly
9 getting his feet wet. He and I have talked
10 about adjusting the DCM or making some kind of
11 workable situation for everybody. Of course,
12 as a public defender, and I know that they do
13 this at some other circuits, I think thirty
14 days trial notice would be great. Certainly
15 it could be worked out but there are ways that
16 we can make court more efficient. I've asked
17 them a few times to go around maybe to some
18 other circuits because law it's never a one
19 size fits all when you get to any court. I
20 think that you can kind of steal aspects from
21 certain different places that help. I would
22 love to see a day or a point in time where
23 bonds or motions are heard as compared to just
24 hodgepodge. One of the frustrating things
25 about our current position is, you know, I get

1 attorneys, they might do the first plea of the
2 day at 9:30 and they might do the last plea of
3 the day at five o'clock and they can't do
4 anything in-between. And while we encourage
5 them to take work with them and read discovery
6 it kind of runs out pretty quickly or, you
7 know, while you're sitting in court you kind
8 of get sidetracked because every case is
9 different and unique and has issues and you're
10 curious about those issues but I think that
11 there's ways we can move things quicker and
12 more efficiency in Lexington County. I
13 recently had a meeting with our Chief
14 Magistrate who talked about numerous things
15 but one of the suggestions she had is
16 approaching Solicitor Hubbard when you have,
17 say, a burglary 1st that has a petty larceny
18 attached to it. Right now what they do, and
19 Solicitor Myers did this while I was employed
20 with him, but right now one of them is handled
21 in Magistrate Court, one of them is handled in
22 General Sessions. It makes a lot of sense for
23 them all to be handled in General Sessions and
24 so we've talked about that. I've mentioned it
25 to Solicitor Hubbard. The only problem that

1 you is you have a new solicitor, you know,
2 they never want their docket to increase by a
3 thousand cases because then if you have an
4 opponent they jump up and say, "Hey, look what
5 he's done to the docket." Even though in the
6 end it could be a benefit for everybody so
7 that case can uniformly be taken care of at
8 one point in time which saves times for
9 officers, victims, lawyers. So we're
10 exploring a bunch of different things at least
11 in my current position. And I certainly think
12 as a Circuit Court judge being a resident
13 judge in Lexington that there are ways that we
14 can make that system more efficient.

15 REPRESENTATIVE RUTHERFORD: One of the
16 things that -- one of the comments in the
17 ballot box was that you would be another
18 solicitor trying to be a judge. How do you
19 address that concern and, I guess, more
20 pointedly, would you be willing to call
21 strikes against solicitors that are your
22 former coworkers when they are doing things
23 that they should not? And again let me
24 preface that. Donnie Myers was a friend of
25 mine, I consider him a friend to this day.

1 Rick is a friend of mine, Rick is making
2 remarkable changes, but by the same token
3 there are still things that are done that are
4 just out of step with everyone else that Rick
5 is working on and we've talked about it, but
6 would you be willing as a judge to call them
7 down, and I use them, not the Public
8 Defender's Office, not the private Bar because
9 the power typically is vested in the
10 Solicitor's Office. Would you be willing to
11 call strikes against them see it?

12 MR. MADSEN: Yes, absolutely. You know, I
13 get it kind of from both sides, that comment,
14 I guess that was, the comment was kind of
15 guilt by association since I had worked under
16 Donnie. Donnie was certainly a polarizing
17 figure. At the same time when I was in front
18 of the Citizens Committee I got the, "Hey,
19 would you show favoritism because you were at
20 the Public Defender's Office?" I think as a
21 judge you need to make sure that you follow
22 what the law is and if one side runs afoul
23 then you need to call them on it. Whether
24 it's a prosecutor or whether it's a defense
25 attorney, you certainly need to treat everyone

1 equally.

2 REPRESENTATIVE RUTHERFORD: Well, I've
3 known you long enough to know that you are a
4 very even-keel guy. I have seen you get angry
5 but I can only tell because your face was red
6 but not because you were berating anybody or
7 outwardly showing it. And again, kudos to you
8 for that. So, again, thank you for offering
9 your name up.

10 MR. MADSEN: Thank you.

11 CHAIRMAN SMITH: Any further questions?
12 Senator Sabb.

13 SENATOR SABB: Thank you, Mr. Chairman.
14 Just one point of inquiry. I've heard you
15 talk about your pet peeve as it relates to
16 punctuality. And you sort of remind me of
17 folks that say to be early is to be on time,
18 to be on time is to be late and to be late is
19 unacceptable. I need you, though, to square
20 that with the following hypothetical. Assume
21 hypothetically the case is starting after
22 lunch, you take the bench, jurors are in the
23 back, solo practitioner is fifteen minutes
24 late. You're having one of your not
25 necessarily worst days but not one of your

1 better days in terms of it seems like
2 everything that could go wrong is going wrong.
3 The solicitor is ready to try to case, in pops
4 Ronnie Sabb late for court. How do you handle
5 it?

6 MR. MADSEN: Well, as I said, it's a pet
7 peeve for me. Maybe a little bit OCD. But
8 there are certainly always situations and I'm
9 not saying that I've never been late to
10 anything. What you're saying, Judge Barber,
11 when he was on the bench in Aiken, had gone to
12 lunch when I was a solicitor with the public
13 defender, someone ordered a hamburger which
14 apparently took a little bit longer. We were
15 about five minutes late for the start of
16 court. Like I said that, me myself, that just
17 drives me nuts. I'm kind of the Bill
18 Parcels' philosophy if you're five minutes
19 early you're still late. I would much rather
20 be there. But in a situation like that, you
21 know, you can't have a hard or fast rule and
22 while I hold myself to certain standards that
23 doesn't mean that if someone's a minute late
24 or two minutes late that they go to jail, that
25 they, you know, a hundred dollar fine or

1 anything like that. That is just something me
2 personally as far as punctuality. As my wife
3 will tell you, you know, as we're trying to
4 get out to church sometimes I like to say, you
5 know, they don't -- "just because we're not
6 there on time doesn't mean that they stop
7 church and they move it back to 8:10 instead
8 of eight o'clock." But that is something
9 internally with me that I'm kind of OCD about.

10 SENATOR SABB: I appreciate the response.
11 Last point, to the extent that a lawyer is out
12 of bounds and needs be chastised by the court,
13 and quite frankly I was a solicitor for twenty
14 years and some of us every once in a while
15 deserve it. How do you address that assuming
16 you become a judge?

17 MR. MADSEN: Well, and like I said, I am
18 not a yeller and I'm not a screamer, but I
19 think that there are certain times where
20 someone needs to be stern -- that the bench
21 needs to be stern to get their point across.
22 And I think without yelling and screaming that
23 someone can be told that certain behaviors are
24 unacceptable. Like I said, I am not a yeller
25 and screamer but I -- I'm confident that I am

1 someone that can get a point across when need
2 be.

3 SENATOR SABB: Where should that point
4 that needs to be aired, be aired?

5 MR. MADSEN: To a certain extent I think
6 that, that depends on the context of it. You
7 know, you would hope sometimes that it would
8 be with all parties behind closed doors, but
9 there are times that needs to happen in front
10 of the court of, "Hey, you've done this, I
11 told you, you can't do this and you've done it
12 again, you know, that just needs to quit."
13 Within the time -- I mean, I've had that
14 happen. I've been on that side of it in front
15 of a judge and I've been on the other side and
16 watched someone get chastised by a judge for
17 something that was inappropriate or strayed
18 from the court's rule. So there can be
19 situations where it could be behind closed
20 doors. There are certainly situations where
21 it could be in open court. Like I said even
22 if someone has to be chastised I think it can
23 be handled in appropriate fashion that's not
24 personal, certainly not screaming. You know,
25 it's kind of like disciplining your child.

1 There are times that you need to discipline
2 your child, but you don't do it out of anger.
3 You do it for an appropriate event and in an
4 appropriate area with an appropriate object.

5 SENATOR SABB: Thank you.

6 CHAIRMAN SMITH: All right. Any further
7 questions?

8 (No response.)

9 CHAIRMAN SMITH: All right, Mr. Madsen,
10 thank you so much. This concludes this
11 portion of your screening process. I want to
12 take this opportunity to remind you that
13 pursuant to the Commission's evaluative
14 criteria the Commission expects candidates to
15 follow the spirit as well the letter of the
16 ethics laws, and we will view violations or
17 the appearance of impropriety as serious and
18 potentially deserving of heavy weight in the
19 screening deliberations. On that note, and as
20 you know, the record will remain open until
21 the formal release of the report of
22 qualifications, and you may be called back
23 at such time if the need arises. I thank you
24 for offering for this position, and I thank
25 you for your service to the State of South

1 Carolina.

2 MR. MADSEN: Thank you very much.

3 CHAIRMAN SMITH: Thank you.

4 (The candidate is excused.)

5 CHAIRMAN SMITH: All right. With that
6 being said, Mr. Hitchcock moves we go into
7 executive session. All in favor say, "Aye."

8 (The Commission members comply.)

9 CHAIRMAN SMITH: All opposed?

10 (No response.)

11 CHAIRMAN SMITH: The Ayes have it. We
12 will go into executive session.

13 (Off-the-record executive session.)

14 CHAIRMAN SMITH: Senator Hayes moves we
15 come out of executive session. All in favor
16 say, "Aye."

17 (The Commission members comply.)

18 CHAIRMAN SMITH: All right. We're now
19 back on the record. And I'd like to state
20 we've been in executive session however no
21 decisions were made and no votes were taken
22 during executive session. We got the two
23 candidates that we have to vote on tonight,
24 Judge Hughston and then the Eleventh Circuit,
25 Seat Number 2. So we'll start with Judge

1 Hughston first and determine -- this is just a
2 vote on qualifying. We don't nominate here so
3 I'll entertain any motions. Representative
4 Murphy moves that we find Judge Hughston
5 qualified. Any discussion?

6 (No response.)

7 CHAIRMAN SMITH: All right. All in favor
8 of finding Judge Hughston -- well somebody
9 needs to second, I guess.

10 SENATOR RANKIN: Second.

11 CHAIRMAN SMITH: So a motion's made by
12 Representative Murphy, second by Senator
13 Rankin. Any discussion?

14 (No response.)

15 CHAIRMAN SMITH: All right. All in favor
16 of finding Judge Hughston qualified, please,
17 raise your hand.

18 (The Commission members comply.)

19 CHAIRMAN SMITH: Let the record reflect
20 that the vote is unanimous. So he is found
21 qualified. All right. Next will be the Seat
22 Number -- Eleventh Circuit, Seat Number 2; is
23 that correct?

24 MS. CRAWFORD: Yes, sir, Mr. Chairman.
25 I'll read them in alphabetical order. Is

1 there a motion?

2 CHAIRMAN SMITH: Mr. Hitchcock moves to
3 find all of them qualified. All right. Any
4 seconds to that?

5 SENATOR SABB: Second.

6 CHAIRMAN SMITH: All right. Senator Sabb
7 seconds it. Any discussion on that?

8 (No response.)

9 CHAIRMAN SMITH: All in favor of finding
10 all the candidates qualified, please, raise
11 your hand.

12 (The Commission members comply.)

13 CHAIRMAN SMITH: All opposed?

14 (No response.)

15 CHAIRMAN SMITH: Let the record reflect
16 that's unanimous. And now, we'll go down for
17 the nominating process.

18 MS. CRAWFORD: Yes, Mr. Chairman, I'll
19 read them in alphabetical order. We have
20 three votes. First candidate is Amy V.
21 Cofield.

22 CHAIRMAN SMITH: All right. So this is
23 just whether they're nominated. Anyone vote
24 that we nominate Amy Cofield?

25 (The Commission members vote.)

1 CHAIRMAN SMITH: All right.

2 MS. CRAWFORD: The next candidate is Donna
3 Elder.

4 CHAIRMAN SMITH: Any votes for Donna
5 Elder to be nominated?

6 (The Commission members vote.)

7 MS. CRAWFORD: David Shawn Graham?

8 (The Commission members vote.)

9 CHAIRMAN SMITH: All right.

10 MS. CRAWFORD: Kyliene Lee Keesley.

11 (The Commission members vote.)

12 MS. CRAWFORD: Robert Michael Madsen.

13 (The Commission members vote.)

14 MS. CRAWFORD: Walton "Tad" J. McLeod,
15 IV.

16 (The Commission members vote.)

17 MS. CRAWFORD: The three candidates that
18 are qualified and nominated are Kyliene Lee
19 Keesley with ten votes, Robert Michael Madsen
20 with ten votes and Walton Tad J. McLeod with
21 eight votes.

22 CHAIRMAN SMITH: Any further business for
23 tonight? Senator Sabb moves we adjourn. All
24 in favor, "Aye."

25 (The Commission members comply.)

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CHAIRMAN SMITH: All opposed.
(No response.)
CHAIRMAN SMITH: The "Ayes" have it. And
we stand adjourned until 9:30 a.m. tomorrow.
(Off the record.)
(There being no further questions,
the proceedings adjourned at 6:02 p.m.)