

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 28th, 2017

20 TIME: 10:00 A.M.

21 LOCATION: Gressette Building, Room 105

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

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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: We're back on the record and Mr. Safran moves we come out of executive session. All in favor say, "Aye."

(The Commission members comply.)

CHAIRMAN SMITH: All opposed?

(No response.)

CHAIRMAN SMITH: The "ayes" have it. We're out of executive session. Let me state for record while we've been in executive session, no decisions were made, no votes were taken. All right. Mr. Floyd, appreciate you being here today.

MR. FLOYD: Yes, sir.

CHAIRMAN SMITH: We're running just a few minutes behind. We're ahead of schedule for what we've normally been doing so you ought to be happy about that. Mr. Floyd, will you raise your right hand, please, sir?

(The candidate is sworn in.)

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

MR. FLOYD: Yes, sir.

1 CHAIRMAN SMITH: And are they both correct
2 to the best of your knowledge?

3 MR. FLOYD: To the best of my knowledge.
4 Yes, sir.

5 CHAIRMAN SMITH: Anything need to be
6 changed or updated at this time?

7 MR. FLOYD: Not unless you can tell me
8 there's something I can do to make it better.

9 CHAIRMAN SMITH: Okay. I don't know if we
10 can help you in that regard. Do you have any
11 objection to us making this an exhibit to your
12 sworn testimony?

13 MR. FLOYD: No objection.

14 CHAIRMAN SMITH: Without objection, we're
15 going to make that an exhibit to your sworn
16 testimony.

17 [EXHIBIT NO. 1, JUDICIAL MERIT
18 SELECTION COMMISSION PERSONAL DATA
19 QUESTIONNAIRE FOR MR. JOEY R. FLOYD,
20 ADMITTED.]

21 [EXHIBIT NO. 2, SWORN STATEMENT FOR JOEY
22 R. FLOYD, ADMITTED.]

23 CHAIRMAN SMITH: Mr. Floyd, the Judicial
24 Merit Selection Commission has thoroughly
25 investigated your qualifications for the

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

9 We received no affidavits today filed in
10 opposition to your election and there are no
11 witnesses present to testify. So do you wish
12 to make a brief opening statement to the
13 Commission?

14 MR. FLOYD: I'm kind of glad to not see
15 anybody back there. I guess that's a good
16 thing.

17 CHAIRMAN SMITH: Makes it easy, doesn't
18 it?

19 MR. FLOYD: I just want to thank you all
20 for your service and appreciate what you all
21 are doing. I know it's a big sacrifice for
22 you all to do this.

23 CHAIRMAN SMITH: Thank you very much.
24 Will you answer any questions that counsel may
25 have for you, please, sir.

EXAMINATION

1
2 (By Mr. Fiffick)

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

12 **A. I have been practicing law now for, this is**
13 **starting my seventeenth year of practice. I would**
14 **like to think that I've seen the good, the bad and**
15 **the ugly when it comes to practicing law from**
16 **opposing counsel. I think I'm prepared to take the**
17 **next step. It's something that I've always wanted**
18 **to do and look forward to hopefully one day being**
19 **able to serve the public by being a Circuit Court**
20 **judge.**

21 **Q. Thank you, sir. Mr. Floyd, the Commission received**
22 **90 ballot box surveys regarding you with**
23 **12 additional comments, only two of which were**
24 **negative. The survey contained positive comments**
25 **to include, "That Mr. Floyd has an excellent**

1 temperament and demeanor. Would make as excellent
2 Circuit judge." Comments described him as,
3 "Patient, but firm with a keen legal mind and is a
4 quick study." One comment points out that, "As a
5 judge, Mr. Floyd's modest, small town background
6 and experience with complex litigation combined
7 would be an asset in helping him deal with parties
8 before him while on the bench." Again, only the
9 two written comments expressed concerns. Mr.
10 Floyd, one concern indicated that you may be
11 unprepared at times and you just failed to make
12 good use of your client's resources. How would you
13 respond this allegation?

14 A. I would -- I would beg to differ. I am used to
15 dealing with people that are financially
16 challenged. I think it's our job as lawyers to
17 find the most cost efficient beneficial way --
18 economical approach to get to the result that the
19 client's looking for. So I'm not real sure where
20 that's coming from.

21 Q. Thank you, sir. Mr. Floyd, another ballot box
22 response raised concern about your lack of criminal
23 experience while only 2.2 percent of respondents
24 found you unqualified in the overall category of
25 experience, how would you respond to the issue of a

1 **lack of criminal experience?**

2 A. Sure. In today's world when we come out of law
3 school I think we are somewhat forced to choose
4 between civil and criminal. There are very few, I
5 would suggest, very few general practitioners who
6 practice both civil and criminal law. With that
7 said, I have -- I have taken the South Carolina
8 Attorney General's Special Prosecutors class. I've
9 begged and pleaded with the Attorney General's
10 Office, some of their staff attorneys, to let me go
11 along with them to continue this special prosecutor
12 role. And I'm still emailing and communicating
13 with them in trying to do that. I acknowledge it's
14 -- it's somewhat of a weakness but it's not -- it's
15 not fatal. First of all, I think whenever you
16 don't feel that you have -- have the confidence --
17 sometimes you can get so comfortable because you
18 think you know the subject matter and you can get
19 steam rolled quite honestly. But if you have just
20 a little bit of fear sometimes fear is better -- is
21 a good motivator. I'll give you a couple of
22 examples. Within the past three years I've started
23 handling more appeals. Maybe I'm winning more or
24 losing more, I don't know, but maybe more things
25 are being highly contested. And that's one thing

1 that I've learned. That you -- you need to run
2 scared whenever you have an appeal because those
3 deadlines are very firm and you need to make sure
4 you meet those. I've also in recent years, within
5 the past three years, picked up a fairly large
6 bankruptcy case representing a United States
7 Trustee. And four years ago, I didn't know really
8 where the bankruptcy court was much less the
9 procedure and forms that you needed to file. But I
10 have since that time picked up quite a bit of
11 knowledge on the bankruptcy side. And another
12 thing that I've also found is you can't be afraid
13 to pick up the phone and ask people questions and
14 more often times than not people are absolutely
15 more willing than not to help you if you have a
16 question about something. So with -- with the help
17 of good mentors, a little bit of fear, I certainly
18 believe that I can -- I can pick up. And of the
19 two, I will say this, I will add this add, of the
20 two between civil and criminal I believe based on
21 my conversations with sitting judges, former
22 judges, the general consensus to me seems to be
23 that if you learn the civil, if you've get a handle
24 on the civil side, the criminal side comes to you
25 because you already have a basis for the procedure

1 and that sort of stuff so that's how I would -- I
2 would address that.

3 **Q. Thank you, sir. At the risk of being redundant, I**
4 **will ask you in your PDQ from the current screening**
5 **you indicated that over the past five years your**
6 **practice has been ninety percent civil and ten**
7 **percent other matters. What percentage of the**
8 **other matters that you described, what percentage**
9 **of that was criminal work?**

10 A. You know, nothing beyond the special prosecutor
11 training and the occasional city matter or
12 Magistrate Court matter for a friend or something
13 like that. Nothing of any substance that I would
14 -- I would submit to this Commission that would
15 qualify as criminal experience.

16 **Q. Thank you, sir. This concern of a lack of civil**
17 **experience was raised by the Commission in your**
18 **screening back in 2012. Is there anything else**
19 **you'd like to address and tell the Commission about**
20 **what you've prepared -- done to prepare yourself**
21 **for criminal matters, if elected?**

22 A. Sure. I've taken a number of CLEs over the past
23 couple of years. I've begged and pleaded with my
24 friends who are criminal attorneys to let me tote
25 their bag when they go to trial just so I can

1 listen along with them. But it seems that they
2 always either -- they're concerned I must be going
3 to get in the way or either they settle out before
4 they plea out before they go to trial. So I'm --
5 I'm working on it. I've taken the special
6 prosecutor training trying to get my own
7 experience. I'm sending emails constantly trying
8 to get on a trial. I've tried to reach out to the
9 Forest Acres folks to try to help me -- let me get
10 in there with them, but apparently there's not a
11 lot going on in Forest Acres either.

12 **Q. Thank you, sir. Mr. Floyd, you've indicated in**
13 **your PDQ that a lawsuit was filed against yourself,**
14 **several other attorneys and several Circuit Court**
15 **judges by a disgruntled debtor in U.S. District**
16 **Court in 2005. Please explain the nature and**
17 **disposition of this lawsuit.**

18 A. Sure. I found myself in good company. Every
19 Circuit Court judge in Richland County was sued
20 along with then Clerk, Barbara Scott. The debtor
21 claimed to be a sovereign nation himself. And I
22 don't if anybody on the Commission's ever had
23 experience with those folks. They can be very
24 difficult to deal with. Reason and logic don't
25 necessarily work with those folks. But I ended up,

1 my client, he rented a backhoe and I proceeded with
2 a claim and delivery action. I got the backhoe
3 repossessed for my client. Shortly there after he
4 filed suit against me for a lot of different stuff,
5 he sued me, I think, it was in Federal Court, I
6 believe. And he also appealed that to the 4th
7 Circuit which was dismissed and I think that he
8 actually got to have a chat with a federal judge
9 before he was able to sue anybody else in Federal
10 Court before they would issue a summons. So I
11 found myself in good company like I said with the
12 Clerk of Court and all the judges. Kind of told me
13 that I was doing my job.

14 **Q. Thank you, sir. Mr. Floyd many candidates have**
15 **expressed that the opportunity for trial experience**
16 **has decreased over the past decade. Given your**
17 **experience how do you see this trend affecting the**
18 **civil justice system in South Carolina in the**
19 **coming years?**

20 **A.** Without a doubt the presence of trials are, even
21 with -- during my sixteen, seventeen, eighteen
22 years that I've been working in a law firm, it
23 seemed that we had a lot more trials going on back
24 in the early 2000's. I think it's a direct
25 function of arbitration. I also think it's a

1 direct function of court resources, the time that
2 it takes to get a case from -- from filing to
3 trial. Some folks don't want to wait the sometimes
4 two to three years. Another thing is the cost,
5 without of doubt. The driving factor in a lot of
6 these cases, even the ones that I handle is you do
7 the economic analysis on it and it just doesn't
8 make sense to litigate something for three years
9 when you can make a settlement that eliminates the
10 risk, ends the case and all that sort of stuff, so
11 it's unfortunate. I have had the privilege of
12 trying cases in jury trials and unfortunately I've
13 been punched in the mouth a couple of times, but
14 you know, I think that makes us all better lawyers
15 and it -- it makes you run just a little bit more
16 scared and have a little bit more fear that
17 something bad can happen. But I don't that these,
18 the folks coming out of school now, are going to
19 have the same trial experiences that I even had
20 fifteen years ago.

21 **Q. Thank you, sir. I have some housekeeping issues to**
22 **take care of. Mr. Floyd, are you aware that as a**
23 **judicial candidate you are bound by the Code of**
24 **Judicial Conduct as found in the Rule 501 of the**
25 **South Carolina Appellate Court Rules?**

1 A. I am.

2 Q. Mr. Floyd, since submitting your letter of intent,
3 have you contacted any members of the Commission
4 about your candidacy?

5 A. I have not.

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

10 A. I have not.

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

15 A. I have not asked anyone nor am I aware of anyone
16 doing that.

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

20 A. I do.

21 Q. Thank you, sir.

22 MR. FIFFICK: I would note that the
23 Midlands Citizens Committee found Mr. Floyd to
24 be well qualified in evaluative criteria
25 of ethical fitness, character, professional

1 and academic ability, reputation and judicial
2 temperament. And qualified in the remaining
3 evaluative criteria of constitutional
4 qualifications, physical health, and mental
5 stability and experience. Mr. Floyd, and
6 again, at the risk of being redundant, while
7 finding you qualified in the area of
8 experience the Citizens Committee commented
9 that I -- and I quote, "Mr. Floyd possesses
10 superior intellect and has considerable trial
11 experience. We are concerned with his lack of
12 criminal experience and his relative youth."
13 While you've already addressed this issue
14 today would you care to comment further as to
15 your lack of criminal experience.

16 MR. FLOYD: Oh, I thought you wanted me to
17 address my youth -- my relative youth. No, I
18 think I've adequately addressed that. And I
19 would note that I majored in civil engineering
20 down at The Citadel and that was a pretty
21 rigorous education in and of itself so I am
22 perfectly well equipped to handle any new
23 challenges that may come my way and I'm ready
24 to hit the ground running.

25 MR. FIFFICK: Thank you, sir. Mr.

1 Chairman, I would not note for the record that
2 any concerns raised during the investigation
3 by staff regarding the candidate were
4 incorporated into the questioning of the
5 candidate today. Mr. Chairman, I have no
6 further questions.

7 CHAIRMAN SMITH: Thank you. Any questions
8 for Mr. Floyd? Representative Murphy.

9 REPRESENTATIVE MURPHY: What company were
10 you in?

11 MR. FLOYD: I was in -- I started out in F
12 Company and went to L Company. I was a Supply
13 Sergeant in L Company and then I finished up
14 on Third Battalion Staff as XO.

15 REPRESENTATIVE MURPHY: Thank you. That's
16 all I have.

17 CHAIRMAN SMITH: Senator Young.

18 SENATOR YOUNG: Thank you, Mr. Chairman.
19 Mr. Floyd, thank you for your interest in
20 serving on the Circuit Court. I see from your
21 PDQ that you've been a candidate before and I
22 want to applaud you for your continuing
23 interest in serving the Circuit Court and our
24 state in that capacity. One question I have
25 for you is how would you describe your

1 judicial philosophy with respect to the
2 application of the law to any facts that would
3 be before you or any issues that would be
4 before you on the Circuit Court?

5 MR. FLOYD: I think a judge is responsible
6 for calling balls and strikes and reading the
7 case law that's out there and interpreting the
8 case law. My job is not to make laws.
9 Fortunately that's up to most of you on this
10 Commission and to -- to not try to make laws
11 from the bench. Sometimes you have things
12 that come to you that maybe just a little bit
13 of a twist but generally speaking case law in
14 South Carolina is pretty developed and you can
15 interpret that and you can find the answer
16 usually if -- if you research long enough a
17 court somewhere has dealt with this issue that
18 you're going to be dealing with and it's your
19 job to interpret the law as our courts in this
20 state have done and call balls and strikes.
21 And -- and one of my -- one of my goals would
22 be to -- to rule one way or the other and not
23 delay. Some things that I have learned over
24 the years in my practice is sometimes,
25 obviously I want the judge to rule in my

1 favor, but more often times than not my client
2 just wants a ruling so we can know which way
3 to go. Balls and strikes, did we win, did we
4 lose, do we appeal? And some people just want
5 closure. So, I mean, I think, as to your
6 philosophy my job would be to interpret the
7 law and my actions would be to be prompt and
8 get it done. That would be my answer.

9 SENATOR YOUNG: What is -- how familiar
10 are you -- you've practiced your entire legal
11 career with the same firm; is that right?

12 MR. FLOYD: Yes, sir. I -- I was a law
13 clerk there and they were crazy enough not to
14 fire me so I wouldn't go away.

15 SENATOR YOUNG: Well, it's a really good
16 firm that you're part of by the way. And you
17 all have eight, ten lawyers?

18 MR. FLOYD: Yes, sir.

19 SENATOR YOUNG: Eight lawyers? Ten?

20 MR. FLOYD: At last count, I believe, it
21 was nine. Yes, sir.

22 SENATOR YOUNG: So a little less than ten
23 lawyers. And so that's a smaller firm. You
24 know, you're not a solo practitioner but
25 you're in a smaller firm.

1 MR. FLOYD: Yes, sir.

2 SENATOR YOUNG: So do you, in the years
3 that you've been practicing, have you gotten
4 to have an appreciation for the challenges
5 that face lawyers who come from smaller
6 practices in terms of the time constraints
7 that they have in meeting the requirements of
8 handling cases in multiple courts and being
9 pulled in all different directions and having
10 family obligations as well?

11 MR. FLOYD: Absolutely. A lot of my
12 friends are from -- probably know that I grew
13 up in Turbeville, so I have a number of lawyer
14 friends who I have met over the years in
15 Sumter and Kingstree and Manning and all the
16 small towns here and around some of which are
17 even lawyer legislators. And I have -- I
18 think you start your legal career with this --
19 with this -- this effort to try and be the
20 cross carrying person that you are, you know,
21 you know you're going to carry it across the
22 line. But then as you get older and you have
23 children and you understand the challenges and
24 the demands, I don't want to say you get more
25 forgiving, but I think you get more relaxed

1 and you understand that you can't hide -- you
2 can't use these foot faults and these issues
3 on people or the hardships that you may put on
4 them by not consenting to a continuance. Or
5 is it something that you really want to waste
6 the court's time on by not trying to work with
7 the other lawyers. And I've even experienced
8 it. Not only do I practice law, I have within
9 the past five or six years, I also started
10 coaching youth soccer and quite honestly it's
11 probably been great for me because it's a good
12 relief. I get out and I'm able to go run
13 around with nine, ten year old, twelve year
14 old little girls and that's my stress relief.
15 That is my hunting and fishing for lack of a
16 better term. I have two daughters who are in
17 that age group right now and a lot of times I
18 have to leave the office a lot earlier than my
19 -- my colleagues and all that sort of stuff.
20 But I get in early, I mean, I get in and I get
21 the job done. And I think that's opened my
22 eyes a lot, having children, and understanding
23 that people have lives more so than just this
24 case, that case. And somebody told me
25 something recently which it means -- it has

1 really stuck with me recently. Every piece of
2 paper that you have on your desk at some point
3 will become meaningless and if you've ever
4 left a sheet of paper on your desk for two to
5 three years whenever you come across that
6 sheet again that case has probably been
7 settled or it's been through a trial and --
8 and it brings up memories and you immediately
9 throw it away. Well, I think there's a lot of
10 truth in that. The way we treat people I
11 think is more important than whether you win
12 or lose that case. I mean, you can still win
13 the case but you have to treat people decently
14 because it is a small state and things come
15 back to you quicker, I think, than what people
16 realize in this state.

17 SENATOR YOUNG: I do have some additional
18 questions. One would be I noticed in your PDQ
19 that you have spent a good bit of your legal
20 career handling -- defending legal malpractice
21 claims. And you've also been involved in a
22 number of actions involving creditors. Have
23 you -- your firm as I understand it, knowing
24 several people in your firm and having had
25 cases involving that firm in my practice over

1 the years, you all handle both plaintiff and
2 defense cases as I recall.

3 MR. FLOYD: We do. Yes, sir.

4 SENATOR YOUNG: Have you been involved in
5 any plaintiff cases?

6 MR. FLOYD: I have. I have. I have, you
7 know, not sharing anything I have, one that's
8 -- that's sort of going right now, I have a
9 death case that I'm trying to work through
10 with some family as well, so. I've been
11 involved in a death case, but I haven't had
12 one to deal with family so that -- that has
13 been a challenge to me. I'm still trying to
14 decide whether or not I want to handle it just
15 because the family relationship. I've done it
16 twice before and I promised myself I would
17 never do it again, represent the family. But
18 that's been pretty challenging so far just the
19 emotional aspect of it.

20 SENATOR YOUNG: Those are all my questions
21 for right now. Thank you.

22 CHAIRMAN SMITH: Senator Rankin.

23 SENATOR RANKIN: I appreciate your coming
24 back perhaps third or fourth time.

25 MR. FLOYD: Yes, sir.

1 SENATOR RANKIN: Fourth time will be the
2 charm is the hope, correct?

3 MR. FLOYD: Yes, sir. That's right.

4 SENATOR RANKIN: And I'm trying to find
5 some of the -- you're -- the chief or the
6 principal name Bruner, his first name --

7 MR. FLOYD: Jim Bruner?

8 SENATOR RANKIN: Jim Bruner. I've had an
9 association --

10 MR. FLOYD: I apologize

11 SENATOR RANKIN: Well, I can see why you
12 may want to be -- no -- a fine, fine
13 individual and I'm familiar with where your
14 office is as well. Years ago I had an
15 association with your firm on a case and I
16 think there -- and recently one as well
17 involving a church so in any event. Why pick
18 this seat? Why pick, unless you -- they all
19 followed you -- the eight would follow. There
20 are nine of you in this particular seat.

21 MR. FLOYD: I want to keep you -- I want
22 to keep the Commission, I want to let you as
23 the Commission and the legislators know that I
24 am interested in this -- in being a Circuit
25 Court judge and I didn't want an opportunity

1 to pass me by that I didn't put my hat in so
2 that you all knew that I was interested. I
3 have found a way to pick some crowded races, I
4 will tell you that. I don't think there's
5 been less than ten or eleven candidates in any
6 of these races. And I don't know that -- some
7 people told me to move to Sumter. I don't
8 know.

9 CHAIRMAN SMITH: That would not have been
10 good idea.

11 MR. FLOYD: I don't know since I've from
12 Clarendon County and all that sort of stuff.
13 But, no, in all seriousness, I don't know, it
14 seems that all of the seats that have come up
15 recently have all been at-large and there
16 haven't been any residence seats that have
17 opened up.

18 SENATOR RANKIN: In terms of your
19 experience, and we have encountered countless
20 people this go-around where they either are
21 strong in one area and weak in another and
22 that the Midlands Committee finds you weak in,
23 again my term in terms of the criminal
24 practice, the next guy is going to have the
25 exact reverse or the next gal perhaps will

1 have the exact reverse. In terms of your
2 temperament, you seem to be -- you seem to
3 have a pretty good sense of humor.

4 MR. FLOYD: I try to. Yes, sir.

5 SENATOR RANKIN: A little deadpan, a
6 little dry sense of wit. Some get it, do most
7 get it?

8 MR. FLOYD: I hope they do. Yes, sir. I
9 try to, whenever you get to know me a little
10 better, I think you'll -- you'll find me to be
11 hopefully one of the nicest guys in the
12 office. One of my former lawyers is actually
13 sitting back there from our firm. I hope -- I
14 hope that he would defend me if called to --

15 SENATOR RANKIN: Should be put him under
16 oath?

17 MR. FLOYD: I might worry about that.
18 Just kidding. I'm perfectly find with that.
19 But I do try to -- to try -- my -- my goal in
20 life is to try and let people remember me as a
21 nice guy. I mean, that's -- that's the way I
22 want people to remember their dealings with me
23 in cases. The word I was looking for earlier
24 when I was answering Senator Young, you start
25 practicing law with a lot of vinegar and you

1 just want to fight and you want to fight. I
2 don't want to say you get tired of the fight
3 but you want -- you understand that fighting
4 is not always the answer to -- to getting to
5 the objective that you want. And more often
6 times than not, especially when it comes to
7 the creditor practice you certainly catch a
8 lot more flies with honey than you do with the
9 vinegar. And I have had debtors hug me after
10 we've been able to work something out which is
11 kind of unusual whenever your client who is
12 the creditor and the debtors sitting on the
13 other side and your debtor hugs you your
14 creditor client looks at you and kind of says,
15 "What's going on here?" But generally
16 speaking they're thankful because more often
17 times than not the debtors have gone through
18 some traumatic financial event whether it be a
19 bankruptcy or a health issue or something. If
20 you can find a way to work with them they will
21 more often times than not try and work with
22 you instead of just trying to jam something
23 down their throat. If you make it manageable
24 for them they will probably thank you at the
25 end for trying to work with them.

1 SENATOR RANKIN: And you were asked about
2 the one perhaps the comment about the youth,
3 again, as a strike and a concern. I don't
4 know who your Midlands Committee is and I
5 don't want to step on toes but was there any
6 non-gray haired person in the room?

7 MR. FLOYD: I think there was one or two.
8 There was. If I'm youth at almost forty-three
9 years old I'll take it.

10 SENATOR RANKIN: And that is a rap again
11 in terms of a rap on your credentials. You
12 finished in 2001, I believe. You've been out
13 sixteen going on seventeen years now. You've
14 tried how many cases to verdict? Countless?

15 MR. FLOYD: I wouldn't say countless. I'm
16 trying to figure out if I would say twenty or
17 thirty but I would say conservatively twenty.
18 That would be my first guess. But in terms of
19 handling cases, going up to the courthouse
20 steps, I mean, I don't know.

21 SENATOR RANKIN: Well, and as we heard
22 more and more of late, big counties, little
23 counties, they're not trying them, they're
24 working out -- working them out in mediation.
25 Perhaps that style you're talking about where

1 you're hugging both the winner and the loser
2 or getting hugged by the winner or the loser.

3 MR. FLOYD: I have found that sometimes
4 you may win the battle but you're not going to
5 win the war. And have you really accomplished
6 anything by doing that.

7 SENATOR RANKIN: Very good. Thank you.

8 CHAIRMAN SMITH: Any further questions?

9 (No response.)

10 CHAIRMAN SMITH: Mr. Floyd, let me ask you
11 a few questions then. And I see you mentioned
12 earlier you're from Turbeville, grew up over
13 there?

14 MR. FLOYD: I did. Yes, sir. East
15 Clarendon High School.

16 CHAIRMAN SMITH: East Clarendon High
17 School.

18 MR. FLOYD: Home of the Wolverines.

19 CHAIRMAN SMITH: Home of the Wolverines.
20 My dad had some great football teams over
21 there. I don't know how -- it still is now.
22 I don't -- The Item -- The Sumter Item doesn't
23 carry much Clarendon County news anymore.
24 They don't carry much news at all.

25 MR. FLOYD: Manning Times.

1 CHAIRMAN SMITH: Yeah, Manning Times will
2 help you. Let me talk to you a little bit
3 about your criminal -- when you talk about
4 your criminal work and obviously you've been
5 volunteering, I think you say, as a CDV
6 prosecutor for the AG's office. Throughout
7 this you would probably be familiar with if
8 you're practicing in Richland if you ever go
9 observe General Sessions, we have some
10 alternative courts over here. The Mental
11 Health Court, I think they've got a Veterans
12 Court here, probably one of the first in the
13 state and also a Drug Court. What's your
14 philosophy on those type of courts and what do
15 you, if you were elected to this position, how
16 could you work with them or improve them or
17 dismantle them. What would be your thoughts
18 on that?

19 MR. FLOYD: Well, first and foremost, I
20 think if the legislator -- legislature creates
21 them obviously there was a great deal of
22 thought that went into that to foster those
23 and I think those courts serve, the Drug Court
24 and that sort, they serve good purposes. And
25 I think they can also be utilized to try and

1 reduce the general case load if you can funnel
2 them into a different direction. Like, kind
3 of similar the -- the business courts and that
4 sort of stuff. If you can redirect and funnel
5 them to -- to someone who -- to lawyers who
6 know what they're doing and judges who are
7 fair and equipped to deal with those sorts of
8 issues. My thought is those should be a great
9 way to try to reduce the docket. I think
10 there's always a push for the docket, no
11 matter how many cases, there's always going to
12 be a push to clear the dockets, and I
13 understand that. Which is good because, I
14 mean, I don't know what the ideal time is for
15 someone to get justice but I feel that two to
16 three years of making a plaintiff or a
17 defendant twist in this land of uncertainty to
18 me that's a long time. And I understand the
19 larger counties have more challenges but --
20 and the smaller counties, they have their
21 challenges as well because they don't always
22 get the resources that they need to continue
23 to push them through so it's always a constant
24 tug and pull between the bigger and smaller
25 counties. But I think if -- if the court --

1 if the courts are created and you put the
2 right people and the right staff in place it
3 should help produce an overall, hopefully,
4 streamline things to make people -- help
5 people get justice quicker.

6 CHAIRMAN SMITH: You haven't served as a
7 solicitor, you haven't served as a public
8 defender so if you came onto the bench you
9 would be a unknown in the General Sessions
10 world and people try to figure out what's your
11 philosophy on, you know, sentencing and how
12 would you handle, you know, violent, non-
13 violent crimes. I mean, I don't want range --
14 but what's your general philosophy on when
15 somebody needs to go to prison as opposed to
16 when they would need probation or some type of
17 other alternative sentence that could be
18 available to you?

19 MR. FLOYD: Well, I think, first of all,
20 your -- your training that you've had in law
21 school teaches you how to think. And more
22 often times, especially in criminal cases,
23 more often times than not you're going to have
24 two good lawyers who are going to tell you,
25 you should -- you should sentence them to

1 this, you shouldn't because of this, and they
2 will both give you all of these things and
3 facts. And each case, civil, I'll just use
4 civil by way of example obviously because I
5 have more experience there, every case is
6 different. It doesn't matter that you say
7 well, this is this or this is -- this is a
8 breach of contract case. Every case is
9 different regardless. You're going to have
10 different facts, you're going to have
11 different people, you're going to have actors,
12 the personalities are different, it may be
13 ever so slight but there's always a difference
14 and there's always reason for you to pause and
15 reflect and -- and understand the intricacies
16 of each individual situation before you make a
17 decision. I also think I have, having been
18 practicing for nearly or right at going on
19 seventeen years I've established some pretty
20 good friendships with -- within the judiciary,
21 I call them friends they may not call friends,
22 but I think they're my friends. And again
23 this is something that I wouldn't hesitate to
24 pick up the phone and call, this is what I'm
25 thinking, you know, tell me am I off base. I

1 do it all the time with practicing law.
2 Whenever you get this wild and crazy idea, but
3 I never have wild and crazy, when you get
4 these ideas you pick up the phone and you say,
5 let me run something by you. Let me just tell
6 you this and you -- you tell me how it hits
7 you. And obviously you can spin the facts to
8 fit your own liking but I try to give an
9 unbiased summary of the facts to get feedback.
10 And I think between that, the mentors that I
11 would have and the good lawyers that you will
12 have because every criminal defendant's going
13 to have a lawyer. It may be an appointed
14 lawyer but they're going to have lawyers. And
15 they're going to present the information and
16 facts to you and more often time than not the
17 defendants are going to have good lawyers.
18 The ones that are able to hire good lawyers
19 they're going to defend them and they're going
20 to tell you each and every reason why they
21 shouldn't be given x, y or x. So I don't
22 think you can go into this with this
23 preconceived notion of this is my philosophy.
24 I think you have to take on each case, every
25 situation, from the civil or criminal case and

1 understand the facts of each case. Listen and
2 pay attention and read everything that you're
3 given.

4 CHAIRMAN SMITH: From time to time, you
5 know, I find when you do -- I don't do much
6 criminal work anymore, but during the time I
7 did you go and you negotiate a case with the
8 solicitor and, you know, they say we recommend
9 "x" amount of time or we'll recommend this and
10 the judge is called upon to listen to the case
11 and determine whether they're going to follow
12 the recommendation or reject the
13 recommendation. But would you be -- when --
14 if you couldn't go along with the
15 recommendation of a solicitor how would you
16 handle that? Would you let the parties know
17 or would you just sentence what you think is
18 appropriate?

19 MR. FLOYD: If I were given the
20 opportunity to let them know I can't do this
21 in chambers or whatever I think that would
22 probably be more appropriate than putting them
23 out on the record and putting me in a bad spot
24 and putting everybody else in a bad spot if it
25 is something that they can tell me. I would

1 rather deal with that way instead of getting
2 out there and then everybody's put in an
3 uncomfortable position.

4 CHAIRMAN SMITH: If you're elected to the
5 position from time to time you're going to be
6 a Chief Administrative Judge of criminal or
7 civil or maybe some circuits you'd be in both
8 where depending upon where you -- where you
9 maintain your offices. When you reach that
10 point you're going to hear from lawyers from
11 time to time that say, you know, I got
12 conflicts with this date and you understand it
13 and going around you got depositions that
14 you've scheduled for a while and then you get
15 called for a motion or you're on the trial
16 roster with not a whole lot of certainty and
17 need some protection or you got your child's
18 baseball game at four o'clock that afternoon
19 or a school program that morning that you'd
20 like to go see. How would you handle those
21 requests as a Circuit Court judge?

22 MR. FLOYD: My experience has been
23 generally speaking if you can get the parties
24 in the judge's office and everybody can sit
25 down with their calendars, because everybody's

1 got the phone with the calendar now. You can
2 always sit down and the good judge, to be the
3 good judges look at you and say, "Okay, Mr.
4 Floyd, I have this day, this day, this day
5 available. When are you available?" "Okay.
6 Mr. Opposing Lawyer, I have this day, this
7 day, this day, when are you available?" I
8 mean, when you do those sorts of things you've
9 got to be understanding and even I've had some
10 situations pop up where I've been having to
11 schedule and juggle and then you schedule
12 something with the judge and then you have to
13 write him back and say, "Judge, I'm sorry, but
14 this arbitration over here has been scheduled
15 on top of me. I've tried to not do it." And,
16 you know, they all are very accommodating and
17 you have to deal with the priority rules and
18 all that sort of stuff. But generally
19 speaking, if you can get everybody in the room
20 -- one of my biggest pet peeves now, I won't
21 go too far on this, but one of my bigger pet
22 peeves is that lawyers are emailing one
23 another so much. I'm probably going to show a
24 little bit of my age, they just want to email
25 instead of picking up the phone and dealing

1 with somebody. I think if you pick up the
2 phone and you deal with somebody you're going
3 to get a lot more traction, you can build a
4 personal relationship as opposed to just
5 getting this random email from this person
6 seeking an extension that you don't know and
7 you -- when they send you this random email
8 you immediately say, well, what have I done
9 wrong, why won't they talk to me, what's going
10 on, is it my personality because I've never
11 met this person. Are they trying to sneak up
12 behind me and hit me in the head with
13 something. You have those, sort of, sneaking
14 suspicions instead of somebody picking up the
15 phone, "Hey Joey, do you mind giving me
16 another thirty days?" "No, not a problem,
17 take sixty." You know, that kind of thing.
18 But that's just one of my pet peeves that I
19 have.

20 CHAIRMAN SMITH: And I know that the
21 Midlands Commission says that you are --
22 you're young, whatever that is, I think you
23 would take that as a compliment. I see you're
24 --

25 MR. FLOYD: I do.

1 CHAIRMAN SMITH: -- a few years behind me,
2 seven years behind me so that makes your
3 forty-two years old.

4 MR. FLOYD: Yes, sir.

5 CHAIRMAN SMITH: And that's young in the
6 eyes of the Commission, huh?

7 MR. FLOYD: I think that's great.

8 CHAIRMAN SMITH: I know. That's a
9 compliment. All right. Any further questions
10 for Mr. Floyd?

11 (No response.)

12 CHAIRMAN SMITH: All right. Mr. Floyd,
13 this will conclude this portion of your
14 screening process. I want to take this
15 opportunity to remind you that pursuant to the
16 Commission's evaluative criteria the
17 Commission expects candidates to follow the
18 spirit as well the letter of the ethics laws,
19 and we will view violations or the appearance
20 of impropriety as serious and potentially
21 deserving of heavy weight in screening
22 deliberations. On that note, and as you know,
23 the record will remain open until the formal
24 release of the report of qualifications, and
25 you may be called back at such time if the

1 need arises. I thank you for offering for
2 this position, and I thank you for your
3 service to the State of South Carolina.

4 MR. FLOYD: Thank you all for your time
5 this morning.

6 (The candidate is excused.)

7 CHAIRMAN SMITH: Good morning, Mrs.
8 Horne. We're only ten minutes behind so we're
9 doing well today.

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

11 CHAIRMAN SMITH: Ms. Horne, will you raise
12 your right hand, please, ma'am.

13 (The candidate is sworn in.)

14 CHAIRMAN SMITH: Ms. Horne, before you,
15 you have the personal data questionnaire and
16 your sworn statement. Are these documents
17 that you've submitted to the Commission?

18 MS. HORNE: Yes, Mr. Chairman.

19 CHAIRMAN SMITH: Are they correct -- are
20 both of them correct to the best of your
21 knowledge?

22 MS. HORNE: Yes, Mr. Chairman.

23 CHAIRMAN SMITH: Does anything need to be
24 changed or updated at this time?

25 MS. HORNE: Not that I'm aware of, Mr.

1 Chairman.

2 CHAIRMAN SMITH: Do you have any objection
3 to making these documents part of the record
4 of your sworn testimony?

5 MS. HORNE: Absolutely.

6 CHAIRMAN SMITH: If you'll hand that to
7 Lindi for me, please, ma'am, and we'll make
8 that as an exhibit to your sworn testimony.

9 [EXHIBIT NO. 3, JUDICIAL MERIT
10 SELECTION COMMISSION PERSONAL DATA
11 QUESTIONNAIRE FOR MS. JENNY A. HORNE,
12 ADMITTED.]

13 [EXHIBIT NO. 4, SWORN STATEMENT FOR MS.
14 JENNY A. HORNE, ADMITTED.]

15 CHAIRMAN SMITH: Mrs. Horne, the Judicial
16 Merit Selection Commission has thoroughly
17 investigated your qualifications for the
18 bench. Our inquiry has 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 received no affidavits filed in
2 opposition to your election and no witnesses
3 are here to testify today. Do you wish to
4 make a brief opening statement to the
5 Commission?

6 MS. HORNE: Yes, Mr. Chairman. Thank you
7 very much for the work that you do here. It's
8 very important work. Many of you know me and
9 have worked with me in a capacity other than
10 what we are here for today and for that I am
11 grateful. One of the parts about becoming a
12 judge is that you leave behind the political
13 part of your life and you move into the
14 judicial branch of government. And certainly
15 having been in your seats I understand the
16 separation of powers and how important it is
17 to interpret the laws as you passed them. I
18 also can appreciate the work that you do to
19 serve your constituents. It's tough work but
20 it's very rewarding work. And I have decided
21 after a lot of reflection and thought that
22 after twenty years of practicing law I would
23 like to go into another role of public service
24 that's quite different than what I have done
25 before. And for that I'll answer any

1 questions that you may have from my resume.

2 CHAIRMAN SMITH: Mr. Maldonado will ask
3 you some questions, so you answer those for
4 me, please, ma'am.

5 EXAMINATION

6 (By Mr. Maldonado)

7 Q. Thank you, Mr. Chairman. I would note for the
8 record that based on the testimony contained in the
9 candidate's PDQ, which has been included in the
10 record with the candidate's consent, The Honorable
11 Jenny A. Horne meets the constitutional and
12 statutory requirements for this position regarding
13 age, residence and years of practice. Ms. Horne,
14 why do you want to be a Circuit Court judge?

15 A. I love trial work. As a practicing attorney for
16 twenty years, I very much enjoy and appreciate our
17 legal justice system. I also worked for a very
18 fine judge when I was a young lawyer. The
19 Honorable Margaret B. Seymour who sits on the
20 federal bench. And she set a fine example for me
21 as to the kind of judge that I would like to be.
22 Careful, deliberate, courteous, and above all treat
23 every lawyer, litigant who comes before the court
24 with the dignity and respect that the courtroom
25 requires.

1 Q. Ms. Horne, how do you feel your legal and
2 professional experience thus far renders you
3 qualified and will assist you in becoming an
4 effective Circuit Court judge?

5 A. Well, I practice in a variety of courts including
6 federal courts in a variety of actions, civil --
7 mostly civil. I have practiced in Family Court and
8 I've practiced in Circuit Court where I've had a
9 good practice and I've been a solo practitioner for
10 a lot of that so I kind of do everything.

11 Q. Ms. Horne, the Commission received 245 ballot box
12 surveys regarding you with 40 additional comments.
13 The ballot box surveys, for example, contained the
14 following positive comments. "Jenny Horne would
15 make an excellent judge. She is intelligent and
16 understanding, courteous and open minded." Also,
17 "I have known Jenny Horne most of my adult life.
18 She is intelligent, diligent and thoughtful. I
19 think she would make a good addition to the bench.
20 Well respected among her peers, good and varied
21 background in her law practice. Excellent people
22 skills." A few negative comments indicated that
23 you might have an issue with temperament. For
24 example, "Jenny's temperament and stability are
25 also major concerns which would be an issue when it

1 comes to treating people who may appear in a
2 courtroom impartially, fairly and with respect."
3 Also, "I firmly believe that part of elevating Ms.
4 Horne's consideration as a serious candidate for
5 judiciary the Commission should review, among other
6 items, the recording of Ms. Horne's speech at the
7 South Carolina State House of Representatives floor
8 during the debate of the removal of the Confederate
9 Flag in 2015 as well as her public remarks and
10 behavior in the weeks that followed. In my humble
11 opinion, Ms. Horne has repeatedly failed to display
12 a proper temperament, demeanor and professionalism
13 necessary to becoming a respective member of our
14 state's court system." How would you respond to
15 these concerns?

16 A. I would respectfully disagree. I think that I've
17 also discussed the fact that as a rule, as a
18 legislator, we are advocates for our constituents.
19 And certainly I have been an advocate for my
20 constituents but I will no longer be an advocate.
21 And I can assure you that I will not have people
22 complaining to this Committee about my temperament
23 or that have a case of robe-itis. I'm very
24 conscious of -- I don't want anyone coming to you
25 and complaining to you that I did not exercise my

1 judicial authority in a fair, impartial, and
2 dignified fashion.

3 **Q. Ms. Horne, a few comments expressed concerns about**
4 **impartiality. For example, "When the judicial**
5 **candidate was in the Legislature she often made**
6 **decisions and reached opinions based on rumor. I**
7 **am concerned about the candidate would render**
8 **judicial decisions based on friendships or**
9 **political considerations." Also, "Jenny can be a**
10 **bit passionate and has some difficulties seeing two**
11 **sides of an issue. I am concerned about her**
12 **ability to be fair." How would you respond to this**
13 **concern?**

14 **A.** My job as a judge is very different than that of
15 being an advocate. And certainly I understand and
16 appreciate the distinction between the position I
17 held in the past and the position for which I seek.
18 There -- there -- the last thing that I'm -- that
19 I'm going to have is have someone complain to you
20 that I am not fair and impartial. And certainly
21 for those of who -- who have served with me in the
22 General Assembly, you know that I can and have
23 worked with everyone to do and compromise to do the
24 best job that I can for our -- our state. And
25 certainly that concern I think that has been

1 voiced, while I respectfully disagree, I do not
2 think it should be a concern of this Committee and
3 it will not be a problem.

4 **Q. One comment expressed a concern about your**
5 **truthfulness. "I have personally dealt with Ms.**
6 **Horne in the past. I know that she will bend the**
7 **truth and compromise her integrity as it suits her.**
8 **She will say one thing and do another." How would**
9 **you respond to this concern?**

10 **A.** This is very offensive because I, those of you who
11 name me know that my word is my bond when I was
12 here. And I did not -- I -- I love -- I love my
13 law license. And certainly if I misrepresented
14 something in a court I'm sure that would have been
15 inappropriate and certainly I take great offense at
16 the questioning my truthfulness and veracity.

17 MR. MALDONADO: Mr. Chairman I would like
18 to request that we now go into executive
19 session.

20 CHAIRMAN SMITH: All right. Mr. Murphy
21 moves that we go into executive session. All
22 in favor say, "Aye."

23 (The Commission members comply.)

24 CHAIRMAN SMITH: All opposed?

25 (No response.)

1 CHAIRMAN SMITH: "Ayes" have it. We're in
2 executive session. We'll clear the room,
3 please. And turn off your mics. Thank you.

4 (Off-the-record executive session.)

5 CHAIRMAN SMITH: Make sure you put on the
6 record that Mr. Safran moves to lift the veil
7 and come out of executive session. All in
8 favor say, "Aye."

9 (The Commission members comply.)

10 CHAIRMAN SMITH: All opposed?

11 (No response.)

12 CHAIRMAN SMITH: "Ayes" have it. We're
13 out of executive session. And for the record
14 I'd like to say that while we were in
15 executive session, no decisions were made, no
16 votes were taken. All right. Proceed Mr.
17 Maldonado.

18 **Q. Thank you, Mr. Chairman. Ms. Horne, how do you --**
19 **what do you feel is the appropriate demeanor for a**
20 **judge?**

21 **A.** I think it would be Margaret Seymour, The Honorable
22 Margaret Seymour. She has -- I've always admired
23 her, the way she conducted her court, the way she
24 was conscientious about counsel and being
25 respectful and certainly she is a -- a good friend

1 to this day and certainly I have -- I learned a lot
2 from her and she has been a mentor to me ever since
3 I clerked for her out of law school.

4 **Q. Are there any areas including subjective areas of**
5 **the law that you feel that you need additional**
6 **preparation in order to serve as a Circuit Court**
7 **judge and how would you handle such preparation?**

8 A. I will acknowledge to this Committee that while I
9 have not practiced in criminal defense or
10 prosecution I have as a federal law clerk did get
11 exposure to the process. And I have spent an
12 amount of time in preparation for this hearing
13 reviewing Title 16, Title 17 and making sure that
14 I'm familiarizing myself with all of these old --
15 these old things. And of course some of this
16 statutes that we have I actually reviewed in the
17 past when I was in the General Assembly so I'm very
18 cognizant that I need to study more in that area
19 but certainly the rules of evidence and the rules
20 of procedure are the same whether you're in Civil
21 Court or Criminal Court. And certainly I will be a
22 good student and certainly will be very cautious
23 while I am training to become a judge in General
24 Sessions.

25 **Q. Thank you. I'll finish up with some housekeeping**

1 issues. Ms. Horne, are you aware that as a
2 judicial candidate you are bound by the Code of
3 Judicial Conduct as found in the Rule 501 of the
4 South Carolina Appellate Court rules?

5 A. Yes.

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

9 A. No.

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

14 A. No.

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

19 A. No.

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

23 A. Yes.

24 MR. MALDONADO: I would note that the
25 Lowcountry Citizens Committee reported Ms.

1 Horne be well qualified as to ethical fitness,
2 professional and academic ability, character,
3 reputation, experience and judicial
4 temperament. And qualified as to the
5 constitutional qualifications, physical health
6 and mental stability. Mr. Chairman, I would
7 note for the record that any concerns raised
8 during the investigation by staff regarding
9 the candidate were incorporated in the
10 questioning of the candidate today. I have no
11 further questions.

12 CHAIRMAN SMITH: Thank you very much. Any
13 questions for Mrs. Horne? Senator Hayes.

14 MR. HAYES: Thank you. I appreciate your
15 willingness to serve. I was over in the
16 Senate a good bit of the time you were in the
17 House, I think, and you served, what, eight
18 years in the Legislature?

19 MS. HORNE: Yes, sir, Senator.

20 MR. HAYES: Why do you think having the
21 legislative background will have, if you do
22 think this, I'm not sure, but do you think
23 having a legislative background will be a help
24 to you in being a good judge?

25 MS. HORNE: Absolutely.

1 MR. HAYES: Why is that?

2 MS. HORNE: Well, when I was in the --
3 when I was in the legislative branch of
4 government, you know, we always talked about
5 some of the decisions that we didn't like that
6 went beyond what the intent -- we thought the
7 intent of the legislature is. And while I'm
8 not applying for an appellate position, of
9 course, I certainly understand and appreciate
10 the separation of powers and what it is. A
11 judge's role is to interpret the law and not
12 to write the law. So I am very cognizant of
13 these separation of powers and certainly hope
14 that, that will improve, make me a better
15 judge, make me a more careful judge and make
16 me a judge that's going to follow what -- the
17 intent of the legislature is.

18 MR. HAYES: Let me follow up, if I could.
19 Do you think having had to humble yourself in
20 a way to go ask for votes as far as running
21 for office in the legislature and then having
22 to deal with constituents, et cetera, do you
23 think that would help you as far as serving as
24 a judge?

25 MS. HORNE: Oh, absolutely. Part of what

1 we do is deal with the public as an elected
2 official. And certainly when you're dealing
3 with litigants, you're dealing with
4 defendants, you're dealing with jurors, you
5 want to be courteous and respectful. And
6 certainly over my eight years I had to evolve
7 certainly as a public servant, but I feel that
8 those eight years gave me an advantage and
9 certainly it was an honor to be able to have
10 the public trust and have people elect me to
11 office.

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

14 SENATOR YOUNG: Thank you, Mr. Chairman.
15 Ms. Horne, I want to thank you for your
16 interest in continuing your public service on
17 the Circuit Court. And thank you for the
18 eight years that you served in the South
19 Carolina General Assembly. You and I were
20 elected at the same time. Started in the
21 South Carolina House in the Fall of 2008, came
22 in then January 2009. One of the questions I
23 have for you, you've already answered it, in
24 the response to Senator Hayes' question. And
25 that was about basically how you would view

1 the law and having to apply it to the facts
2 that would be before you on the Circuit Court.
3 And you made it clear in your answer, that you
4 would not attempt to -- you would interpret
5 the law, you would not try to be a judicial
6 activist from the bench. The second question
7 I have for you is you are a solo practitioner;
8 is that right?

9 MS. HORNE: I am.

10 SENATOR YOUNG: And you have been in a
11 small practice with your own firm for nine
12 years --

13 MS. HORNE: Yes.

14 SENATOR YOUNG: -- is that right. And so
15 you are familiar with the challenges that face
16 lawyers who come from small practices in a lot
17 of regards but especially as to being pulled
18 from one court to the next whether it be
19 Family Court or Circuit Court, Magistrate
20 Court, wherever it may be. You can't be in
21 multiple places at one time and so you're
22 familiar with those challenges from your
23 practice. Is that fair to say?

24 MS. HORNE: That is absolutely fair to
25 say, Senator Young. Thank you for that

1 question though.

2 SENATOR YOUNG: Are you sensitive to
3 lawyers who come from small practices who have
4 very active practices who may at time need to
5 have protection or a continuance?

6 MS. HORNE: Absolutely.

7 SENATOR YOUNG: Do you -- tell me how your
8 experience on -- as a Federal Court clerk for
9 Judge Seymour would help you and assist you in
10 your service on the Circuit Court?

11 MS. HORNE: I believe that when I -- when
12 I was a law clerk I did work on sentencing,
13 work on writing orders and drafting orders,
14 researching evidentiary issues that are of
15 course a lot of times are the same issue that
16 you have in State Court and in Federal Court,
17 I worked on a couple of bank robbery trials as
18 a law clerk and those are the kind of
19 experiences that I had. But I also understand
20 and Judge Seymour instilled this in me. I
21 understand that we're an umpire. We're
22 supposed to -- we're supposed to call balls
23 and strikes. We're not supposed to be an
24 activist. And certainly I learned from her
25 exactly what it is to be a judge because I

1 think a lot of times young lawyers -- when I
2 was a young lawyer, she taught me what it
3 really meant to be a judge. That's -- we
4 don't have a dog in this fight. We're just
5 going to apply the law, we're going to write
6 cogent orders that we won't get reversed, that
7 we try not to get reversed. So those are the
8 types of experiences that I think will give me
9 some insight on what my role is.

10 SENATOR YOUNG: Did you write orders for
11 Judge Seymour?

12 MS. HORNE: Oh, yeah. I'm a real good
13 Westlaw researcher and writer. I really -- if
14 you're a solo practitioner you better know
15 Westlaw and write orders.

16 SENATOR YOUNG: I may have some additional
17 questions in a moment.

18 CHAIRMAN SMITH: Senator Rankin.

19 SENATOR RANKIN: Thank you. Ms. Horne,
20 likewise, I want to commend you for your
21 willingness to step out further in a different
22 branch. You ran unsuccessfully. I think in
23 time the Pearly Gates, and if not before with
24 your family and your friends, that loss was a
25 win for you. Do you appreciate that now or

1 no?

2 MS. HORNE: I do. I do. I appreciate
3 that, but that was the end of my political
4 career.

5 SENATOR RANKIN: The desire to become a
6 judge after eight years and it would be
7 awkward to run and serve in Congress. What's
8 the mindset there? Why this now?

9 MS. HORNE: It's just like every -- I've
10 been committed to practice for twenty years,
11 and I think now is the time that I have had
12 the life experiences and the professional
13 experiences that would make me a -- a, how do
14 I say this, a more competent and compassionate
15 judge who has -- I have a wealth of experience
16 that these experiences that I've had for the
17 last eight years, I mean, some of this stuff
18 you just can't make it up. But all of those
19 things have brought me to this point in my
20 career where I've decided that this is the
21 next step for me and that's how I decided
22 when, to do it now as opposed to after I was
23 out of practice for eight years. I wasn't
24 ready. I'm -- I'm ready now.

25 SENATOR RANKIN: And I note in your PDQ

1 all Carolina and I would dare say all with
2 honors both in the undergraduate honors
3 program and then if you're on the Order of the
4 Wig and Robe and the Law Review you've got to
5 be a pretty stellar academic, if nothing else,
6 correct?

7 MS. HORNE: Well, I hope so.

8 SENATOR RANKIN: Tell me about trial work.
9 And you mentioned earlier about your
10 experience in various courts. Did you do a
11 little bit of trial work before now or a lot
12 of trial work before now?

13 MS. HORNE: So for the benefit of the
14 Committee, when I started working I went to a
15 labor employment defense firm. So I did a lot
16 of work in the areas of the Union issue as
17 well as employment. And so I litigated my --
18 my, I guess, my first case that I ever tried I
19 tried in Federal Court.

20 SENATOR RANKIN: Ellzey and Brooks. Is
21 that South Carolina?

22 MS. HORNE: Now they are Fisher and
23 Phillips. Prior to that they were Ogletree.
24 And I worked there for eighteen months and
25 then had the opportunity to go work for

1 Margaret Seymour because she wanted someone
2 who had Title 7 experience because a lot of
3 the work that new baby judges get to do is all
4 the cases that nobody else wants to deal with.
5 And so I was busy doing ERISA, Social Security
6 appeals and Title 7. I enjoyed it because I
7 enjoyed the work. And so since then I've been
8 a practitioner -- solo practitioner. Well,
9 for a period I had a partner but for the main
10 -- main portion of the last nine years, I
11 practiced in Circuit Court, I recently tried a
12 case in Dorchester County and got a modest
13 verdict, and I think I put that in there, in
14 front of one of our fine judges, Judge Maite
15 Murphy. And it was a pleasure to do that and
16 it's always been -- to get in because so
17 often now with mandatory mediation lawyers
18 don't really a chance to try a case very
19 often. But certainly I enjoy trial work, I
20 love people, I enjoy lawyers, I represented
21 lawyers in legal malpractice cases for almost
22 five years.

23 SENATOR RANKIN: On the plaintiff or the
24 defense?

25 MS. HORNE: Defense side. And I've worked

1 with Susan Wall who has -- who has written a
2 letter of recommendation for me. I worked
3 with her for almost five years. And the first
4 case that we tried was in front of Judge Duffy
5 and it was a malpractice case with a diversity
6 component. You usually don't try malpractice
7 cases in Federal Court, they're usually in
8 Circuit Court so that was -- you know, I've
9 just been -- I've been very fortunate to have
10 had the plaintiff side perspective as well as
11 the defense side perspective because I can
12 tell you that the little guy can get beat up
13 in Federal Court. And I have been beaten up
14 in Federal Court before. And certainly I one
15 of the cases that I listed in my cases was an
16 employment case I had against Pfizer
17 Pharmaceuticals and it was a big law firm and
18 they about killed me. And so I can really
19 appreciate, like Senator Young said, how
20 difficult it is for small practitioners to be
21 able to keep up with the demands of the
22 federal system. But I will say this. I'm a
23 hard worker and federal judges -- circuit
24 judges have to work a whole lot harder because
25 of the way that the rules are set up. And our

1 -- our docket for Circuit Court judge is one
2 of the busiest dockets per capita, per judge
3 in the United States and certainly I'm looking
4 forward to that challenge and know that I'm
5 going to be working really hard. And I look
6 forward to the challenge.

7 SENATOR RANKIN: Passion is not a foreign
8 concept with you. Obviously, you're exuding
9 passion right now which is an attractive
10 thing. Some of the comments that passion can
11 be perceived in a negative way. Perhaps as
12 too independent, too -- there was one comment
13 about your survey taking on difficult topics,
14 difficult issues and not shying away from
15 them. To your folks, and perhaps it's the
16 flag, perhaps it's you're a woman, perhaps its
17 who knows what, but to those who are rubbed
18 wrong by your passion and your independence,
19 how do you, again, in an anonymous non-
20 qualified, non-specific vein which again I
21 can't define, but as the question is poised,
22 how do you respond to those who bristle
23 perhaps at your passion?

24 MS. HORNE: This is a completely different
25 role for me. And being a zealous advocate is

1 part of what we do as lawyers and it spills,
2 for those of us who are zealous advocates for
3 our clients, it does spill over into the
4 legislator process and I know we had some
5 pretty heated discussions, right,
6 Representative Rutherford? And at the end of
7 the day that's the job that I was sent to do.
8 The judicial post is completely different.
9 There will be a passion, it will thoughtful,
10 it will be deliberate, it will be well-
11 reasoned, it will not be something that I'm
12 going to get angry and throw a book at
13 somebody just because I'm angry. That's not
14 the type of person I am. And for those of you
15 that worked with me you know getting into a
16 debate is one thing but when you're not the
17 lawyer anymore and you're the judge, your role
18 is very different. So I can -- I can assure
19 this Committee that will -- my passion will
20 not be an issue for -- for the litigants and
21 the lawyers and the court security people that
22 come before -- into my court.

23 SENATOR RANKIN: You got a number of
24 ballot box Bar comments. And in fact a number
25 of -- a fairly large number that -- and

1 there's some negative but a ton of positive in
2 terms of your ability, your intellect and your
3 demeanor and/or temperament. With the good
4 comes the bad or with the bad comes the good.
5 Do you believe that this barometer, this
6 metric, this means of soliciting comments from
7 folks who deal with you who know you, or
8 likewise myself if I'm offering, do you think
9 that this is a valid tool that the Judicial
10 Merit Selection Committee should consider?

11 MS. HORNE: Oh, absolutely. I think it's
12 very important to get the opinion of the Bar,
13 I mean, the Bar is where, you know, where you
14 work -- it's where you're working. Certainly
15 -- but, you know, not everyone is going to
16 say, and we all know this for those of us who
17 have served in elected office, when you're in
18 an elected office people have really bad
19 things to say about you whether they're
20 justified or not. So I think that overall I
21 think that survey works. And like you said,
22 I'm going to have some negatives, Everybody's
23 going to have some negatives. But I am also
24 humbled by the fact that I had so many
25 positive comments from people who had

1 litigated against me in Federal Court or State
2 Court or in Family Court. So I think it is a
3 useful tool. It can be cruel at times, but
4 you know, it's just part of the process and
5 this is an excellent process and I believe
6 that this process works.

7 SENATOR RANKIN: Thank you.

8 MS. HORNE: Thank you.

9 CHAIRMAN SMITH: Senator Sabb.

10 SENATOR SABB: Thank you, Mr. Chairman.
11 And thank you, Ms. Horne, for offering
12 yourself. I just really have more of a
13 comment. And I think some of it sort of goes
14 in keeping with a number of the comments that
15 have been made. And so I just wanted the
16 Committee to know as a democrat and, of
17 course, Ms. Horne and I ideologically differ
18 on a number of issues and certainly we've had
19 our heated debates as well, but I admire the
20 way that she listens to the opposition and is
21 willing to give thought to differing points of
22 view. And so I've served with Jenny Horne for
23 four years and I don't mind stating for the
24 record that I admire the type of individual
25 she is.

1 MS. HORNE: Thank you, Senator, for those
2 kind words.

3 CHAIRMAN SMITH: Any further questions?
4 (No response.)

5 CHAIRMAN SMITH: Keeping consistent, Ms.
6 Horne, let me just ask you a couple of
7 questions. I think you sort of answered them,
8 but, you know, from time to time, if you were
9 successful at this candidacy and became
10 elected as Circuit Court judge you're going to
11 have attorneys who going to raise conflicts
12 with you and say, you know, I can't be in
13 this court, I got depositions, or my child's
14 got school program this morning. How are you
15 going to handle those decision vis-a-vis the
16 demands of moving dockets and having cases
17 disposed of in a timely manner?

18 MS. HORNE: Certainly, having been a solo
19 practitioner who could practice law full time
20 only six months out of the year and part time
21 the other six months out of the year, I am
22 very understanding that people have lives,
23 they have children that get sick, they have
24 other obligations in other courts. So
25 certainly that will be -- that will be

1 something that I will be able to have a great
2 deal of insight into.

3 CHAIRMAN SMITH: And then I want to just
4 tag along with what Senator Sabb was saying.
5 The three of us all served on the House Ethics
6 Committee for a long, long time. I think
7 since it reconstituted you served ably on that
8 committee and we got to work with you
9 firsthand, see your ethics, see how you -- the
10 seriousness that you took your job and that
11 position. And certainly, you know, when you
12 read these ballot box surveys, like you said,
13 there's -- I think all of us make enemies when
14 we practice law, that's the nature of advocacy
15 that we have through the process, but by the
16 same token, you know, when you look at this
17 and you look at your record when you served in
18 the General Assembly, you served with honor,
19 you served to the best of your ability to your
20 constituents, you always took that into
21 effect. And I know as it relates to your
22 ethics those were without question. We
23 watched and saw that demonstrated time after
24 time on the committee so, you know, hold your
25 head high. We all get bad remarks all the

1 time. If I was in your place mine would
2 probably look a whole lot worse. So I wanted
3 to go ahead and say that. But I appreciate
4 your service, appreciate what you've done in
5 the past and appreciate you offering here
6 today.

7 MS. HORNE: Thank you, Mr. Chairman. And
8 thank you to the Committee for the important
9 work you do serving in this state.

10 CHAIRMAN SMITH: Any more questions?

11 (No response.)

12 CHAIRMAN SMITH: Ms. Horne, this
13 concludes this portion of your screening
14 process. I want to take this opportunity to
15 remind you that pursuant to the Commission's
16 evaluative criteria the Commission expects
17 candidates to follow the spirit as well the
18 letter of the ethics laws, and we will view
19 violations or the appearance of impropriety as
20 serious and potentially deserving of heavy
21 weight in the screening deliberations. On
22 that note, and as you know, the record will
23 remain open until the formal release of the
24 report of qualifications, and you may be
25 called back at such time as the need arises.

1 Thank you for your service and offering for
2 this position and for your service to the
3 State of South Carolina.

4 MS. HORNE: Thank you, Mr. Chairman.

5 (The candidate is excused.)

6 CHAIRMAN SMITH: Judge McCoy, I see you
7 have somebody that accompanied today?

8 JUDGE MCCOY: I do. I have three ladies
9 that accompanied me today.

10 CHAIRMAN SMITH: Let's let them come in
11 first.

12 JUDGE MCCOY: Thank you. It might take a
13 couple more minutes. Thank you very much.

14 CHAIRMAN SMITH: If you'll introduce them
15 to the Commission. We've got a couple of them
16 not here, but we'll go ahead and get started.

17 JUDGE MCCOY: Okay. I'd love to. Thank
18 you for the opportunity. And this is first of
19 all my mother, Patricia Blanchard, she came
20 over here from Augusta, Georgia this morning.
21 My grandmother-in-law, Lucy Coleman. And Mary
22 Jones, her caretaker. They came over here
23 from Laurel Crest this morning. So not as far
24 for them.

25 CHAIRMAN SMITH: We're glad for you all to

1 be here. Welcome and good to see you. All
2 right. We'll get started right now. Judge
3 McCoy, if you'll raise your right hand, please
4 ma'am.

5 (The judge was sworn in.)

6 CHAIRMAN SMITH: Thank you very much.
7 Before you, Judge McCoy, is your personal data
8 questionnaire and your sworn statement. Are
9 both of these documents that you have
10 submitted to the Commission?

11 JUDGE MCCOY: Correct. They are.

12 CHAIRMAN SMITH: Are they both correct to
13 the best of your knowledge?

14 JUDGE MCCOY: Yes, they are.

15 CHAIRMAN SMITH: Are there any changes or
16 updates that need to be made at this time?

17 JUDGE MCCOY: No.

18 CHAIRMAN SMITH: And do you have any
19 objection to us making this a part of the
20 record of your sworn testimony today?

21 JUDGE MCCOY: I -- I do not.

22 CHAIRMAN SMITH: If you'll hand those to
23 Lindi for me, please, ma'am. And we're going
24 to make those an exhibit of your testimony
25 today.

1 [EXHIBIT NO. 5, JUDICIAL MERIT
2 SELECTION COMMISSION PERSONAL DATA
3 QUESTIONNAIRE FOR THE HONORABLE JENNIFER
4 BLANCHARD MCCOY, ADMITTED.]

5 [EXHIBIT NO. 6, SWORN STATEMENT FOR THE
6 HONORABLE JENNIFER BLANCHARD MCCOY, ADMITTED.]

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

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

23 JUDGE MCCOY: Thank you for having me. I
24 understand you're all away from your families
25 and your practices and your businesses today

1 and I certainly appreciate all of your time
2 and your consideration. And I'm happy to
3 answer any questions. I obviously would like
4 to thank very much Paula Benson as well.
5 She's been very helpful to me throughout this
6 process. I'd like to give her credit for
7 that. Thank you.

8 CHAIRMAN SMITH: Thank you very much.
9 Will you answer any questions that Ms. Benson
10 may have?

11 JUDGE MCCOY: Yes.

12 EXAMINATION

13 (By Ms. Benson)

14 **Q. Mr. Chairman. I note for the record that based on**
15 **the testimony contained in the candidate's PDQ,**
16 **which has been included in the record with the**
17 **candidate's consent, that Judge McCoy meets the**
18 **constitutional and the statutory requirements for**
19 **this position regarding age, residence and years of**
20 **practice. Judge McCoy, how do you feel your legal**
21 **and professional experience thus far renders you**
22 **qualified to be an effective Circuit Court judge?**

23 **A. Ms. Benson, I've known that I've wanted to do this**
24 **since the beginning of my legal career. In fact,**
25 **that's actually why I've crafted my career the way**

1 I have. I was lucky enough in law school to clerk
2 as a student for an entire year for Judge Blatt in
3 Charleston. Of course, no finer example of the
4 jurist to my knowledge to learn from initially.
5 After law school, I was fortunate to clerk for
6 Judge Markley Dennis, another excellent jurist. I
7 learned a lot from Judge Dennis and it was at that
8 point being on the bench with Judge Dennis on a
9 day-to-day basis in Circuit Court that I really
10 knew this is what I wanted to do. So knowing that
11 I moved forward. I was lucky enough to go into a
12 great practice with a civil litigation firm in
13 Charleston for many years. We did a lot of
14 professional negligence actions, a lot of
15 construction litigation, insurance defense, mostly
16 is what we did. Of course, didn't get in the
17 courtroom a lot. Most of that settles at
18 mediation. It was a little frustrating when I
19 couldn't get back and have that courtroom
20 experience that I so missed from being a law clerk.
21 I actually went back to Judge Blatt and talked to
22 him about, you know, what next steps maybe I should
23 take. And he said, "Jennifer, you either need to
24 go be a solicitor or a public defender if you want
25 to get in the courtroom and get that trial

1 experience." So at that point, I did go and become
2 a solicitor for a few years in Charleston. I had a
3 great experience there as well and, I mean, I got
4 what I asked for. Second week on the job I was in
5 court so I definitely enjoyed that experience. I
6 was happy to have the criminal side as well as the
7 civil side at that point. And then again, in
8 trying to prepare myself as best I could for a role
9 as a Circuit judge I said, well, I probably need to
10 know what it's like to wear a robe and make
11 decisions and impact people's lives. So with that
12 in mind I applied for -- or, you know, spoke with
13 my Senator and became eventually a Magistrate judge
14 which is what I'm doing now part time. I also have
15 a small practice on the side. I take a few cases
16 at a time, but not many, and most of those are
17 criminal defense cases. So not only have I
18 prosecuted criminals, I've got some criminal
19 defense experience now as well. So I feel that,
20 you know, up -- while my career has not been as
21 long as some who've applied I think that the
22 quality makes up for the quantity in my case. And
23 so I think I am very prepared.

24 **Q. Thank you. Judge McCoy, the Commission received**
25 **134 ballot box surveys including 34 that had**

1 additional comments, only three of which were
2 negative. The positive comments called you "A
3 great attorney with a wonderful temperament and
4 high ethical character, and extraordinarily smart
5 with perfect judicial temperament." One negative
6 comment indicated that you did not have sufficient
7 grasp of the evidentiary rules. How would you
8 respond to this concern?

9 A. Well, you know, I've been in a trial court almost
10 my entire legal profession at this point. I've
11 been involved, as I stated, with criminal and civil
12 matters. I believe my evidentiary grasp is strong
13 however as a judge now I've had to make several
14 rulings regarding the rules of evidence. And some
15 people aren't always pleased with how I make
16 rulings, if it was in their favor or not. So I'm
17 not sure, again, obviously these are anonymous
18 questionnaires, you know, I feel like my grasp of
19 the rules is very strong.

20 Q. Thank you. The other two comments concerned your
21 marriage to a state legislator and the political
22 conflict of interest that this may create. How
23 would you respond to those comments?

24 A. I would respond that I'm qualified in this
25 situation for this position as anyone else would in

1 the state and is qualified who meets constitutional
2 requirements to be a Circuit judge. Obviously,
3 with regards to his law practice, as with anyone
4 who has a spouse who is a legislator or lawyer for
5 that matter I would recuse myself as appropriate.
6 And follow Judicial Canons that are in place to
7 ensure that all ethical guidelines are followed.

8 **Q. Thank you. Judge McCoy, you've talked about always**
9 **wanting to be a judge or at least seeking this from**
10 **early on in your career. How do you think in**
11 **particular working as a Magistrate has helped you**
12 **to appreciate the role of a judge?**

13 A. It's helped me immensely. I really couldn't put a
14 price on experience and being a magistrate has
15 given me -- it's a front lines judge, it really is.
16 And we -- most of the parties in front of me are
17 pro se, very few people are represented. So it's a
18 chance for me to -- it's more challenging as a
19 judge in that role because I have a duty to not
20 only apply the law, but in some roles explain it to
21 the parties who are in front of me before it -- I
22 can apply it. My proudest moment was actually not
23 in court, but an eviction was before me. And
24 unfortunately, I handled a lot of housing
25 evictions. I handle all evictions that affect

1 downtown Charleston which encompasses many housing
2 projects. I had a young lady come before me and it
3 was for an eviction and she ultimately, before we
4 even went on the record they said, "Well, Judge,
5 we've settled this case." And we put the
6 settlement on the record, entered it, and recorded
7 it. And the hearing was over and I dismissed the
8 parties and they left. And in a little while the
9 clerk came to me and said, "Your Honor" -- I'll
10 just say Ms. Smith -- "came and wants to speak with
11 you." And I said, "Well, I, you know, I really
12 can't speak with her, but I'd be happy to, you
13 know, if you want to take a message." And she
14 said, "Okay." And she came back and she said she
15 just wanted to thank you for treating her so
16 nicely. That's she's never been treated that well
17 in her life. And, you know, I was thinking back
18 and I really just wrapped my mind around it. I
19 didn't treat her any differently than I treat
20 anybody else, but I don't think she had ever been
21 called Ms. Smith and really get any courtesies and
22 I believe that, that's something that we need
23 extend to everybody represented or not. So on that
24 level, just a personal level, and a level of just
25 getting to know the public and appreciate the

1 public. It's been a tremendous -- tremendously
2 good experience.

3 **Q. Judge, you and I have spoken. You have been able**
4 **to work with the family and family support and in**
5 **working with your career you also have a special**
6 **needs child, I believe.**

7 A. Uh-huh.

8 **Q. How do you feel that your family life will be**
9 **affected should you be one of the ones nominated**
10 **for this Circuit Court position?**

11 A. Well, of course, I am working now. Not only as a
12 part-time Magistrate, but a law practice on the
13 side. So my family is already used to me working
14 outside the home. We run it like a well-oiled
15 machine. My husband is -- I'm lucky to have a
16 husband who is very hands-on and helpful and active
17 and we are both extremely lucky to have the family
18 support that we have from our parents who step in
19 all the time with the children. So we -- I feel
20 that we are more than adequately covered and I feel
21 very confident in that.

22 **Q. Thank you. Thank you, Judge. A few housekeeping**
23 **issues. Judge McCoy, are you aware that as a**
24 **judicial candidate you are bound by the Code of**
25 **Judicial Conduct as found in the Rule 501 of the**

1 **South Carolina Appellate Court Rules?**

2 A. Yes.

3 **Q. And since submitting your letter of intent, have**
4 **you contacted any members of this Commission about**
5 **your candidacy?**

6 A. No, I have not.

7 **Q. And also since submitting your letter of intent,**
8 **have you sought or received the pledge of any**
9 **legislator, either prior to this date or pending**
10 **the outcome of your screening?**

11 A. No, I have not.

12 **Q. And have you asked any third parties to contact**
13 **members of the General Assembly on your behalf or**
14 **are you aware of anyone attempting to intervene in**
15 **this process on your behalf?**

16 A. No, I have not.

17 **Q. And have you reviewed and do you understand the**
18 **Commission's guidelines on pledging and South**
19 **Carolina Code 2-19-70(E)?**

20 A. Yes, I do.

21 **Q. Thank you.**

22 MS. BENSON: Mr. Chairman, I would note
23 for the record that the Lowcountry Citizens
24 Committee reported Judge McCoy to be well
25 qualified in the evaluative criteria

1 of ethical fitness, professional and academic
2 ability, character, reputation, experience and
3 judicial temperament. And qualified in the
4 remaining evaluative criteria of
5 constitutional qualifications, physical
6 health, and mental stability. Mr. Chairman, I
7 would note for the record that any concerns
8 raised during the investigation by staff
9 regarding the candidate were incorporated into
10 the questioning of the candidate today. And I
11 have no further questions.

12 CHAIRMAN SMITH: Thank you very much. Any
13 questions for Judge McCoy? Senator Young.

14 SENATOR YOUNG: Thank you, Mr. Chairman.
15 Judge McCoy.

16 JUDGE MCCOY: Yes, sir.

17 SENATOR YOUNG: Good morning.

18 JUDGE MCCOY: Good morning.

19 SENATOR YOUNG: Thank you for being here
20 and for your interest in serving our state on
21 the Circuit Court. One question I have is how
22 would you describe your judicial philosophy as
23 it relates to the application of the law to
24 any facts or to issues that would be before
25 you on the Circuit Court?

1 JUDGE MCCOY: I would apply the law that
2 the legislators have drafted as carefully as
3 possible on a case by case basis. My
4 philosophy tends to follow the letter of the
5 law, certainly the legislative intent behind
6 the law. I do not believe in judicial
7 activism. I don't believe in legislating from
8 the bench, it's not appropriate at any time.
9 So my philosophy is to carry out the law as
10 it's written as even-handedly as possible in
11 all cases.

12 SENATOR YOUNG: Are you in a solo practice
13 currently?

14 JUDGE MCCOY: I have a solo practice on
15 the side, correct. I'm a twenty-four hour a
16 week Magistrate. So that leaves me a little
17 time on the side, not a lot to practice law,
18 but yes.

19 SENATOR YOUNG: Are you -- so as a solo
20 practitioner you -- I noticed in your PDQ that
21 you continue to handle cases like criminal
22 cases outside of Charleston County in --

23 JUDGE MCCOY: Correct. Right.

24 SENATOR YOUNG: -- Federal Court?

25 JUDGE MCCOY: That's correct.

1 SENATOR YOUNG: And do you handle cases
2 outside of General Sessions and Federal Court?

3 JUDGE MCCOY: I have had only -- I've had
4 a Magistrate case in another county. I've had
5 General Sessions cases in other counties. And
6 just the federal -- it's pending federal
7 action right now out of Columbia.

8 SENATOR YOUNG: But as a small office
9 attorney, is it fair to say you're familiar
10 with the time challenges that would -- that
11 exist on lawyers who practice either by
12 themselves or in smaller firms?

13 JUDGE MCCOY: Absolutely. I commend and
14 have a very great appreciation for lawyers who
15 practice in small firms. As I said, I've been
16 on the other side too. I've been in a huge
17 firm based out of Atlanta. And I know that
18 sometimes attorneys in those insurance defense
19 cases like to sit around and bill hours while
20 attorneys like myself and like many others in
21 small practices, if you're not back at your
22 office handling other cases you're not making
23 money. And so I have a great deal of
24 appreciation for -- for the small and solo
25 practicing attorneys.

1 SENATOR YOUNG: How much experience do you
2 have handling cases in Common Pleas?

3 JUDGE MCCOY: That's all I did for the
4 first three years of my practice. We were
5 almost exclusively in Common Pleas. I've had
6 a few federal civil cases every now and then
7 they would get removed to Federal Court. But
8 for the most part I was only in Common Pleas.
9 And of course working for Judge Dennis,
10 obviously, he was the Chief Admin Judge for
11 Common Pleas while I was his clerk so I have
12 extensive practice there.

13 SENATOR YOUNG: I noticed that you had --
14 one of the cases that you list on Number 20 of
15 your PDQ is a case in which, it was an Aiken
16 County case involving insurance coverage that
17 went to the State Supreme Court? Is that --

18 JUDGE MCCOY: That's right. Yeah. Walde
19 versus Association Insurance Company.

20 SENATOR YOUNG: And you were representing
21 the insurance carrier on that coverage
22 dispute?

23 JUDGE MCCOY: I was. That's correct.

24 SENATOR YOUNG: Have you handled any cases
25 in Circuit Court and Commons Pleas where

1 you've represented the plaintiffs?

2 JUDGE MCCOY: I have not been attorney of
3 record on a plaintiff's case in Common Pleas,
4 no.

5 SENATOR YOUNG: So my next question will
6 be in terms of Common Pleas and your practice
7 it sounds like you've handled lots of motions
8 and been in -- yeah, you're pretty familiar
9 with the Civil Court rules.

10 JUDGE MCCOY: Correct. Yes. A lot of
11 motions for summary judgment, 12(b)(6), motion
12 to dismiss. A lot of those dispositive
13 motions.

14 SENATOR YOUNG: So are you comfortable
15 telling this Commission that you feel like you
16 got a pretty good grasp of both civil and
17 criminal law as it would be before you on a
18 daily basis in the Circuit Court?

19 JUDGE MCCOY: I am extremely comfortable.
20 And, in fact, I'll reiterate I have -- I have
21 literally crafted my career to make myself
22 extremely comfortable in both criminal and
23 civil settings in Civil Court, Criminal Court
24 and Circuit Court level in South Carolina.

25 SENATOR YOUNG: Thank you, Mr. Chairman.

1 CHAIRMAN SMITH: Mr. Safran.

2 MR. SAFRAN: Judge McCoy, thank you for
3 being up here. And what strikes me and I
4 really feel like it's worth making comment on
5 is I've been here two years and I see a lot of
6 people who come wanting to be a Circuit judge.
7 And I also hear about the same thing that
8 you've told us. This is something I've wanted
9 to do for quite some time. And each time
10 we're seemingly faced with a circumstance
11 where despite that plan, despite the desire,
12 nobody takes the effort to go and get what we
13 look at as being such a significant component
14 which is experience. It looks like to me you
15 did go to try to get some experience in the
16 civil courts by working in the firm. Realized
17 that you needing the criminal experience was,
18 I guess, a must. So you went and did that.
19 Then you went and decided to at least to try
20 to become more acquainted with being a
21 decision maker. So I guess, I want to say
22 that it's very refreshing to see that having
23 heard the opposite many times already you've
24 kind of made a plan. Do you feel like even
25 though there has been some limited time in

1 each of those positions that you've picked up
2 enough in order to feel comfortable doing what
3 you've watched with Judge Dennis?

4 JUDGE MCCOY: I do. I really do. I can
5 say that with -- with confidence. I gave -- I
6 worked very hard in all of my positions and I
7 haven't gotten here by any chance of fate or
8 luck or anything like that it's just plain
9 old-fashioned hard work like all of us have to
10 do our jobs on a day to day basis. So I do, I
11 feel very prepared. It was not easy to leave
12 the big firm and, you know, the paycheck that
13 comes with that, but it was something I had to
14 do, a sacrifice that I was willing to make.
15 Public service is, like, as you all know,
16 obviously, it's very rewarding. And I, you
17 know, while I could have stayed at the firm
18 and, you know, I'd probably be a partner by
19 now where all of my peers are at this point
20 and living very comfortably. But my public
21 service is what really brings me the most
22 fulfillment in life so I'd like to continue
23 that.

24 MR. SAFRAN: Thank you.

25 CHAIRMAN SMITH: Senator Rankin.

1 SENATOR RANKIN: I missed the
2 introductions. I apologize I was behind the
3 column over there getting a half of a biscuit
4 Your mother and your grandmother; is that
5 correct?

6 JUDGE MCCOY: Correct. This is my mother,
7 Patricia Blanchard and my grandmother-in-law
8 Lucy Coleman and her caretaker Mary Jones.

9 SENATOR RANKIN: Ms. Coleman is from
10 Winnsboro.

11 JUDGE MCCOY: She is in fact from
12 Winnsboro, yes, sir.

13 SENATOR RANKIN: Where I spent
14 Thanksgiving Day. I'm married to a Bonds,
15 Weldon and Lillian Bonds' daughter. I was
16 hoping that you were a Coleman. I served with
17 Creighton, your cousin-in-law, I guess, ma'am.

18 JUDGE MCCOY: My uncle-in-law.

19 SENATOR RANKIN: Trying to make him as
20 young as I can. Anyway --

21 JUDGE MCCOY: Trying.

22 SENATOR RANKIN: Welcome, both of you. I
23 am curious about a couple of things. And I am
24 impressed. You know, we have -- we're vetting
25 lots and lots of folks and one of the raps is

1 they don't have enough of this, they don't
2 have enough of that. And I don't want to call
3 you Goldilocks, but perhaps in the experience
4 realm of criminal and civil you may have the
5 perfect for just the right amount of both and
6 it's not too hot, it's not too cold, it might
7 just be just right. So kudos to you.

8 JUDGE MCCOY: Thank you.

9 SENATOR RANKIN: Dovetailing what Mr.
10 Safran said in terms of that ability and your
11 desire to shore up where perhaps you might be
12 weak. So kudos to you there. And Ms.
13 Coleman, kudos to your family member sitting
14 here before you. So youth is either a
15 blessing or a problem. If we asked your
16 grandmother perhaps or rather your mother if
17 youth would be a negative some of these
18 Citizens Committees will cite that they have
19 had too little experience and not enough time
20 or maturity. You've been out of law school
21 for?

22 JUDGE MCCOY: Ten years.

23 SENATOR RANKIN: And I don't know that
24 we've had another one before us that has been
25 out so short of time. You have filled your

1 time well, but to those who don't buy that,
2 hey look, look what I've done, tell -- speak
3 to the naysayer as to your youth and
4 experience.

5 JUDGE MCCOY: Well, I said it a little
6 while ago, I'll say it again. I think that
7 the quality of my years makes up for the
8 quantity. I think, you know, thirty years as
9 a -- in one niche might not give you the
10 quality of experience that I've been able to
11 achieve in my ten years since graduating law
12 school. And again, I've worked hard in all of
13 the roles I've had thus far. I've put a
14 hundred and ten percent into everything I've
15 done. I will continue to that as a Circuit
16 judge, if elected. And while I certainly
17 respect the brothers and sisters of the Bar
18 that I have who have been practicing longer
19 than I have I always appreciate the input that
20 they have in court and I listen to them very
21 carefully. Obviously, they've mentored me up
22 to now in my career and they will continue to
23 do so. I believe that the quality of my
24 experience, the variety that I've had, lends
25 itself well to this position.

1 SENATOR RANKIN: In Fall of 2002 through
2 the Spring of 2003 you taught at Garrett
3 Academy in North Charleston?

4 JUDGE MCCOY: I did. I was a teacher. I
5 didn't go straight into law school after
6 college. I took a couple of years and my
7 first year I was a teacher in Charleston
8 County Public District.

9 SENATOR RANKIN: You taught those who
10 might have been considered the unteachable?

11 JUDGE MCCOY: I did. All of my students
12 were those who previously failed the PACT test
13 is what they called it at that point. I think
14 they're the Palmetto Aptitude test now. They
15 had taken it and failed in Language Arts. And
16 I was an English major at Georgia. So I was
17 not a teaching major, but I came and moved to
18 Charleston and applied with the district and
19 they hired me. They hired me one day and I
20 was in the classroom the next. It was pretty
21 fly by the seat of your pants. And they gave
22 me the students and they were, you know, a lot
23 of them were from very unfortunate, you know,
24 backgrounds and circumstances and a lot of
25 them in North Charleston they grow up and

1 they've never even been to downtown Charleston
2 or seen the beach and here they lived in
3 Charleston. So they just had very limited
4 exposure throughout their life, but I was
5 happy to teach them and I was very proud of
6 the fact that at the end of the year when they
7 re-took the test that two-thirds of those then
8 passed.

9 SENATOR RANKIN: That's where I was headed
10 to see what your success rate was. And by
11 describing these as unteachable I would be in
12 that same camp. I guarantee and would have
13 likely have failed that test back then so that
14 was a one year gig for you?

15 JUDGE MCCOY: I did that for one year and
16 I enjoyed teaching. My mother was a lifelong
17 educator and school administrator and I wanted
18 to try it out. And I did enjoy teaching, it
19 was -- it was very rewarding and to me there's
20 no more important job in this world than that
21 of a teacher. But I knew I wanted to apply to
22 law school and take my career in that
23 direction.

24 SENATOR RANKIN: Very good. Thank you for
25 offering for this position.

1 JUDGE MCCOY: Thank you.

2 CHAIRMAN SMITH: Any further questions?
3 Representative Murphy.

4 REPRESENTATIVE MURPHY: Just real quickly,
5 Mr. Chairman.

6 SENATOR RANKIN: I'm sorry, let me go
7 right back. Quick interruption. I'm going to
8 ask you if you don't mind -- will you yield?

9 REPRESENTATIVE MURPHY: I'll yield.

10 SENATOR RANKIN: Very quickly. I do this
11 with everyone so I apologize. Stream of
12 consciousness. Will be clean with him and I
13 will not interrupt again. This Bench Bar
14 survey.

15 JUDGE MCCOY: Yes, sir.

16 SENATOR RANKIN: Of which you have
17 received, I dare say, few if any negative
18 comments. I want you to tell us whether or
19 not this is something you recognize as
20 valuable or suspect. Is it something that we
21 should consider?

22 JUDGE MCCOY: I think the anonymous
23 comments that the Bar gets should have some
24 value. I think the fact that they're given
25 anonymously it can go both ways. People can

1 hide behind that anonymity and make some
2 comments that maybe sometimes aren't true.
3 But I think, by and large, I think our
4 brothers and sisters of the Bar take that as
5 an opportunity to really give honest feedback
6 about people so I do think it's a good tool.

7 SENATOR RANKIN: Thank you. My apologies,
8 sir.

9 REPRESENTATIVE MURPHY: That was my
10 question -- no. Judge McCoy, as a solo
11 practitioner, part-time Magistrate and having
12 three children, that I know, do you think it's
13 important as a, if you were to become Circuit
14 Court judge, to understand the, I guess, the
15 different ties and pulls that attorneys have
16 as far as life outside of the courtroom and do
17 you feel that's important? And how would you
18 -- if you had an attorney that came into your
19 courtroom and asked you at the last minute for
20 a continuance, to be able to leave early to go
21 home or to a soccer match or to a baseball
22 game, I mean, do you feel that quality of life
23 outside of the practice of law is important
24 and something that you would respect?

25 JUDGE MCCOY: Definitely. I think quality

1 of life is the most important to anybody
2 regardless of your career, but certainly for
3 attorneys it's a stressful job being an
4 attorney. My husband and I tease should I
5 have gone to law school? There are a lot less
6 stressful ways to make money. But we
7 ultimately know we both made the right choice.
8 But I absolutely feel attorneys are better
9 practitioners if they are leading happier
10 lives. And certainly being there for your
11 family is always a top priority and certainly
12 a continuance or a request to leave early on a
13 day would not be something that I would balk
14 at. I think that's very reasonable and as
15 long as there wasn't some serious prejudice
16 that the other party would suffer, which, you
17 know, would be hard to imagine. It would
18 certainly be something that I would consider
19 granting.

20 REPRESENTATIVE MURPHY: Thank you. Thank
21 you for your willingness to serve.

22 JUDGE MCCOY: Yes. Thank you.

23 CHAIRMAN SMITH: Any further questions?

24 (No response.)

25 CHAIRMAN SMITH: Judge McCoy, just a

1 couple of questions. I also thank you for
2 your willingness to serve and offering for
3 this position. When I look through this, I
4 think someone alluded to it earlier, Senator
5 Rankin, that you have hardly any negative
6 comments. I saw that there was one on your
7 temperament being unqualified, you worked in
8 the Solicitor's Office where you prosecuted
9 people and that tends to be the most
10 contentious area of what we see when we have
11 prosecutors or public defenders. Their
12 negative comments seem to go up and yours
13 don't so I commend you for that. One issue
14 that I see that a couple of people remarked on
15 is that the fact that your husband practices
16 criminal law and he may have to appear in
17 front of you. I presume you would recuse
18 yourself if that were the case?

19 JUDGE MCCOY: Absolutely. I reiterate
20 clearly I would recuse myself and follow all
21 Judicial Canons to ensure I was within all
22 ethical guidelines.

23 CHAIRMAN SMITH: And as it relates to your
24 time over in the Solicitor's Office, I presume
25 you learned what works over there and what

1 doesn't work over there. And one thing that
2 I'm interested in as we embark in sentence
3 reform we're talking about alternative courts.
4 And I think you all have a Drug Court down in
5 --

6 JUDGE MCCOY: We do. We have a Drug
7 Court. I think the statistics on Drug Court
8 are very good by in large.

9 CHAIRMAN SMITH: And if you were able and
10 successful with your candidacy here and get
11 elected what would you do to help improve or
12 work with the Drug Court? I understand that
13 obviously the solicitors are the ones in
14 charge of the court, but judges take a
15 prominent role in those. What would you do in
16 that regard?

17 JUDGE MCCOY: They do. I would just
18 ensure close follow up. Drug Court is very
19 difficult. It takes the right candidate to be
20 successful in Drug Court. It's got to be
21 someone who's willing to make the meetings,
22 someone who's willing to see something
23 through. And I think as a judge on the front-
24 end when you take the plea to begin with, to
25 refer someone to Drug Court, I think you need

1 to be able to recognize the characteristics
2 they are going to make as a successful
3 candidate in Drug Court rather than just
4 putting everybody in there even if they're not
5 very likely to succeed.

6 CHAIRMAN SMITH: And I think Mr. Murphy,
7 hit on this, but you know from time to time
8 you'll be, if you're successful, you'll be
9 Chief Admin in General Sessions or Common
10 Pleas, and I know that's not something you
11 probably aspire to from what I hear from other
12 judges, but regardless you have to deal with
13 that. And you're going to have to deal with
14 the request for continuances and lawyers
15 getting jammed up on different conflicts from
16 time to time. How do you propose to handle
17 those requests and those conflicts that may
18 arise?

19 JUDGE MCCOY: Well, I really think you
20 have to take them on a case by case basis.
21 And I think you have to understand that we're
22 all human beings and we all have lives away
23 from the practice of law that are very
24 demanding. And again, I'd reiterate that I
25 think the best practitioners of law are the

1 ones who are the most well-rounded, the ones
2 that are there for their family and aren't
3 stressed out too terribly. So I think it's
4 really good for the practice of law to
5 entertain those requests in as generous a way
6 as possible.

7 CHAIRMAN SMITH: Any further questions?

8 (No response.)

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

1 JUDGE MCCOY: Thank you all very much for
2 your service and time.

3 CHAIRMAN SMITH: Thank you. You all have
4 a safe trip back.

5 (The judge is excused.)

6 CHAIRMAN SMITH: We're going to go into
7 executive session. Mr. Hitchcock moves we go
8 into executive session. All in favor say,
9 "Aye."

10 (The Commission members comply.)

11 CHAIRMAN SMITH: All opposed?

12 (No response.)

13 CHAIRMAN SMITH: "Ayes" have it. We're in
14 executive session. Let's turn off the mics
15 and close the doors.

16 (Off the record.)

17 (There being no further questions,
18 the proceedings adjourned at 12:40 p.m.)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND)

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5 JUDICIAL MERIT SELECTION COMMISSION
6 TRANSCRIPT OF PUBLIC HEARINGS

7 * * * * *

8 BEFORE: G. MURRELL SMITH, JR., CHAIRMAN
9 SENATOR LUKE A. RANKIN
10 SENATOR RONNIE A. SABB
11 SENATOR TOM YOUNG, JR.
12 MR. ROBERT W. HAYES, JR.
13 REPRESENTATIVE J. TODD RUTHERFORD
14 REPRESENTATIVE CHRIS MURPHY
15 MICHAEL HITCHCOCK
16 JOSHUA HOWARD
17 ANDREW N. SAFRAN
18 ERIN B. CRAWFORD, CHIEF COUNSEL

19 * * * * *

20 DATE: November 28th, 2017
21 TIME: 2:17 p.m.
22 LOCATION: Gressette Building
23 1101 Pendleton Street
24 Columbia, South Carolina 29201
25 REPORTED BY: JENNIFER NOTTLE, COURT REPORTER

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1 GRADY L. PATTERSON III:

2 CHAIRMAN SMITH: All right. Back on the record.

3 Representative Murphy moved that we lift the veil
4 and come out of executive session. All in favor
5 say, aye.

6 (Ayes are heard.)

7 CHAIRMAN SMITH: All opposed?

8 (No response is heard.)

9 CHAIRMAN SMITH: Ayes have it. Let me state for the
10 record that while we've been in executive
11 sessions, there were no decisions made, no votes
12 were taken. We're now going to proceed and Mr.
13 Patterson, sorry about the delay. We always tell
14 people we're optimistic on our times over here,
15 so appreciate your patience. Mr. Patterson will
16 you raise your right hand, please sir?

17 GRADY L. PATTERSON, III, having been duly sworn, testifies
18 as follows:

19 CHAIRMAN SMITH: All right. Mr. Patterson, before you
20 is the personal data questionnaire and the sworn
21 statement. Are these documents that you've
22 submitted to the Commission?

23 MR. PATTERSON: Yes.

24 CHAIRMAN SMITH: Are they both correct, to the best of
25 your knowledge?

1 MR. PATTERSON: They are correct. But I would note
2 that the personal data, I filed an amendment
3 yesterday. I don't know if that's been --

4 CHAIRMAN SMITH: It's in here. Okay.

5 MR. PATTERSON: I filed it yesterday and I brought the
6 original today.

7 CHAIRMAN SMITH: Okay. All right. Well, we're going
8 to make that as an amendment to your personal
9 data questionnaire then.

10 MR. PATTERSON: I would just note for the record that
11 question number 42 on the personal data
12 questionnaire asks if you've received anything
13 from a lobbyist of value. My daughter is a
14 lobbyist. And I had a birthday a couple of weeks
15 ago. She gave me a birthday present. I know
16 that's exempt under the statute, but it just asks
17 if you've gotten anything. I did that.

18 CHAIRMAN SMITH: Out of an abundance of caution, we're
19 going to make an oral amendment to your PDQ to
20 add that, is that okay?

21 MR. PATTERSON: That would be good. Thank you.

22 CHAIRMAN SMITH: All right. Anything else you need to
23 update or amend with your personal data
24 questionnaire?

25 MR. PATTERSON: No.

1 CHAIRMAN SMITH: All right. Do you have any objection
2 to us making that a part of your sworn testimony
3 -- exhibit to your sworn testimony?

4 MR. PATTERSON: No objection.

5 CHAIRMAN SMITH: All right. Without objection, we're
6 going to make those documents and any amendments,
7 plus oral amendment, an exhibit to your sworn
8 testimony. Mr. Patterson, the Judicial Merit
9 Selection Commission has thoroughly investigated
10 your qualifications for the bench. Our inquiry
11 has focused on nine evaluative criteria and has
12 included a ballot box survey, a thorough study of
13 your application materials, verification with
14 your compliance with state ethics laws, a search
15 of newspaper articles in which your name appears.
16 Study of previous screenings, and checks for
17 economic conflicts of interest. We've received
18 no affidavits filed in opposition to your
19 election and there are no witnesses here to
20 testify today. But before we get started and I
21 see, did you bring a guest with you today?

22 (EXHIBIT 7 - JUDICIAL MERIT SELECTION COMMISSION
23 PERSONAL DATA QUESTIONNAIRE OF GRADY L. PATTERSON,
24 III)

25 (EXHIBIT 8 - JUDICIAL MERIT SELECTION COMMISSION SWORN

1 STATEMENT OF GRADY L. PATTERSON, III)

2 (EXHIBIT 9 AMENDMENT TO PERSONAL DATA QUESTIONNAIRE OF
3 GRADY L. PATTERSON, III)

4 MR. PATTERSON: I did and I appreciate you mentioning
5 that, Mr. Chairman. This is my wife I'd like to
6 introduce, Sally Patterson.

7 CHAIRMAN SMITH: All right, Sally, appreciate you
8 being here, welcome. And do you wish to make a
9 brief opening statement, other than introducing
10 your wife?

11 MR. PATTERSON: I think I'll probably just wait for
12 the questions. I'm anxious to get it -- yes, Mr.
13 Chairman.

14 CHAIRMAN SMITH: Thank you very much. Answer any
15 questions that counsel may have for us, please?

16 MR. PATTERSON: Thank you.

17 EXAMINATION BY MS. VALENZUELA:

18 **Q. Thank you, Mr. Chairman. I would note for the**
19 **record that based on the testimony contained in**
20 **the candidate's PDQ, which has been included in**
21 **the record with the candidate's consent. Mr.**
22 **Grady "Leck" Patterson meets the constitutional**
23 **and statutory requirements for this position**
24 **regarding age, residence, and years of practice.**
25 **Mr. Patterson, how are you?**

1 A. Fine, thank you.

2 **Q. Good. How do you feel your legal and**
3 **professional experience thus far renders you**
4 **qualified and will assist you to become an**
5 **effective circuit court judge?**

6 A. Well, I've been practicing law for over 35 years.
7 And over that period of time -- and those amongst
8 you who are lawyers and it may be everybody. But
9 at any rate, you learn a lot of things about
10 judgement. You learn about the fact that a rule
11 of law, black letter law, may have a number of
12 underlying policies or principals involved. You
13 learn that different cases, different sets of
14 facts, call on different policies or principals.
15 And it may be that one set of facts calls on a
16 rule of law, for example, the sanctity of
17 contract, where another state of facts would call
18 on an exception to that, such as a contract of
19 adhesion. So you learn that different -- that
20 the law is here to guide and give structure to
21 our society. And depending on the facts
22 involved, the different rules of law are in place
23 to help resolve any issues that may arise.

24 **Q. Thank you, Mr. Patterson. Mr. Patterson, the**
25 **Commission received 124 ballot box surveys**

1 regarding you with 12 having additional comments.
2 Some examples of some positive comments are as
3 follows, "an exceptional lawyer and an
4 exceptional person". And also, "Leck has vast
5 experience as an attorney. He is intellectually
6 gifted and possesses unflappable temperament. He
7 is kind and generous and gracious to everyone."
8 And that is two examples. And, of course,
9 everyone on the Commission has all of the
10 comments.

11 MS. VALENZUELA: Mr. Chairman, I would note that no
12 comments indicated any concerns.

13 Q. Mr. Patterson, in your PDQ, you stated your
14 practice has largely been in civil matters, but
15 that you've also handled criminal cases in
16 magistrate's court, city court, and summary
17 military courts. What else should the Commission
18 know about your experience as it relates to your
19 ability to preside over criminal matters, should
20 you be elected to the circuit court position?

21 A. Well, I think it's two things to take into
22 consideration. Number one, the overlap between
23 the criminal and the civil matters. The rules of
24 evidence are largely going to be applied the same
25 way. Of course, in the criminal setting you've

1 got some additional rules of evidence, such as
2 the Crawford, right to be confronted. Bruton,
3 where you have the co-defendant being tried at
4 the same time. But generally, the experience
5 with the rules of evidence are going to apply.
6 The second thing is, is I've done what I can in
7 the past couple of years to educate myself on the
8 criminal practice. I have been associated with a
9 former assistant solicitor on cases. I have met
10 with a circuit court judge. I've met with a
11 former solicitor, assistant solicitor. Just
12 recently I met with a current serving assistant
13 solicitor from the upstate in order to do what I
14 can to educate myself on the procedures and the
15 law. So, I feel like there's a lot of overlap.
16 The key, of course, in trying any case, is to
17 have an understanding of the law, to be
18 thoughtful, listen to the arguments and to apply
19 your judgement, the facts before you. And I
20 think my experience, while largely on the civil
21 side, gives rise to a qualified candidate to do
22 that on either the civil or the criminal side.

23 **Q. Thank you for that, Mr. Patterson. And now just**
24 **some housekeeping issues. Are you aware that as**
25 **a judicial candidate you are bound by the Code of**

1 **Judicial conduct as found in Rule 501 of the**
2 **South Carolina Appellate Court Rules?**

3 A. Yes.

4 **Q. And Mr. Patterson, since submitting your letter**
5 **of intent, have you contacted any members of the**
6 **Commission about your candidacy?**

7 A. No.

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

12 A. No.

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

17 A. I have not asked any and I'm not aware of any
18 attempting to intervene on my behalf.

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

23 A. Yes.

24 MS. VALENZUELA: Mr. Chairman, I would note that the
25 Midland's Citizens Committee reported that Mr.

1 Patterson is well-qualified in the evaluative
2 criteria of ethical fitness, professional and
3 academic ability, character, reputation,
4 experience, and judicial temperament. And
5 qualified in the remaining evaluative criterial
6 of constitutional qualifications, physical
7 health, and mental stability. The Committee
8 commented that, "Mr. Patterson has considerable
9 experience in both civil and criminal law, as
10 well as considerable trial and life experience.
11 We believe he possesses superior temperament,
12 work ethic, and intellect. In summary, Mr.
13 Patterson would be a superior circuit court
14 judge." Mr. Chairman, I would note for the
15 record that any concerns raised during the
16 investigation by staff regarding this candidate
17 were incorporated into the questioning of the
18 candidate today. And I have no further
19 questions.

20 CHAIRMAN SMITH: All right. Thank you very much. Any
21 questions for Mr. Patterson? Senator Hayes.

22 EXAMINATION BY MR. HAYES:

23 **Q. Yeah. I appreciate your willingness to serve.**

24 A. Thank you, Senator.

25 **Q. And we had the pleasure of serving with you, I**

1 **think, in the National Guard for a number of**
2 **years. And what experiences did you have in the**
3 **Guard that would help make you a better judge?**

4 A. Well, there's a couple of aspects of that. One
5 of the main ones is being responsible for a large
6 number of people. In other words, if you're
7 going to be a judge in a county like Richland,
8 then you've got to be able to organize. You've
9 got to have a lot -- there are a lot of cases out
10 there that are pending. You've got to be able to
11 coordinate and in my -- I had several command
12 positions, one with six squadrons, Air Force
13 squadrons, and several hundred people. And
14 you've got to coordinate careers,
15 responsibilities. You have to have people
16 prepared for events that are going to take place
17 in the future, training and deployments. That
18 gave me a lot of experience for handling a lot of
19 things as efficiently as you can and doing it
20 right. I think that helped a lot. The other
21 thing is just dealing with people. When you're
22 handling that many people, you learn a lot about
23 how people think, what motivates them, what's
24 important to them. Particularly, I'll say again,
25 what motivates them. All those things, those

1 experiences. And on top of that, just the flat-
2 out experience of responsibility. As you know,
3 when we're called up to go somewhere, you can't
4 go half way. You've got to be ready. And all
5 that is attributed to my experience of being
6 prepared, on time. Those types of things are
7 important to self-discipline. I think all that
8 contributes to they can be better qualified for a
9 position of responsibility.

10 CHAIRMAN SMITH: Senator Young.

11 EXAMINATION BY SENATOR YOUNG:

12 Q. Thank you, Mr. Chairman. Mr. Patterson, thank
13 you so much for your interest in serving our
14 state on the circuit court. Thank you for your
15 many years of service in the South Carolina
16 National Guard, as well in the -- I should say,
17 the South Carolina Air National Guard. Anyway,
18 one of my questions is -- I have more than one.
19 But one is, how would you characterize or
20 describe your judicial philosophy, with respect
21 to the application of the law to any facts or
22 issues that would be before you on the circuit
23 court?

24 A. Well, as I said a little earlier, the facts
25 heavily determine which law gets applied. But as

1 a matter of fact, when I was before the Bar
2 Screening Committee, I was asked a similar
3 question about forfeiture of property in a civil
4 forfeiture. And expressed my thought that I
5 thought sometimes it was an aggressive policy.
6 And one of the questioners asked me, said, well,
7 if someone came before you and the solicitor
8 showed that they were entitled to have the
9 property forfeited, but you didn't really think
10 it was the right thing, because maybe it was a
11 relative or a mother or something, wasn't really
12 involved. You know, the answer to that is if the
13 legislature has passed a law that says that
14 government is entitled to forfeiture, if they
15 meet these criteria, then as a circuit court
16 judge I would forfeit the property. Because
17 that's not my responsibility to decide whether or
18 not I liked the law, whether or not I think it's
19 appropriate, whether it's too strict or too
20 liberal. My job is to apply the laws as best I
21 can and that's what I'd do.

22 **Q. You've practiced -- I've looked at your PDQ.**
23 **You've practiced the last several years as a solo**
24 **practitioner?**

25 **A. Yes.**

1 Q. Before that you were in a firm, a couple
2 different firms with multiple lawyers?

3 A. Yes.

4 Q. But they were fairly smaller firms?

5 A. Yes.

6 Q. Not a bigger firm, like you see in some parts of
7 Columbia, but a smaller firm with less than 10
8 lawyers?

9 A. Yes, sir.

10 Q. So is it fair to say that you are familiar with
11 the challenges as to time and trying to be in
12 multiple courts on maybe multiple days or
13 depositions in multiple places, et cetera, that
14 lawyers who are in small firms or who are solo
15 practitioner's experience?

16 A. Absolutely.

17 Q. And do you believe that you would be sensitive to
18 those challenges for those types of lawyers if
19 you were elected to the circuit court bench?

20 A. I would be sensitive to that, very much so.

21 Q. How do you think that your -- my understanding
22 from your practice is that you have had a very
23 distinguished and lengthy civil practice since
24 you got out of law school in 1979; is that fair
25 to say?

1 A. I appreciate the characterization, yes, Senator.

2 Q. And you have spent time over the last few years
3 learning more about the criminal law; is that
4 correct?

5 A. Yes.

6 Q. Do you feel that you could represent to this
7 Commission that for the areas of the criminal law
8 that you maybe do not have extensive practice,
9 you would be able to learn that in a short period
10 of time, if elected to the circuit court?

11 A. I can represent that to the Commission, yes.

12 Q. Those are all my questions.

13 CHAIRMAN SMITH: Thank you. Any further questions?

14 Mr. Safran.

15 EXAMINATION BY MR. SAFRAN:

16 Q. Mr. Patterson, it's nice to see you. Appreciate
17 your coming back. Let me just follow up on that.
18 Obviously, you've been seeking a position like
19 this for quite some time. And I guess if
20 somebody who was actually -- I'm not a
21 contemporary, you're a little ahead of me in
22 terms of law school and all. But it seems to me
23 what you're doing is basically what we used to
24 see is that people would cap a career with
25 wanting to become a judge. Is that basically

1 **been kind of what motivates you to keep coming**
2 **back to see us?**

3 A. Well, I think the actual motivation is because
4 it's something I really want to do.

5 **Q. Sure.**

6 A. And I think it's something I've been trained to
7 do and have experience in. I tell you I started
8 practicing in the attorney general's office and
9 really enjoyed the public aspect of the law
10 there. And, you know, eventually, not everybody,
11 but in my case I left to get out in private
12 practice and start that kind of career. But
13 parallel to that I was serving in the Guard. And
14 so that was my public service, which can be
15 testified with eye witness, let me put it that
16 way. It takes a lot of time. But at any rate,
17 and now I'm finished my Guard service. And this
18 is another way to have that public service. And
19 I feel like I'm ready for it. It's something I
20 would really like to do. And I think I've been
21 trained and I'm ready.

22 **Q. Well, and let me ask this -- and we, obviously,**
23 **look at experience as being a significant factor.**
24 **And I understand that, you know, you may not be**
25 **out in General Sessions on a regular basis, but**

1 you did have time at the AGs office. And you
2 certainly were exposed to the criminal process to
3 some extent there?

4 A. Yes, I had a -- we would rotate around with our
5 training session, had a section in the criminal
6 appeals where I wrote a number of briefs,
7 learning issues and that type of thing.

8 Q. Well, and I guess it's -- what I'm trying to also
9 make clear is that the fact you've got the number
10 of years of experience in court doing all the
11 aspects that a lawyer would do in case after
12 case. Don't you think that pretty well gives you
13 a leg up, in terms of being able to pick up
14 whatever you may not have had in General Sessions
15 Court, maybe over the last several years, as far
16 as being able to handle that type of aspect of
17 it?

18 A. Oh, I think so. And I think as a lot of you will
19 agree, I think, is that the farther you go along,
20 the faster you learn, you know. It's not like
21 you go along and you run into harder and harder
22 things become difficult. It's the faster you
23 learn. You learn the language of the law. You
24 learn the policies of the law. You learn the
25 thinking of the way statutes are written and what

1 they're trying to do. And I think -- I think at
2 this stage, I'm learning faster than I've ever
3 learned. And I continue to learn. It's
4 something I really enjoy. And so I do, I believe
5 that that length of period of time of having the
6 experience of being in court, the interactions,
7 dealing with clients, all of that goes to give
8 you, as you say, a leg up or some advantage in
9 learning the next thing, I do.

10 **Q. And I guess, certainly, you wouldn't be here if**
11 **you didn't think you were up to the task, as far**
12 **as being able to handle what you've seen over the**
13 **course of decades in the circuit court.**

14 A. That's true. And that's a very important point.
15 I just -- that's personally important to me. To
16 do something -- if you're going to go do
17 something, you better be ready to do it. And I
18 firmly believe that.

19 **Q. Thank you very much.**

20 CHAIRMAN SMITH: Senator Rankin.

21 EXAMINATION BY SENATOR RANKIN:

22 **Q. Mr. Patterson, I well recall conversations with**
23 **you in the last judicial race. And I leaned in**
24 **to try to figure out who the contenders were of**
25 **that race. But you are distinguished being the**

1 son of a great man, who was a contemporary of my
2 father. And I'm not sure they would be the same
3 age if they were both living, but I remember
4 growing up hearing about Grady Patterson forever,
5 and so, here's Leck.

6 A. Let me thank you for those comments, Senator. I
7 really appreciate that.

8 Q. Well, it's a compliment to your legacy, which is
9 not your father's alone, based on the
10 accomplishments that I did not know about prior
11 to my position here. Brigadier general?

12 A. Yes, sir.

13 Q. Was your -- and is there any higher rank?

14 A. Yes, sir, brigadier general is a one-star.

15 Q. Within the Air National Guard?

16 A. Within -- well, in any of the services a
17 brigadier general -- well, the Navy calls it
18 something different, but they call it an admiral.
19 But the Marines, Army, and the Air Force would be
20 -- a brigadier general would be a one star
21 officer.

22 Q. And forgive my lack of familiarity with this, but
23 in terms of South Carolina, anyone within the Air
24 National Guard?

25 A. No, the Air National Guard in South Carolina has

1 two one-star positions, a chief of staff and an
2 assistant adjutant general for Air. And that's
3 as high as it gets. And I was the assistant
4 adjutant general for Air.

5 **Q. Point being, you're as high as we've known in**
6 **this state?**

7 A. Other than the adjutant general who could be an
8 air officer and get two stars. But we haven't
9 seen that, it's always been an Army officer.
10 There's a lot more Army National Guard than Air.
11 But as far as normal operations a one-star
12 general is as high as you can get in a South
13 Carolina Air National Guard.

14 **Q. So that's a compliment that I'm paying you and**
15 **not an insult. You with me, follow me?**

16 A. I do, Senator, and thank you.

17 **Q. Okay. And then an honorable discharge from that**
18 **in 2012?**

19 A. 2012.

20 **Q. And then you rested on your laurels and have not**
21 **done anything since?**

22 A. I tell you, I'm still heavily involved with the
23 Association and the National Guard Foundation,
24 which we've recently had a very successful fund
25 raiser for. It's something I think will be a

1 benefit to the soldiers and airmen.

2 Q. I've asked this mostly of everyone, but in terms
3 of the Bench Bar ballots and anonymous input that
4 we've received in your instance, your case, I
5 think, if I've got my math right, about 124,
6 perhaps, plus people have commented on you. This
7 part of this Judicial Merit Selection Committee,
8 in terms of our soliciting unvarnished, un-
9 attributed comments, good or bad, about a
10 candidate, about you particularly, do you see
11 this is a valuable tool for us to rely upon?

12 A. I think it's valuable, with the caveat that
13 negative comments, the candidate would probably
14 need to be able to comment on. Because, well,
15 obviously somebody could be confused and makes a
16 comment. And someone could have an ulterior
17 motive for making a bad comment. So I think it's
18 a very useful tool and if you see a trend or a
19 majority, that would obviously be very useful.
20 But I just add that caveat that it's not --

21 Q. An outlier comment, again, favorable or
22 unfavorable, but would -- could well be pegged or
23 considered a trend, good or bad; do you think
24 that's something we should consider?

25 A. Should consider, I do, yes.

1 Q. Okay. Fortunately for you, unless I've
2 overlooked one, I don't see any negative comment
3 about -- in terms of your qualifications,
4 constitutionally, your ethical fitness, academic
5 and professional ability, character, reputation,
6 experience, and judicial temperament. Of these,
7 which do you consider to be the most important?
8 If you had to pick one and if you can't pick one,
9 I'll give you three, top three.

10 A. I would say, my thinking is judicial temperament
11 and academic qualification would be the two most
12 important.

13 Q. And why?

14 A. Well, number one, the judge has got to know the
15 law, got to know how to proceed, got to be able
16 to make a fair decision, but based on the law.
17 And the judge has got to be willing to study.
18 The judge is going to get things that the judge
19 never was involved in before. And he's going to
20 get a memo from one side and then a memo from the
21 other. He's got to be able to go through that,
22 look at the case law, make sure it's cited
23 properly, make sure it's cited for the position
24 or stands for, obviously. And so that to me is a
25 given. You've got to be able to do that. And

1 then number two, the temperament is also, to me,
2 the same level. Because the judge has got to be
3 willing to listen to the people who are trying to
4 educate him on it, on those particular issues.
5 He's got to be able to listen so he, for once he
6 can pick it up. And number two, so that when it
7 comes time to make a decision, he's got all the
8 facts and he's giving them a fair hearing.

9 **Q. Thank you.**

10 CHAIRMAN SMITH: Any further questions.

11 EXAMINATION BY CHAIRMAN SMITH:

12 **Q. Mr. Patterson, let me clear up one thing that I**
13 **heard you mention and I presume it was in**
14 **general. When you talk about your time with the**
15 **National Guard Foundation. Since you've been a**
16 **candidate, you haven't raised any -- participated**
17 **in raising any funds for them because of your**
18 **being bound to the Judicial Candidate's Ethics;**
19 **is that right?**

20 A. Well, as I understand it. I assisted with a
21 reception was what I did.

22 **Q. Yeah, but you didn't, you didn't raise --**

23 A. Go out and raise any money?

24 **Q. Yes, sir.**

25 A. Oh, no, sir.

1 Q. Okay. All right. I just wanted to make that
2 record clear.

3 A. Understood.

4 Q. All right.

5 A. No, as a matter of fact. I was -- no, sir. I
6 didn't.

7 Q. You can go to a reception, you just didn't raise
8 money. Yes, sir.

9 CHAIRMAN SMITH: All right. Any other questions for
10 Mr. Patterson? Mr. Hitchcock.

11 EXAMINATION BY MR. HITCHCOCK:

12 Q. Mr. Patterson, I just wanted to, you know, I
13 think I said this the first time that we screened
14 you and it was my first screening and I know
15 we've -- I think we've seen each other every time
16 since then. But I just wanted to say how much I
17 appreciate your willingness to serve South
18 Carolina in this capacity. And also, you know,
19 reiterate a comment that I made during your first
20 screening of how you don't see a lot of folks who
21 go from being a JAG officer, to being a line
22 officer to, obviously, being the assistant
23 adjutant general for the Air Guard, so you're
24 certainly to be commended for that. As a JAG
25 officer in the Army National Guard, I can tell

1 you I don't possess the skills or the ability to
2 do that. So I just wanted to congratulate you on
3 that and to say thank you for all of your years
4 of service. I appreciate your willingness to
5 continue to come back through -- put yourself
6 back through this process in hopes of serving
7 some more, so thank you.

8 A. Thank you.

9 CHAIRMAN SMITH: Senator Young.

10 EXAMINATION BY SENATOR YOUNG:

11 Q. I just wanted to explore one more thing for the
12 record. Your civil practice, you've handled --
13 is it fair to say you've handled a large number
14 of business litigation cases?

15 A. Yes.

16 Q. And many of those involved very complex issues;
17 is that fair to say?

18 A. I would say so. Quite a lot of research.

19 Q. Do you think that the number of lawyers who have
20 -- and I -- do you think it's fair to say that
21 you have as much or more experience with complex
22 business litigation than other lawyers who may be
23 appearing before this commission?

24 A. I don't -- I have a lot. I just don't know the
25 level of the other lawyers.

1 **Q. You've been handling them for over 25 years; is**
2 **that fair to say?**

3 A. Business cases, close to 30 years. Yes,
4 Senator.

5 **Q. Thank you very much.**

6 A. Yes, sir.

7 CHAIRMAN SMITH: All right. Any further questions?

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

24 MR. PATTERSON: Thank you, Mr. Chairman.

25 ROBERT L. REIBOLD:

1 CHAIRMAN SMITH: All right. Mr. Reibold, everyone's
2 around here, so we'll just get started. And go
3 through the first part. Will you raise your
4 right hand, please, sir?

5 ROBERT REIBOLD, having been duly sworn, testifies as
6 follows:

7 CHAIRMAN SMITH: All right. Mr. Reibold, you have
8 before you the personal data questionnaire and
9 your sworn statement. Are these documents that
10 you've submitted to the Commission?

11 MR. REIBOLD: They are.

12 CHAIRMAN SMITH: And are they both correct, to the
13 best of your knowledge?

14 MR. REIBOLD: Yes.

15 CHAIRMAN SMITH: Do you need to make any changes or
16 updating information on there at this time?

17 MR. REIBOLD: I have no further amendments.

18 CHAIRMAN SMITH: Do you have any objection to these
19 documents being made a part of the record of your
20 sworn testimony?

21 MR. REIBOLD: No, I do not.

22 CHAIRMAN SMITH: Will you please hand those to Lindi
23 for me. And we're going to make those an exhibit
24 to the record of your sworn testimony. Mr.
25 Reibold, the Judicial Merit Selection Commission

1 has thoroughly investigated your qualifications
2 for the bench. Our inquiry has focused on nine
3 evaluative criteria and has included a ballot box
4 survey, a thorough study of your application
5 materials, verification of your compliance with
6 state ethics laws, a search of newspaper articles
7 in which your name appears. Study of previous
8 screenings, and checks for economic conflicts of
9 interest. We have received no affidavits filed
10 in opposition to your election. There are no
11 witnesses present to testify here today. Do you
12 wish to make a brief opening statement to the
13 Commission?

14 (EXHIBIT 13 - JUDICIAL MERIT SELECTION COMMISSION
15 PERSONAL DATA QUESTIONNAIRE OF ROBERT L. REIBOLD)

16 (EXHIBIT 14 - JUDICIAL MERIT SELECTION COMMISSION
17 SWORN STATEMENT OF ROBERT L. REIBOLD)

18 (EXHIBIT 15 - AMENDMENT TO PERSONAL DATA QUESTIONNAIRE
19 FOR ROBERT L. REIBOLD)

20 MR. REIBOLD: Yes, I do.

21 CHAIRMAN SMITH: All right. Go ahead, please, sir.

22 MR. REIBOLD: Let me preface my statement by saying
23 that I'm suffering from what medical doctors
24 call, respiratory crud. And so if I seem tired
25 today, I am. And if my voice is raspy, I

1 apologize. But that wasn't going to keep me from
2 coming here today. What I want y'all to
3 understand as we get into this hearing is that my
4 desire to be a circuit court judge is a real.
5 This is not a whim, a late career choice. This
6 is not a way to cap off a career for me. This is
7 not a paycheck. In fact, I would be taking a pay
8 cut if I became a circuit court judge. I'm here
9 because I believe in the job and I want to do the
10 work. That being said, I know y'all have come
11 back after Thanksgiving break. I know that you
12 have real jobs and places to be and you're taking
13 your time out here doing what I think is an
14 important civic service. So I have nothing
15 further to add. I just wanted to express my
16 earnestness for being here.

17 CHAIRMAN SMITH: Thank you, Mr. Reibold. Will you
18 answer any questions that counsel may have,
19 please, sir?

20 EXAMINATION BY MR. FRANKLIN:

21 **Q. Thank you, Mr. Chairman. I note for the record**
22 **that based on the testimony contained in the**
23 **candidate's PDQ, which has been included in the**
24 **record with the candidate's consent, Robert**
25 **Reibold meets the constitutional and statutory**

1 requirements for this position, regarding age,
2 residence, and years of practice. Good
3 afternoon, Mr. Reibold. How do you feel your
4 legal and professional experience thus far
5 renders you qualified and will assist you to be
6 an effective circuit court judge?

7 A. Well, I'm -- even though I might not look it, I'm
8 47 years old. If I do quick math, that means
9 I've been practicing for about 22 years. I have
10 tried cases in magistrate's court. I've tried
11 cases in circuit courts. I've tried cases in
12 federal district courts. I've argued appeals
13 before the Court of Appeals before the South
14 Carolina Supreme Court. I've even argued an
15 appeal before the United States Court of Appeals
16 for the federal circuit. In that time I've been
17 lucky, I've had a wide variety of cases. I've
18 done your typical slip and falls. I've done car
19 accident cases. In fact, my very first trial was
20 a car accident case against Beth Bernstein and
21 Former Chief Justice Costa Pleicones was the
22 presiding judge. I've done employment
23 discrimination cases. I've done products
24 liability cases. I've done procurement cases.
25 I've done fraud, unfair trade practices, trade

1 secret cases. I even had one case that involved
2 the international theft of trade secrets, and we
3 had french interpreters throughout the whole
4 trial. So I've been very fortunate to have a
5 wide variety of experience. And I've been a
6 courtroom lawyer, that's what I've done. In
7 addition, I am AV rated by Martindale-Hubbell.
8 I've written four articles for the South Carolina
9 Lawyer magazine. And I've co-authored a legal
10 reference test for the Bar -- text for the Bar.
11 I've presented at CLEs. And I think I have the
12 requisite experience and judgment to be a circuit
13 court judge.

14 **Q. Thank you. Mr. Reibold, the Commission received**
15 **97 ballot box surveys regarding you with 13**
16 **additional comments. The ballot box survey, for**
17 **example, contained the following positive**
18 **comments. "Rob is intelligent, thoughtful, well-**
19 **prepared and courteous. He would make a good**
20 **judge." "Mr. Reibold is an excellent lawyer and**
21 **an amazing person. He's honest, diligent, and**
22 **wise. If Mr. Reibold were to be elected to the**
23 **bench I feel very comfortable that he would be**
24 **fair, impartial and courteous and respectful to**
25 **all litigants." And finally, "Rob is the total**

1 package. He is academically gifted and has
2 decades of experience. We need more gentlemen
3 like Rob on the bench". However, two of the
4 written comments expressed concerns with your
5 temperament, specifically that your temperament
6 seems to be a challenge for you. What response
7 would you offer to that concern?

8 A. Well, the very first thing I'd say is that the
9 majority of responders said that I had a very
10 good temperament for the bench. That I was found
11 well qualified by the Bar in all categories,
12 including temperament. I don't raise my voice.
13 I don't yell. Those are not things that come out
14 of Rob Reibold. I've traditionally been a very
15 nice, easy-going guy. What I would say though,
16 more specifically, that is the practice of law,
17 especially trial work, is adversarially. And if
18 I hadn't made someone mad along the way, I'm not
19 representing my clients very well or very
20 effectively. So I think, overall, that I have no
21 concerns about my temperament. I'm sure at some
22 point, in 22 years of law practice, someone
23 didn't like what I said, but I can assure you
24 temper was not an element.

25 Q. An additional concern indicates that you lack

1 experience in the area of criminal law. In fact,
2 when you were screened in 2015, you were asked,
3 "are there any reasons including substantive
4 areas of the law that you need additionally to
5 prepare for in order to serve as a judge?" You
6 responded in part, "I don't have a large focus on
7 criminal litigation, that is the area where I
8 would need to do some extra work." What
9 efforts, if any, have you made over the last
10 couple of years to better prepare yourself in the
11 area of criminal law?

12 A. That's a good question and it's fair to say that
13 my practice has been predominantly civil. But I
14 want to stress that I do have some criminal
15 experience. My very first job was as a judicial
16 law clerk for a circuit court judge. And in that
17 role I assisted with the criminal trials. I sat
18 through several weeks of PCRs. I assisted with
19 guilty pleas. I assisted with the sentencing. I
20 interacted with the solicitor's office. So there
21 is some criminal experience there. I've handled
22 two or three criminal cases in my career. I've
23 done some PCRs, so there is a foundational
24 element there for criminal experience. Secondly,
25 things I've been doing. I've been reading

1 criminal law. I've been attending criminal law
2 CLEs periodically for the last several years in
3 order to improve my knowledge of that field. I
4 have attended trials to watch criminal law. I've
5 gone to criminal law symposiums on my own time to
6 educate myself about that area. Those are the
7 steps that I have taken to bolster that need.

8 **Q. As a circuit court judge, which strategies would**
9 **you utilize to ensure that orders are issued in a**
10 **timely manner?**

11 A. Well, the very first thing you need to do is you
12 have to have a calendar and I've learned that in
13 my own practice. If you don't put it on the
14 calendar, it doesn't get done. So you would do
15 that. You'd work with your law clerk. You'd
16 have to insist that if you were going to use
17 proposed orders that they be submitted by counsel
18 in a timely fashion so that you have the
19 appropriate time to review them, respond to them,
20 reject them, edit them, whatever you might want
21 to do as the circuit court judge. That is a key
22 issue, prompt decisions. Litigants don't like
23 delayed, long decisions. They want faster
24 answers to their problems. And that's what the
25 judge is there to do. You know, if the parties

1 can't resolve it themselves, the judge is going
2 to make a decision. So calendaring, active
3 management are what you'd need to do to make sure
4 you stay on top of that demand.

5 **Q. Thank you. Now, for a few housekeeping issues.**
6 **Mr. Reibold, 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**
9 **Carolina Appellate Court Rules?**

10 A. Yes. Y'all made me very aware of that.

11 **Q. Since submitting your letter of intent, have you**
12 **contacted any members of the Commission about**
13 **your 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**
18 **of your screening?**

19 A. I have not.

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

24 A. I am not.

25 **Q. Have you reviewed and do you understand the**

1 **Commission's guidelines on pledging in South**
2 **Carolina Code Section 2-19-70(e)?**

3 A. I do.

4 MR. FRANKLIN: I would note that the Midland's
5 Citizens Committee reported that Mr. Reibold is
6 well-qualified in the evaluative criteria of
7 ethical fitness, professional and academic
8 ability, character, reputation, and judicial
9 temperament. And qualified in the remaining
10 evaluative criteria of constitutional
11 qualifications, physical health, experience, and
12 mental stability. The Committee stated that, Mr.
13 Reibold, "meets many of the criteria for the
14 position of circuit court judge." The Committee
15 is somewhat concerned about the paucity of his
16 experience in the criminal law arena." In sum,
17 the Committee found that Mr. Reibold qualified
18 with some question on criminal law experience.
19 Mr. Chairman, I would note for the record that
20 any concerns raised during the investigation by
21 staff regarding the candidate were incorporated
22 into the questioning of the candidate today. Mr.
23 Chairman, I have no further questions.

24 CHAIRMAN SMITH: All right. Thank you. Any questions
25 for Mr. Reibold? Mr. Young -- or Senator Young.

1 EXAMINATION BY SENATOR YOUNG:

2 Q. Thank you, Mr. Chairman. Mr. Reibold, thank you
3 so much for your continued interest in serving
4 the state as a circuit court judge. I have some
5 questions. The first of which would be, how
6 would you describe your judicial philosophy, as
7 it relates to the application of the law, to the
8 facts or to the issues that would be before you,
9 if you were elected to the circuit court?

10 A. If I understand the question correctly, my take
11 is that y'all here write the law, not the circuit
12 court judge. The circuit court judge's job is to
13 apply the law as given. Now if there's a
14 situation where there isn't any guidance from the
15 legislature or there isn't any guidance from the
16 superior courts then, in those situations, you'd
17 have to exercise your discretion. But you're the
18 referee. You're there to make sure that the
19 trial is fair. That's really one of the biggest
20 reasons that I keep at this is the courtroom
21 ought to be the one place that's as fair as we
22 can make it. Life isn't fair in general, but we
23 ought to do everything we can to make sure it's
24 fair. And that includes following the rules.
25 There's some predict- -- there's a benefit to

1 predictability of results. I think everybody
2 would agree that knowing what's probably going to
3 happen helps people resolve disputes and make
4 informed decisions. So you apply the law as
5 given to you and that's where I stand on that
6 issue.

7 **Q. What do you think -- do you think there's any**
8 **particular aspect of your practice, since you've**
9 **been out of law school, that would make you**
10 **particularly attractive and effective as a**
11 **circuit court judge? Attractive as a candidate**
12 **and then effective as a circuit court judge?**

13 A. Well, I've been a trial court lawyer. That's
14 what I do. I'm a litigator. So I've been in and
15 out of a courtroom. I've argued hundreds of
16 motions. I've tried cases. I've dealt with
17 attorneys on both sides. I've mediated cases.
18 I've arbitrated cases. So I think that that type
19 of experience -- I'm not a book lawyer. I'm not
20 a transactional lawyer who's trying to fit a
21 round hole into a square peg. My experience fits
22 with the position I'm seeking. I think that I
23 have -- my writing would show that I have the
24 intellectual capacity to do the job. I think
25 that the amount of work that I do annually shows

1 that I'm not afraid of hard work, which I think
2 is important in the circuit court position. It's
3 not a position that, you know, hey, the courts
4 close at 3:00 o'clock, let's go home. That's not
5 how I view the position. So, I think those
6 factors would make me particularly attractive.

7 **Q. I don't have anymore questions right now. I may**
8 **in a few minutes.**

9 CHAIRMAN SMITH: Any further questions?
10 Representative Murphy.

11 EXAMINATION BY REPRESENTATIVE MURPHY:

12 **Q. Mr. Reibold, real quick, looking at your PDQ, you**
13 **graduated from Penn State University?**

14 A. I did.

15 **Q. Question seven asks list of colleges that you**
16 **attended and there was a comment in one of the**
17 **Bar surveys that -- did you attend a college**
18 **before Penn State?**

19 A. I did not.

20 **Q. Okay.**

21 A. I went directly to Penn State, graduated in four
22 years. Came to USC here in Columbia for law
23 school immediately thereafter.

24 **Q. Thank you. That's all I have.**

25 MR. SAFRAN: Mr. Safran.

1 EXAMINATION BY MR. SAFRAN:

2 Q. Mr. Reibold, we're happy you're here today.

3 Appreciate the fact that you are going through
4 the process and I can certainly understand that
5 it is not always the easiest or the most
6 comfortable.

7 A. It's not easy for you all either.

8 Q. I understand. Let me ask you just a couple of
9 things. Having been in the courtroom as much as
10 you have over the course of the last 20 years,
11 you've certainly had an opportunity to get a
12 flavor for different judges. You've worked for a
13 good one too. You know, in terms of how you feel
14 like you would come across or how you would want
15 to run a courtroom, who would be -- or if there's
16 more than one, kind of the models that you might
17 point to and say, these are kind of things I'd
18 pick up that would be beneficial, in terms of how
19 I want to do it?

20 A. Well, the first one that's immediately come --
21 other than Judge Kinard, who's passed, and he had
22 some unique personal flair. But Judge -- G.
23 Thomas Cooper, Jr. would be the one that I have
24 been the most impressed with. Both in demeanor,
25 work ethic, and knowledge of the law.

1 Q. So, I guess -- let me ask you also, obviously, we
2 all have our own standards, our own habits and
3 idiosyncrasies, in terms of how we work, you
4 know. And I understand that ours -- mine might
5 be different from yours, as everybody else's in
6 here. You may have situations where you may
7 encounter lawyers that may not necessarily be, in
8 the back of your mind, measuring up in the terms
9 of the amount of time they put in, or necessarily
10 their level of preparedness. But given that
11 fact, how do you basically go about kind of
12 dealing with them in a courtroom context, i.e.,
13 if you think something's lacking. You say
14 something to them out in open court or, you know,
15 how would you address it? The other thing we've
16 talked about a lot in these hearings is, you're
17 in a small practice, so you understand the
18 demands. I mean, how do you feel like it would
19 translate into a situation where as a judge
20 you've got people coming to you with the idea
21 that, you know, as much as I need to be here as a
22 lawyer there are other things in my life that are
23 going on that may require me to do something that
24 might change the course of how a schedule might
25 be? How do you address those type of things?

1 A. Well, the very first question, I can easily
2 answer that. I believe that no one should be
3 afraid of walking into the courtroom, whether
4 it's a lawyer or a litigant or a juror, for that
5 matter. And coupled with that goes the assurance
6 that I'm not going to be, as a lawyer, humiliated
7 or called out in public by the judge. I don't
8 believe that's appropriate. I can't say never,
9 but I would say very rarely is something like
10 that appropriate. Something very flagrant would
11 have to happen in the courtroom for that to be an
12 appropriate response, in my opinion. So, yes,
13 the way to do is to talk to them in chambers or
14 talk to them privately about the issue and not to
15 make that a public issue that's front of their
16 clients, or particularly in front of the jurors.

17 **Q. What -- again, what about, as far as recognizing,**
18 **I guess, that lawyers, like anybody else, have**
19 **other things going on in their lives. It might**
20 **be having to attend something for a child, or,**
21 **you know, having -- being called to multiple**
22 **different requirements or different obligations.**
23 **I mean, how flexible do you feel like you need to**
24 **be in a situation like that?**

25 A. Well, I could tell you as a practicing litigator,

1 I sometimes feel at the mercy of the courts. And
2 that my personal life and other priorities have
3 been pushed aside. And that's not a feeling that
4 I appreciate. And I have done this long enough
5 that I understand that viewpoint. I think I
6 would be sensitive to it were I on the bench.
7 Now, it's a balancing act. It's hard to say what
8 I would do in any given circumstance without the
9 facts. You know, if trial had been continued
10 three times and we had a date certain and people
11 came to me at the end and said, no, I can't do
12 it. I might be less lenient. If someone came to
13 me and said, I woke up this morning and my child
14 had 104 fever and I can't be there. I might
15 understand that. So, it's sort of a sliding
16 scale, I think, on how flexible you can be. You
17 have to make some effort to make sure that the
18 court continues to run in an orderly fashion.
19 But we're human beings, things happen to us. You
20 know, if I had my choice right now, I would be
21 home in bed trying to recover from my cold. I
22 didn't have a choice. So I do understand that
23 things happen and I don't expect that I would be
24 unreasonable in those situations.

25 **Q. Thank you for your response.**

1 CHAIRMAN SMITH: Any further questions? All right.

2 Mr. Reibold, thank you so much. This concludes
3 this portion of our screening process. I want to
4 take this opportunity to remind you that pursuant
5 to the Commission's evaluative criteria, the
6 Commission expects candidates to follow the
7 spirit, as well as the letter of the ethics laws.
8 And we will view violations or the appearance of
9 impropriety as serious and potentially deserving
10 of heavy weight and screening deliberations. On
11 that note, and as you know, the record will
12 remain open until the formal release of the
13 report of qualifications and you may be called
14 back at such time, if the need arises. I thank
15 you for offering and I thank you for your service
16 to South Carolina. And I hope you get over your
17 cold quickly.

18 MR. REIBOLD: Thank you so much, Mr. Chairman. Thank
19 y'all.

20 BENJAMIN CHAD SIMPSON:

21 CHAIRMAN SMITH: All right. Back on the record. Mr.
22 Simpson, will you raise your right hand, please,
23 sir?

24 BENJAMIN CHAD SIMPSON, having been duly sworn, testifies as
25 follows:

1 CHAIRMAN SMITH: Mr. Simpson, before you is your
2 personal data questionnaire and a sworn
3 statement. Are these documents you submitted to
4 the Commission?

5 MR. SIMPSON: Yes.

6 CHAIRMAN SMITH: All right. Are they both correct, to
7 the best of your knowledge?

8 MR. SIMPSON: To the best of my knowledge with one
9 last minute amendment.

10 CHAIRMAN SMITH: Yes, sir. And let's don't talk about
11 the amendment, because that's confidential
12 information in there. But we've received the
13 amendment and we'll make sure everybody's aware
14 of it, okay?

15 MR. SIMPSON: Okay.

16 CHAIRMAN SMITH: Other than the update that we just
17 talked about, any other updates or changes that
18 need to be made to your documents?

19 MR. SIMPSON: No.

20 CHAIRMAN SMITH: Do you have any objection to making
21 these documents a part of your sworn testimony?

22 MR. SIMPSON: None whatsoever.

23 CHAIRMAN SMITH: All right. Without objection, if
24 you'll hand those to Lindi for me, please, sir.
25 And we're going to make those an exhibit to your

1 testimony. Mr. Simpson, the Judicial Merit
2 Selection Commission has thoroughly investigated
3 your qualifications for the bench. Our inquiry
4 has focused on nine evaluative criteria and have
5 included a ballot box survey, a thorough study of
6 your application materials, verification of your
7 compliance with state ethics laws, a search of
8 newspaper articles in which your name appears,
9 study of previous screenings, and checks for any
10 economic conflicts of interest. We've received
11 no affidavits today that has been filed in
12 opposition to your election and there are no
13 witnesses present to testify. Do you wish to
14 make a brief opening statement to the Commission?

15 (EXHIBIT 16 - JUDICIAL MERIT SELECTION COMMISSION
16 PERSONAL DATA QUESTIONNAIRE OF BENJAMIN CHAD SIMPSON)
17 (EXHIBIT 17 - JUDICIAL MERIT SELECTION COMMISSION
18 SWORN STATEMENT OF BENJAMIN CHAD SIMPSON)

19 MR. SIMPSON: Yes, and I'll be brief. I know you've
20 all had a long day. I just wanted to extend my
21 thanks to the Commission for your work and all
22 the attention you've put into it. And I'll let
23 you know that I'm open to any questions that you
24 might have about the materials you've reviewed.

25 CHAIRMAN SMITH: Okay. Thank you so much, Mr.

1 Simpson. Answer any questions that counsel may
2 have. Mr. Davidson.

3 EXAMINATION BY MR. DAVIDSON:

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

14 A. Thank you. I think since law school, the
15 materials that are before all of you, events of
16 dedication to public service. I was lucky enough
17 to be hired by the Court of Appeals just after
18 law school and was really inspired in those three
19 years. To that academic type approach to the
20 law, your typical stay in that position is sort
21 of one year. I stayed for three, because I loved
22 it. The exercise of really digging into a legal
23 issue and coming up with the, you know, correct
24 legal answer is really what's just always
25 appealed to me. And so when I decided to leave

1 the Court of Appeals, prosecution was sort of a
2 natural fit for me. I enjoy that approach to law
3 and I think I've thrived in it. I've had the
4 honor to be trusted with some pretty important
5 case work, cases important to the community and
6 important, certainly, to the people involved and
7 feel that I've handled myself well. And
8 hopefully made my state proud thus far in my
9 career and I just think this would be a natural
10 next step to, hopefully, continue to do that.

11 **Q. Thank you for that response. The Commission**
12 **received 108 ballot box surveys regarding your**
13 **candidacy with 37 additional comments. The**
14 **ballot box survey, for example, contained the**
15 **following positive comment, "Calm and deliberate**
16 **demeanor. One of the most intelligent people in**
17 **our legal community." "Even-handed and fair in**
18 **his approach." Two of the written comments**
19 **expressed concerns. One of the concerns raised**
20 **was whether you have the requisite civil**
21 **experience necessary for the job. How would you**
22 **respond to that?**

23 **A. Sure. I think because of my dedication on the**
24 **criminal side in the recent last decade that a**
25 **lot of people, and perhaps this particular**

1 respondent, was unaware of a lot of civil
2 experience I do have. It sort of went on more in
3 the background. And I'm referring specifically
4 to my time in the teaching realm. I taught at
5 Trident Technical College at nights for seven
6 years, while during the day being a prosecutor.
7 And a lot of that course work focused in teaching
8 of business law, civil torts, constitutional law,
9 a judicial process, family law. It was on an
10 undergraduate level, but I was sort of during
11 that time blown away by the academic rigor shown
12 by people. A lot of people who are in
13 challenging circumstances in their own personal
14 lives are there at night, nose to the grindstone.
15 But to address the concern that kept me abreast
16 of, certainly, your general topics in civil law.
17 So that is a type of experience. I realize it's
18 not civil trial work, but it is civil experience
19 of a type that I don't think that respondent was
20 likely really aware of. I would also further
21 repeat my time at the Court of Appeals. I spent
22 three years there. Certainly, the majority of
23 cases, not all, but I would guess 70 to 80
24 percent of the case work you're working on at the
25 Court of Appeals is civil in nature. And it

1 tends to be your most difficult contentious and
2 vexing cases in the state make their way through
3 the appellate system. So I would -- certainly,
4 my career has focused, as you see before you in
5 the criminal atmosphere. But I do have civil
6 experience and I think I would be ready to
7 proceed. But respectfully to that respondent,
8 I'm pretty certain they're unaware of that civil
9 experience.

10 **Q. Thank you. Along the same lines, the other**
11 **concern question, your ability to be impartial,**
12 **setting a potential bias toward the prosecution,**
13 **given your career as a prosecutor. How would you**
14 **respond to that concern?**

15 **A.** Well, sure. I would -- to a person that raised
16 that concern, I would love to sit down with them
17 and talk about -- I know, you know, you're asked
18 in the questionnaires about cases you've worked
19 on and certainly I think anyone is prone to put
20 in, you know, as a prosecutor the big guilty
21 verdict you've obtained and sort of pump up your
22 chest to that. But I can be honest with the
23 Commission that I am as equally proud of cases
24 I've dismissed, and times I'd intervened in the
25 case work. I've been fortunate enough to reach a

1 stage within our own organization that I've had a
2 supervisory role for many years. I'm just as
3 proud as the time I've stepped into other
4 people's work and said, look, let's rethink this.
5 Let's re-analyze this evidence. And oftentimes
6 that leads to dismissals or alternative dispute
7 resolutions, such as drug court, mental health
8 court. And I can think of several cases where
9 I'm equally proud of that type of resolution.
10 Because the prosecution, when done right, isn't
11 about convictions at any cost. It's about being
12 fair and just. And a lot of the same
13 considerations that one should bring to the
14 bench.

15 **Q. Thank you. I have a few housekeeping questions,**
16 **we'll run through quickly. Are you aware that as**
17 **a judicial candidate you are bound by the code of**
18 **judicial conduct as found in Rule 501 of the**
19 **South Carolina Appellate Court Rules?**

20 **A. I am.**

21 **Q. Since submitting your letter of intent, have you**
22 **contacted any members of the Commission, this**
23 **Commission, about your candidacy?**

24 **A. No.**

25 **Q. Have you sought or received the pledge of any**

1 legislator, either prior to this date or pending
2 the outcome of your screening?

3 A. No, sir.

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

8 A. No, sir.

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

12 A. Yes.

13 MR. DAVIDSON: Thank you. The Low Country's Citizens
14 Committee found Mr. Simpson to be qualified in
15 the evaluative criteria of constitutional
16 qualifications, physical health, and mental
17 stability. And well qualified in the remaining
18 evaluative criterial of ethical fitness,
19 professional and academic ability, character,
20 reputation, experience, and judicial temperament.
21 Mr. Chairman, I note for the record that any
22 concerns raised during the investigation
23 regarding the candidate were incorporated into my
24 questioning today. I have no further questions.
25 Thank you, Mr. Simpson.

1 MR. SIMPSON: Thank you.

2 CHAIRMAN SMITH: Thank you, Mr. Davidson. Any
3 questions for Mr. Simpson? Senator Young.

4 EXAMINATION BY SENATOR YOUNG:

5 Q. Thank you, Mr. Chairman. Mr. Simpson.

6 A. Yes, sir.

7 Q. I thank you so much for your interest in serving
8 our state on the circuit court. I have a couple
9 of questions. And the first of which would be,
10 how would you describe your judicial philosophy
11 as it relates -- or as it would relate to the
12 application of the law to any facts or issues
13 that would be before you on the circuit court
14 bench.

15 A. Well, sure. Judicially, the challenge is to set
16 all sorts of personal belief, opinion, and bias
17 to the greatest degree humanly possible aside and
18 follow the law as it stands. And that comes from
19 many sources, but primarily in a circuit court
20 setting, laws passed by the legislature and
21 statutes and obviously the interpretation of
22 those statutes by binding the Court of Appeals
23 and state Supreme Court precedent, as well as
24 constitutional precedent as set by the Supreme
25 Court. I think philosophically that the goal is

1 to follow the text in the letter of the law. And
2 to do so I think in some recent confirmation
3 hearings at a much higher level than a state
4 circuit court, you know, it was said by a
5 candidate -- and I thought this was pretty
6 profound that, you know, if you're a sitting
7 judge and have never had to make a ruling that
8 you didn't like, then you're doing something
9 wrong. And so that would be the judicial
10 philosophies, that you have to follow the law and
11 be able to put, you know, your personal beliefs
12 and biases to the side.

13 **Q. How do you -- and you may have addressed this a**
14 **few minutes ago. But I just want to be real**
15 **clear for the record. How would you go about**
16 **preparing yourself for the cases that you would**
17 **hear, in terms of the issues that exist in civil**
18 **non-jury cases that are -- you know, there are a**
19 **lot of issues that come up involving the civil**
20 **rules of procedure --**

21 **A. Sure.**

22 **Q. -- the case law. I see from your experience that**
23 **you've got a lot of experience on the General**
24 **Sessions side, but tell me how you're going to**
25 **address that, if you're elected to the circuit**

1 **court?**

2 A. Thank you, Senator. Even though you set alone on
3 that bench as a judge, just like as a prosecutor,
4 you're often standing there alone. All of us
5 know, that practice law, that's it's a
6 collaborative undertaking. And I've never been
7 embarrassed or ashamed to reach out to peers.
8 And I'm lucky in the Low Country to have
9 established really good working relationships
10 with both current sitting circuit court judges
11 and former judges. And that would certainly be
12 where I would go first as a source. Now,
13 obviously, you know, as I addressed in your last
14 question, that the beauty of the law in any area
15 is that the answers are there when you know how
16 to find them. And when you're willing to take a
17 moment, be a little deliberative in your actions,
18 you don't have to come out, especially as a newer
19 judge and feel like you have to, you know, rule
20 things on the fly. You have that authority to
21 take a break, do your research which, you know,
22 is again an aspect of the law that I really
23 enjoy. And if you're still confounded as to
24 certain, you know, practices, every court has
25 sort of unwritten practices. You reach out to

1 your colleagues and that's how I would solve any
2 sorts of issues that came up with that. But I've
3 never been a person who was -- you know, felt
4 like I needed to exert some sort of control over
5 a situation that I really didn't understand.
6 I've always been willing to reach out to other
7 people and that's how I --

8 **Q. Have you handled any cases in South Carolina**
9 **Court of Common Pleas?**

10 A. Well, actually, yes. I am often -- our -- have
11 developed kind of a reputation within the Ninth
12 Circuit Solicitor's office as a guy that can
13 handle sort of different things. So whenever --
14 and it comes up from time-to-time, that a
15 solicitor's office has to be in civil court. I'm
16 sort of our guy. I'm our subpoena and FOIA
17 attorney. And obviously FOIA is a big civil
18 statute that, you know, is often -- has a lot of
19 questions and a lot of litigation arises from
20 that. I'm our guy with that. I handle our
21 appeals from magistrate's court, which are civil
22 proceedings in civil court. And again, I do have
23 some experience teaching in civil law.
24 Obviously, because I've enjoyed my role so much
25 as a solicitor, that prohibits me from, you know,

1 civil litigation. That is something that I have
2 not had a lot of experience with recently. That
3 is not to say that I have not appeared in civil
4 court representing the interest of the
5 solicitor's office.

6 **Q. Have you ever taken a deposition?**

7 A. I have been ordered by a court in General
8 Sessions -- it's unconventional, but I have been
9 ordered a couple of times due to some issues
10 raised by the defense to take a deposition in a
11 criminal case. But I have not been a participant
12 in a civil deposition, no.

13 **Q. All right. Thank you.**

14 CHAIRMAN SMITH: Mr. Howard.

15 EXAMINATION BY MR. HOWARD:

16 **Q. Good afternoon, Mr. Simpson.**

17 A. Good afternoon.

18 **Q. Just following up on Senator Young's questions.**

19 **One comment you made was that you would go to**
20 **others, go to your peers and you've built some**
21 **relationships, you indicated. Who? Who would**
22 **you go to? Which judge is out there that you**
23 **maybe go to, would pattern yourself after?**

24 A. Sure. The first one that pops into my mind, if
25 it was a complicated legal issue, would be Judge

1 Danny Peeper. He's not currently a judge, but he
2 was a judge on many levels. I know him and would
3 reach out to him and I always really respected
4 his intelligence and academic approach. Judge
5 Dennis, Jefferson, Harrington. Houston is
6 retired, but these are all judges in my circuit
7 that I've been in there -- and they all bring
8 different styles and different approaches and I'm
9 aware of them. But I feel like I've built
10 relationships in all of those areas to reach out
11 to colleagues in that regard.

12 Q. Okay. Another question, as a -- I do civil
13 litigation and I'll say that some of the
14 reservations that I often have are with somebody
15 who hasn't experienced at any point a private
16 practice. And that's a -- it's not a
17 disqualifier in my mind, but it is a reservation.
18 And something I have to -- one of the things that
19 as a judge sitting in common pleas, it's true,
20 there are less jury trials. But there's still a
21 lot of non-jury matters that are going on out
22 there. And there are still a lot of non-jury
23 trials that are going to come in front of you.
24 And there's a lot of situations where you're
25 going to sit in equity. And when you're sitting

1 **in equity, you're going to be -- did you handle**
2 **any appeals in equity?**

3 A. I have never handled appeals as a litigant. I
4 handled several appeals involving all the areas
5 of law and equity as a -- I shouldn't say
6 handled, I assisted and worked on several appeals
7 in the three years I was working at the Court of
8 Appeals.

9 Q. Sure. And my question was bad. I really meant
10 during your time with the Court of Appeals, did
11 you help the court, help the judges you worked
12 for, in reviewing matters in equity?

13 A. Yes.

14 Q. Okay. And so, you know, in that role, obviously,
15 you're being called upon to use your experience
16 as a judge, is that right, to, you know, in your
17 discretion, to render some decisions?

18 A. Sure.

19 Q. And my question really is, what would you tell
20 this group and how would you sort of allay any
21 concerns about that from the standpoint of, what
22 would you draw upon in your life and your career?

23 A. Well, I really appreciate that question because I
24 think equity -- when you sit in equity is one of
25 those situations where the law allows -- it's

1 sort of different than what I was speaking on
2 earlier, is a situation where the law allows you
3 to bring a little more of your personal wisdom
4 and knowledge to the table in the way you rule.
5 In that regard, I'm proud of some of the
6 materials that are before you. I was a waiter
7 for a long time, a bartender for a long time.
8 You know, you get a lot of lawyers that take this
9 very sort of closeted path of privilege. And
10 that always has not been my life. I've made
11 mistakes, some embarrassing mistakes. But
12 they're in front of you there. But I've had
13 those experiences in my life. And I think I
14 really bring, you know, some varied experience to
15 the bench. And when -- I've always built a
16 reputation and I think the Bar survey sort of are
17 evidence of this. It's just a person with a good
18 general idea of what it means to be fair. As a
19 prosecutor -- and I know that's not what you're
20 asking me about. But as a prosecutor you wield a
21 lot of authority and I'm proud of my reputation
22 as being fair doing that. And I think that will
23 carry over into equity, rendering through with
24 personal judgement on what is a moral and fair
25 result is something that I'm proud to have done

1 in the past and would certainly do going forward.

2 Q. Okay. The other side of having not been in
3 private practice is just the aspect of are you
4 sensitive, are you understanding of the pressures
5 on lawyers in private practice that are coming
6 before you? Do you have any friends that are in
7 private practice?

8 A. I have many friends in private practice on both
9 the plaintiff's and the defense side. And
10 myself, I've been in the job that carries with it
11 a lot of stressors. And I think my demeanor on
12 the bench and my respect to lawyers on the
13 criminal and civil side would be quite
14 understanding to the pressures of having a large
15 case load. I've dealt with that in my own
16 career. I realize it's not the same as in civil
17 litigation, but I can't imagine that it's much
18 different in that you have to juggle. You've got
19 a lot of balls in the air at one time and that
20 needs to be considered by the bench.

21 Q. At the same time, some of those lawyers that are
22 going to come before you -- and this committee's
23 been very active in asking questions about this.
24 And it's one of those concerns that this
25 committee has on any judicial candidates is the

1 notions of a lot of the lawyers coming in front
2 of you are going to have a varied practice in a
3 number of different courts. Perhaps they might -
4 - you know, in your area they might be practicing
5 in Charleston. They might be in Dorchester.
6 They might be in family court. They might be in
7 magistrate's court. They might have to go to the
8 Court of Appeals. It could be that you're in
9 circuit court in two separate circuits at the
10 same time.

11 A. Sure.

12 Q. It could be that they have a -- as Chairman Smith
13 has asked before, it could be that they have a
14 child that has a baseball game at 4:00 o'clock or
15 a -- so how do you approach, would you approach
16 that from a standpoint of a request for a
17 continuances or some understanding of the
18 pressures and the life pressures on lawyers?

19 A. It isn't the same as being a judge, obviously,
20 but -- not currently, but for most of my career
21 as a prosecutor, we have had docketing control.
22 I know that's a matter of some controversy, but I
23 do have some experience in having to, you know,
24 get calls about a case saying, hey, this is just
25 not a good week for me. And I think one of the

1 things that you can get from these Bar surveys,
2 or at least as I understand them as I've reviewed
3 them, is I've developed a pretty good reputation
4 as being considerate and listening to others.
5 There are rules which dictate a priority of
6 courts when they're in direct conflict. But I'm
7 really not the type of guy that sees a need to
8 sort of exert authority if someone's got a
9 legitimate problem going on. If that baseball
10 game comes up at 4:00, there's always -- in civil
11 and criminal court, there's always something that
12 can be done if you're willing to reach out. If a
13 party needs to leave at 3:00 o'clock to go to a
14 baseball game, you can find something to do in
15 those two hours and still use your time
16 effectively and efficiently. So I really don't
17 think -- I think that's a matter of personality
18 and I'm just not the type of person that, you
19 know, feels a need to exert authority and will as
20 long things -- you know, to a degree. As long as
21 things are moving forward and I don't feel like
22 someone's being evasive or trying to skirt around
23 their responsibilities as an attorney. I'm an
24 understanding person and I think I've developed a
25 reputation accordingly.

1 Q. And as a role as a prosecutor, do defense
2 attorneys often come to you to either request a
3 continuance or request your assistance or
4 agreement to a continuance?

5 A. Frequently, yes, that's less now. I don't know
6 how familiar you are with docket management down
7 in the Lowcountry, but less now. But yes,
8 throughout most of my career, yes. It's been a
9 frequent request made. And that frequent request
10 granted, you know, within the boundaries of
11 reasonableness.

12 Q. Okay. Thank you, Mr. Simpson.

13 A. Thank you.

14 CHAIRMAN SMITH: Mr. Safran.

15 EXAMINATION BY MR. SAFRAN:

16 Q. Thank you. We appreciate your being here and
17 certainly, as I've mentioned to the others
18 before, this is not the easiest process. Feel
19 like you're going through the sausage maker.

20 A. I'm use to being on the other side of it.

21 Q. Exactly. Let me ask this, first, I've read the
22 comments and, as you say, I think you have, in
23 many, many respects been characterized as a fair
24 person, intelligent. So I don't see any issues
25 there. And so, please don't take this as

1 anything negative, because I think you've got a
2 good background. I think obviously working for
3 Judge Williams, being a staff attorney, gives you
4 a pretty good insight into some aspects of the
5 practice of law. Given that, even though there
6 are less jury trials in the civil side,
7 basically, all that pretrial practice continues.
8 And the judge has a pretty substantial role in
9 that. I mean, you would agree with that,
10 wouldn't you?

11 A. Absolutely.

12 Q. Well, and here's my question, there are many
13 times that those decisions that are going to be
14 made prior to any trial can have just
15 unbelievable impact on the course of litigation.

16 A. Certainly.

17 Q. Motion here, ruling there. And I think it's even
18 more profound once you've been around a while to
19 be able to gauge just how significant a
20 particular issue might be to the ultimate
21 resolution of the case. And some of that comes
22 with experience and having been there over the
23 course of time. Where do you see yourself in
24 terms of being able to kind of make up for that
25 lack of experience in those settings where you're

1 necessarily going to have an impact in many
2 situations they're going to be tremendous, but
3 never been there on that civil and in a private
4 practice handle those kind of cases?

5 A. Sure. Well, you know, again, my experience is
6 what it is. And the lack of civil litigation, I
7 can't talk my way around that. I can tell you
8 that I'm an intuitive person. I pick up on a lot
9 of those things. And it's less different, I
10 think, than some people think to the criminal
11 practice where, while the pretrial procedures
12 aren't as well defined as they are on the civil
13 side, there is still a lot finesse involved there
14 that has some impact pretrial on what can happen
15 to the ultimate resolution. And I think that
16 isn't as much of a concern with me as it might
17 be. But I understand the question and I respect
18 it. The lack of actual in-the-courtroom civil
19 litigation experience is part of my record.
20 Quite frankly, I just enjoy my job so much that I
21 haven't branched out on that.

22 Q. Well, and let me ask --

23 A. I do understand your concern.

24 Q. And again, it's not meant as in any way a
25 criticism. It's just a matter of a question.

1 But from what I remember hearing earlier, this is
2 not in terms of choosing to want to do this a
3 snap judgement. It's something that he's thought
4 about for a period of time?

5 A. Yes, sir.

6 Q. Something that you wanted to do, kind of like,
7 ultimately, a goal, correct?

8 A. Yes, sir.

9 Q. All right. And I guess with that in mind,
10 knowing really that being on the circuit court is
11 going to have to put you in two capacities. And
12 you've obviously really shined in one. At what
13 point did you think maybe about trying to get
14 that other experience to more or less round
15 yourself out to where you might be, not having to
16 answer this question, as far as, hey, I'm not --
17 you got me. I mean, is that not something you
18 think maybe that would be a good course for you
19 today?

20 A. It's been suggested through this process, and
21 something I might take away from it to consider.
22 I have always been a quick learner, especially
23 when I enjoy something. And I like to stay
24 abreast of civil law and civil issues and things
25 of that nature. I really don't think it is as

1 big of a liability. And I'm certainly not
2 discounting your question, as some may think. I
3 think I would be quite capable of really getting
4 in there and rolling my sleeves up and making up
5 for some of these deficiencies. All that being
6 said, it's been suggested many times that some
7 civil -- more civil litigation experience might
8 help me in this endeavor. And I respect that
9 position, I do. I take it to heart.

10 **Q. Well, thank you for your response.**

11 A. Thank you.

12 CHAIRMAN SMITH: Senator Hayes.

13 EXAMINATION BY MR. HAYES:

14 **Q. Well, let me begin by thanking you for**
15 **participating in the process. And I appreciate**
16 **your service, long-term service, in the**
17 **solicitor's office. And I guess in the**
18 **solicitor's office as far as who are your**
19 **clients, I guess the victims in the state would**
20 **be your clients, wouldn't you say?**

21 A. I think -- and this may be sort of ethereal, but
22 I think justice is our ultimate client. Victims,
23 obviously, and their concerns and their interests
24 are a huge part of what we do. But they're not
25 clients in the strictly legal sense, of course,

1 in that I've had many cases where what I have
2 believed to be in the interest of justice ran
3 contrary to what the victim would want. And
4 always the correct answer to a prosecutor is to
5 do what's fair and just. Again, my client, of
6 course, is the State of South Carolina, but in a
7 sense the State interests align with the interest
8 of justice.

9 **Q. You think not having had any individual clients**
10 **would be a hindrance for you being a judge and**
11 **being able to protect litigants or certainly take**
12 **care of the interest of litigants?**

13 A. Well, much like the previous question that has
14 been a concern that's been raised to me and I
15 respect that as a concern. I don't think so.
16 Prosecution, when done right, is such a -- you
17 build those interpersonal relationships. And
18 like I said, the interest of victims and their
19 families, while not strictly legal clients, is so
20 intertwined often -- not always, but often, in
21 what we're doing. I don't think that is a real
22 concern for me. Again, I think those that know
23 me know that, you know, that I'm a person who
24 does have a big heart and compassion is never
25 really a shortcoming for me. And I really know

1 what it's like to -- even though I've never
2 represented a client, I know what it's like to
3 stand in a courtroom and have 30 people behind
4 you whose life and well-being depends on what
5 you're doing in that courtroom and that's a
6 heavy, heavy burden. And I --

7 **Q. Another question and I'll be done. But I, you**
8 **know, and I look on people who certainly work in**
9 **the solicitor's office or the public defender's**
10 **office as a form of public service. And I**
11 **appreciate that. What else in the community have**
12 **you done over the years, as far as service to --**
13 **giving back, service to the community?**

14 **A.** Well, I mean, while it was a barely paid
15 position, being an adjunct professor was a very
16 rewarding endeavor for me for several years. The
17 people I worked -- I get calls to this day from
18 former students, some of their stories are really
19 inspiring. People working nights with, you know,
20 large families and limited resources. I really,
21 really enjoyed that. Being a full-time
22 prosecutor and at times an adjunct professor and
23 a dad of two young girls, that's pretty time-
24 consuming.

25 **Q. Thank you.**

1 A. Thank you.

2 CHAIRMAN SMITH: Senator Sabb.

3 EXAMINATION BY SENATOR SABB:

4 Q. Thank you, Mr. Chairman. I really wanted to make
5 more of a comment than a question. I can tell a
6 people's prosecutor when I see one. And I really
7 think that you are the epitome of the kind of
8 prosecutor that our state needs. When I read
9 through the comments and everything that was
10 telling. But in listening to you talk about it,
11 it's equally as telling. I prosecuted for 20
12 years. And I would hope that those lawyers and
13 the people who I interacted with over the course
14 of that 20-year period would be as kind as they
15 were to you. And I could tell from the comments
16 that when my colleagues here questioned you about
17 how you worked with other lawyers and all of
18 those kind of things. I can discern from the
19 comments themselves exactly what you said. So I
20 just want to commend you on what I consider to be
21 an honorable career --

22 A. Thank you, sir.

23 Q. As a prosecutor. And I think you've addressed
24 the issue of, you know, the lack of courtroom
25 experience as it relates to the civil side, but

1 we all know that a lot of our best judges have
2 come from one side of the aisle or the other.
3 And we also understand each of our practice and
4 how difficult it is to play in both arenas so to
5 speak. So anyway, that's in the for-what-it's-
6 worth column, but thank you for what you do.

7 A. Thank you so much, that's very flattering. Thank
8 you, Senator.

9 CHAIRMAN SMITH: Any further questions?

10 EXAMINATION BY CHAIRMAN SMITH:

11 Q. Mr. Simpson, let me just follow up with a few
12 questions if you would, please. I think some
13 people have asked my questions, so it made a
14 little bit easier for me. But one of the issues
15 that you've obviously practiced exclusively in
16 General Sessions, so you have the opportunity of
17 learning about each circuit and what different
18 types of courts and alternative courts they have.
19 And you know, as we go through sentencing reform,
20 we've been through that a few years ago. And re-
21 engaging and one of the issues that comes up in
22 sentencing reform is alternative courts and the
23 more use of alternative courts, drug courts,
24 mental health courts, veterans' courts. We've
25 heard about homeless courts today. What's your

1 **experience in using those alternative courts and**
2 **if you were successful for this position, what**
3 **would you do? I know you don't create them and**
4 **you don't order them, but you, obviously, would**
5 **be a part of it. What would you do to help**
6 **improve the courts and the alternative courts?**

7 A. Whatever was asked of me. I cannot convey to
8 those of you who are part of creating a lot of
9 these things how wonderful it is from a
10 prosecution perspective to -- you know,
11 imprisonment is appropriate at times. But having
12 only that blunt tool at our disposal can be
13 difficult. I've been a big fan of drug court.
14 I've seen it work with people that, you know, a
15 lot of people said could not be turned around.
16 What I would do as a judge, you know, it's more
17 of a prosecution role to decide who goes where.
18 The prosecution and the defense working together,
19 obviously. But I would be an advocate, I would
20 be happy to volunteer my time. Most of those
21 courtrooms do require a judge who's willing to
22 come spend his or her time on a weekly basis,
23 drug court, specifically, is very hands-on from
24 the bench. And I would just be willing to
25 advocate and be a part of any of those

1 alternative resolutions to criminal trials.

2 They're invaluable.

3 CHAIRMAN SMITH: And so, as far as I see, there are
4 one or two comments and I think you heard about
5 them, about your exclusive practice in General
6 Sessions in the solicitor's office. For those
7 I'm just going to make an observation here as I -
8 - we've had that with public defenders who have
9 come before us and solicitor so far, these past
10 two weeks. And when you look at them, usually
11 you look at the temperament and some of the
12 rankings from the ballot boxes. And you,
13 obviously, you understand you make enemies as you
14 go through the practice of law. And one thing
15 that stands out to me is when I look at your
16 ballot box surveys, you have three people who say
17 you're unqualified from judicial temperament.
18 And so that is unusually low for somebody who
19 does what you do in prosecuting, because it tends
20 to be adversarial and antagonistic at times. And
21 we all argue our positions in court. But, you
22 know, I think that's a testament to the way you
23 conduct yourself as a solicitor. I think that
24 you, obviously, when you see someone when you
25 have people with just a handful of rankings as

1 unqualified who holds the power of a solicitor
2 who decides when to call a case and decides what
3 to recommend and whether to reduce the sentences,
4 you know, sometimes people don't agree with it.
5 And they tend to take it out on these ballot box
6 surveys. But here I do not see that pattern with
7 you. And so I think that's very commendable and
8 I appreciate the job you're doing in that regard.
9 Because that shows, not only do you have the
10 respect of your peers who you are working within
11 the solicitor's office, but you also have the
12 respect of the peers on the defense side, and you
13 ought to be proud of that.

14 A. Thank you so much.

15 CHAIRMAN SMITH: Is there any further questions for
16 Mr. Simpson? All right, Mr. Simpson. This
17 concludes this portion of the screening process.
18 I want to take this opportunity to remind you
19 that pursuant to the Commission's evaluative
20 criteria, the Commission expects candidates to
21 follow the spirit, as well as the letter of the
22 ethics laws. And we will view violations or the
23 appearance of impropriety as serious and
24 potentially deserving of heavy weight and
25 screening deliberations. On that note, and as

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

7 MR. SIMPSON: Thank you. Thank you all for your time.

8 CHAIRMAN SMITH: Safe travels back home.

9 SARA HEATHER SAVITZ WEISS:

10 CHAIRMAN SMITH: All right. We're back on the record.

11 Ms. Weiss, how are you doing today?

12 MS. WEISS: Good, how are you, sir?

13 CHAIRMAN SMITH: And you've got a crowd of people here
14 today. Would you like to introduce them to the
15 Commission?

16 MS. WEISS: I would, thank you. Seated with me is my
17 father, Steve Savitz. My mother, Jennifer Savitz
18 and my husband Todd Weiss.

19 CHAIRMAN SMITH: Welcome. Glad to have y'all here
20 today. Ms. Weiss, will you please raise your
21 right hand?

22 SARA SAVITZ WEISS, having been duly sworn, testifies as
23 follows:

24 CHAIRMAN SMITH: Ms. Weiss, before you is your
25 personal data questionnaire and your sworn

1 statement. Are those documents that you've
2 submitted to the Commission?

3 MS. WEISS: Yes, sir.

4 CHAIRMAN SMITH: Are they correct, both of them
5 correct, to the best of your knowledge?

6 MS. WEISS: They are. There is one comment about a
7 workers' comp hearing that was scheduled that
8 actually settled and never happened. So I know
9 that's -- I know that's in here though. That
10 would be the only thing that's anything
11 different.

12 CHAIRMAN SMITH: We're going to make an oral amendment
13 to that, to correct that, which you referenced in
14 there, if that's okay with you?

15 MS. WEISS: Thank you.

16 CHAIRMAN SMITH: Any other changes or updates that you
17 need to make at this time?

18 MS. WEISS: No, sir.

19 CHAIRMAN SMITH: Do you have any objection to these
20 being made as exhibits to your sworn testimony
21 today?

22 MS. WEISS: No, sir.

23 CHAIRMAN SMITH: All right. If you'll hand those to
24 Lindi for me, please ma'am. And we're going to
25 make those as exhibits to your sworn testimony.

1 (EXHIBIT 18 - JUDICIAL MERIT SELECTION COMMISSION
2 PERSONAL DATA QUESTIONNAIRE OF SARA HEATHER SAVITZ
3 WEISS)

4 (EXHIBIT 19 - JUDICIAL MERIT SELECTION COMMISSION
5 SWORN STATEMENT OF SARA HEATHER SAVITZ WEISS)

6 MS. WEISS: Thank you.

7 CHAIRMAN SMITH: Ms. Weiss, the Judicial Merit
8 Selection Commission has thoroughly investigated
9 your qualifications for the bench. Our inquiry
10 has focused on nine evaluative criteria and has
11 included a ballot box survey, a thorough study of
12 your 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 any
16 economic conflicts of interest. We have received
17 one affidavit by a Dr. Marie Asssa'ad-Faltas
18 filed in opposition to your election. However,
19 the Commission has dismissed this complaint.
20 There are no witnesses present here to testify
21 today. Do you have a brief opening statement
22 that you would like to make at this time?

23 MS. WEISS: Mr. Chairman, thank you. Just very
24 briefly, I know it's late in the afternoon and
25 you have more to do after me. But thank you very

1 much for allowing me to appear and for the
2 service you provide for the interviewing of the
3 judges. I just want to thank and commend your
4 staff. They have been absolutely wonderful in
5 helping get through what could be a very
6 confusing and difficult process. I just want to
7 say thank you for all you do and all they do.

8 CHAIRMAN SMITH: All right and thank you. And I do
9 want to say I understand Dr. Faltas is here. And
10 so I do want to recognize that she is here today.
11 Will you answer any questions that counsel may
12 have?

13 MS. WEISS: Yes, thank you.

14 EXAMINATION BY MR. STIMSON:

15 **Q. I note for the record that based on the testimony**
16 **contained in the candidate's PDQ, which has been**
17 **included in the record with the candidate's**
18 **consent, Ms. Weiss meets the constitutional and**
19 **statutory requirements for this position**
20 **regarding age, residence, and years of practice.**
21 **Ms. Weiss, how do you feel your legal and**
22 **professional experience thus far renders you**
23 **qualified and will assist you to be an effective**
24 **circuit court judge?**

25 **A. Thank you. I have been in the courtroom since**

1 the day I started practicing law as an assistant
2 solicitor. For 18 years I've been able to appear
3 before some amazing judges and in courtrooms in
4 Richland County, Kershaw County, and most
5 recently all over the state of South Carolina.
6 My academic background, law school, just like
7 everyone else, then the opportunity to learn in
8 the solicitor's office and then as I moved to the
9 Attorney General's office to expand that
10 knowledge. I realized at that point in my career
11 that there was a whole area of law -- there are
12 all areas of law, even criminal law that I was
13 not familiar with. And so I had the opportunity
14 to study and to learn each of those areas of law
15 so that I would be competent to practice those.
16 I feel like that experience, my experience and
17 time in the courtroom, prepares me to be able to
18 handle the circuit court bench. Just
19 understanding how to run a courtroom is, I
20 believe, the most important asset that a judge
21 can bring to the bench. And from then, it's the
22 studying of the law, which I thoroughly have
23 enjoyed doing and have done continuously up to
24 this point in my career.

25 **Q. Thank you. Ms. Weiss, the Commission received**

1 148 ballot box surveys regarding you, with 25
2 additional comments. The ballot box survey, for
3 example, contained the following positive
4 comments, "she would be an exceptional judge.
5 This candidate would be an asset to the
6 judiciary. And the bench would be well served by
7 the addition of Heather Weiss." "She is a great
8 lawyer and a great person." Twelve of the
9 comments expressed concerns. Several comments
10 indicated that your lack of private practice, as
11 well as civil experience would be a concern.
12 What response would you offer to this concern?

13 A. I certainly understand the concern. Actually, I
14 didn't appreciate just how much you don't
15 understand of the private practice and the
16 demands that are on the private Bar that practice
17 throughout the state of South Carolina, while I
18 worked at the solicitor's office. However, since
19 2011 when I came to the Attorney General's office
20 I have since then been practicing throughout the
21 state. I've learned at the Attorney General's
22 office, we don't control the docket. We aren't
23 the home team. We aren't the ones who are always
24 in the courtroom, our witnesses aren't always
25 there. And I've had to learn to manage my time

1 and to work with the court system in order to be
2 prepared for court, in order to make sure that my
3 family at home was taken care of, and in order to
4 make sure that each case I prepared for court,
5 whether it be a trial, a motion, or a plea was
6 thoroughly prepared. I understand that's not
7 something that can be done in three-quarters of a
8 day like it often can in a solicitor's office.
9 So I understand the concern, but I do believe the
10 Attorney General's office has given me a unique
11 opportunity to travel the state and face some of
12 those same demands. In addition to that, the
13 civil court concerns I understand; however, I
14 have -- the rules of evidence are the same. The
15 circuit bench is the circuit court bench and I
16 understand -- I've been able to watch good
17 judges. I've been able to see how controlling
18 the courtroom sets the tenor for what the court
19 case is going to be like for how everybody is
20 treated in the courtroom. I believe that knowing
21 how to be a judge is that much more important
22 than understanding the civil rules coming into
23 it. Now, that does not mean I have taken --
24 started to take CLEs. I've been studying the
25 Rules of Civil Procedure. I've been talking to

1 judges and civil practitioners to find out where
2 the differences are and what they think is
3 important for me to focus on in preparing to
4 serve on the bench. And I intend to continue
5 doing that. And with the benefit of the civil
6 court, having summonses, complaints, answers,
7 briefs, you have experts in those areas that are
8 going to prepare and submit written materials. I
9 intend to study those and any area of the law
10 that I'm unfamiliar with or rules I'm unfamiliar
11 with. I intend to study and be fully prepared
12 before I ever take the bench on a civil court
13 case.

14 **Q. Thank you. The second concern came from several**
15 **comments that indicated you might have a poor**
16 **judicial temperament if elected to the bench.**
17 **What response would you offer to this concern?**

18 A. I've been in a courtroom for a long time. There
19 probably have been times -- I know there have
20 been times when I've gotten more upset than I
21 should have about something that's happening in
22 the courtroom. What I can also say is over the
23 18 years my concerns have tempered with age, with
24 experience. Things that I thought were very
25 personal and were geared towards me or the

1 victims or whatever I've learned are part of the
2 court system. So anyone who's been with me
3 throughout the entire journey of 18 years, I am
4 certain has seen me at times that I wouldn't be
5 most proud and where my frustration has gotten
6 the better of me. However, I do feel that as
7 I've been in the courtroom and as I've expanded
8 my practice and management, I've learned to
9 balance and understand where we fit in the court
10 system. I don't let things get to me. So I feel
11 like my temperament, with age, has gotten better
12 so that this would be the time that I would be
13 more prepared to be on the bench in the
14 courtroom.

15 **Q. Thank you. Ms. Weiss, the third and final**
16 **concern came from a comment that suggested you**
17 **may dismiss ethics in an effort to win your case.**
18 **What response would you offer to this concern?**

19 A. Because they're anonymous comments, I don't know
20 exactly which incident this stems from. However,
21 since I've been at the Attorney General's office,
22 we get some very difficult cases and some very
23 touchy cases. Often ones that the solicitor's
24 office and the local jurisdiction don't want to
25 handle because they relate to attorneys in the

1 community. Various different types of cases.
2 The involvement of the attorney's often not as an
3 attorney. And I've been part of some of those
4 cases, some of those are very difficult. And I
5 can see where someone who was on the opposite
6 side in a case not necessarily representing a
7 client may feel that way. But what I can tell
8 you is that I take my job and my ethical duties
9 very seriously, just as I would as circuit court
10 judge. And I believe it's important to evaluate
11 a case from the time you get it, all the way
12 until you get into the courtroom. And I can
13 assure that I do not take a case into the
14 courtroom until I know that I can prove that case
15 or believe that I can prove that case beyond a
16 reasonable doubt. There's a lot that goes on in
17 the front end that oftentimes those attorneys
18 only see me in the courtroom at the end of all of
19 that preparation they don't see, where cases have
20 been dismissed, offers have been made, different
21 decisions have been made, because it was the
22 right thing to do. And where I can imagine the
23 cases that comment comes from, but I can tell you
24 that is, I believe, a very unique situation. I
25 believe it's related to one or two cases.

1 **Q. Thank you, Ms. Weiss. What do you envision as**
2 **being the biggest challenge of acting as a**
3 **circuit court judge?**

4 A. I believe the biggest is to insure the respect
5 that the court system and the judicial system is
6 upheld. I think that reaches out into many
7 tentacles, many branches. But it's important
8 that everyone in the courtroom be treated with
9 respect that the litigants be treated with
10 respect. The jurors, the staff, anybody in the
11 courtroom. Your judiciary is the face of our
12 court system, which I believe is the best in the
13 world. And I believe the only way that they can
14 truly feel confident is to come into a courtroom
15 and feel the respect starting from the bench. I
16 believe that extends to the backlog of cases from
17 litigants being able to have their cases heard
18 and gets very important; however, I believe the
19 legislature has done what you've needed to do, as
20 far as increasing the number of judges. What I
21 think is a huge concern, now, that I've just
22 started really running into is court reporters.
23 We've got to increase the number of court
24 reporters so that the court terms that are
25 assigned by court administration can actually be

1 held. We've had court terms that have been cut
2 in half or eliminated altogether, because there
3 wasn't a court reporter to actually go with it.
4 So I think in order for the court system to work
5 and for everybody to be able to get their cases
6 to court in a timely manner, the biggest concern
7 now that we're really facing, is the court
8 reporter shortage.

9 **Q. Thank you, Ms. Weiss. We have just have a few**
10 **more housekeeping issues for you. Are you aware**
11 **that as a judicial candidate you are bound by the**
12 **code of judicial conduct as found in Rule 501 of**
13 **the South Carolina Appellate Court Rules?**

14 **A. Yes.**

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

18 **A. No.**

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**
22 **of your screening?**

23 **A. No.**

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
2 in this process on your behalf?

3 A. No.

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

7 A. Yes.

8 MR. STIMSON: Thank you, Ms. Weiss. I would note
9 that the Midland's Citizens Committee found Ms.
10 Weiss to be well qualified in the evaluative
11 criteria of ethical fitness, character,
12 professional and academic ability, reputation,
13 experience, and judicial temperament. And
14 qualified in the remaining evaluative criteria of
15 constitutional qualifications, physical health,
16 and mental stability. The Midlands Citizens
17 Committee noted in comments, "Ms. Weiss made a
18 very good impression on our committee. She is
19 bright, outgoing and personable. Her experience
20 in the criminal law arena is prodigious. She
21 does lack extensive civil law experience, but her
22 time spent in a courtroom observing how judges
23 perform is a plus." In summary, they stated Ms.
24 Weiss is a strong candidate for circuit court
25 judge with some hesitation because of her civil

1 law experience. Mr. Chairman, I would note for
2 the record that any concerns raised during the
3 investigation by staff regarding Ms. Weiss were
4 incorporated into the questioning of her today.
5 Mr. Chairman, I have no further questions.

6 CHAIRMAN SMITH: All right. Thank you very much. Any
7 questions for Ms. Weiss? Senator Young.

8 EXAMINATION BY SENATOR YOUNG:

9 Q. Thank you, Mr. Chairman. Ms. Weiss, I want to
10 thank you for your service in the South Carolina
11 Attorney General's office and in the different
12 prosecutorial positions that you've held over
13 your career. And I know that what you do in the
14 Attorney General's office and what you have done
15 there has been difficult work at times. I
16 noticed in your PDQ that you tried the first --
17 or prosecuted the first State Grand Jury Human
18 Trafficking case. And I know that several people
19 on this Commission have been involved in the
20 passage of that legislation. And we want to
21 thank you for your work in that regard. One of
22 the questions I have or the first one I have is,
23 how would you describe your judicial philosophy
24 and that would be, how would you apply the law to
25 the facts or to the issues that would be before

1 **you if you're elected to the circuit court?**

2 A. Yes, sir. My philosophy is that it is my job to
3 preside over the case, to follow the law as it is
4 written. To apply that to the case at hand. It
5 is not my job to interpret that or to add any of
6 my own personal opinions or beliefs into that.
7 That's something that I was sworn to do as an
8 assistant solicitor and I believe it carries
9 through. The law is what you make it. And not
10 what I believe it to be. However, as far as
11 being a judge in the courtroom, I believe it's
12 important that the judicial role is to be a
13 facilitator. I believe that communication is the
14 most important asset that a judge can bring to
15 any case. And there needs to be communication
16 between the judges as well as between counsel.
17 And that it's the judges responsibility to make
18 sure the conversations are happening. I don't
19 believe a judge should force any results in any
20 case. I believe it's -- the jury can make a
21 decision on the case. The attorneys can settle a
22 case or can come to an agreement. But until a
23 case is before a circuit court judge for
24 sentencing, I don't believe anything should be
25 forced. However, what I found in my practice is

1 that oftentimes because of the schedules of the
2 people that are involved in the cases,
3 communication doesn't really happen until
4 everybody's in the courtroom and all the parties
5 are present to talk. And I believe it's the
6 judge's role and the judge can add to the court
7 by facilitating that conversation by ensuring
8 that both sides are heard. And if something can
9 be settled, if something can be shortened, then
10 you certainly encourage that. But ultimately,
11 it's to preside over the case and apply the laws
12 as they are written.

13 **Q. Thank you for that answer. Another question I**
14 **have is with respect to your civil experience. I**
15 **want to know, have you handled any cases in the**
16 **circuit court in common pleas at all?**

17 A. I have not.

18 **Q. Okay. And so how would you best prepare yourself**
19 **for handling the variety and multitude of non-**
20 **jury matters that you may -- or that you will**
21 **hear if you serve on the circuit court in common**
22 **pleas?**

23 A. I believe learning to be a common pleas judge
24 would be very similar to what I've done to study
25 to be a circuit court judge in general. I would

1 go and watch. I've been in common pleas and I've
2 sat and watched common pleas and watched how the
3 judge handles the docket. And I know there are
4 different ways of handling status conferences and
5 docketing. You know, e-discovery, which is a
6 whole different -- e-filing, which is a whole
7 different system from what the criminal court is
8 used to. What I promise you is that I will go
9 and observe. I will continue to take CLEs and
10 continue to study and talk to the practitioners.
11 I've talked to judges and lawyers in preparing
12 for this, just to find out what they feel like is
13 different, especially circuit court judges.
14 Where do they see the differences in what they've
15 done in common pleas versus circuit court. And
16 what I've found is that most of them felt like
17 when they actually were working on a civil trial
18 that they were very prepared and very
19 knowledgeable about the entire case prior to
20 going to court, which gives me some comfort in
21 knowing that I'm going to have to really study.
22 But the materials are there. And the opportunity
23 to talk to counsel and have status conferences
24 and know what's going on. The rules of evidence
25 are the same. So I feel confident that I would

1 know how to rule on the rules of evidence. And I
2 feel even more at ease that I would be able to
3 prepare and study the pleadings that are before
4 me before I even go in there. So I would know
5 the questions to ask to prepare. And if I have a
6 question, I have no hesitancy to admit that I
7 have a question, take a break and figure out the
8 answer, talk to someone if I need to. I don't
9 think it should happen at a point that would slow
10 down the court process. But I'm certainly
11 someone that recognizes when I don't know the
12 answer.

13 **Q. I noticed that you have prosecuted cases**
14 **involving insurance fraud?**

15 A. Yes, sir.

16 **Q. And other types of white collar crimes. Those**
17 **are all in the criminal arena?**

18 A. Yes, sir, they are but it's interesting. So I
19 honestly had no idea that insurance fraud was a
20 whole separate section of the code until I came
21 to the Attorney General's office and they told me
22 I was going to be the director of insurance
23 fraud. And I was introduced to the insurance
24 fraud statute. And what I learned is that even
25 though I had been practicing for 11 years at that

1 point in criminal law, there's even more there.
2 The insurance fraud statute provides for civil
3 remedies that we are given the option of offering
4 in lieu of a criminal disposition, which is the
5 only statute that does that. So you have to be
6 prepared that if someone takes that civil remedy,
7 we have to go to court. In my first years at the
8 Attorney General's office I went up to our chief
9 deputy at the time, John McIntosh and said, you
10 know, well what do you want me to do with this if
11 this person, you know, signs off and doesn't pay.
12 He said, I believe you graduated from law school
13 and you can go into the Court of Common Pleas and
14 litigate it. And I said, yes, sir, I believe I
15 can. And I became aware, starkly aware at that
16 point, that that's what I had to do. I had to
17 figure it out. Securities fraud is very complex.
18 I don't pretend to understand the securities
19 laws, but what I have learned is how to make my
20 way through it. How to wind my way through
21 complex laws, which can lead to complex
22 litigation. Another -- so the white collar, in
23 general, but another one that I've found is the
24 unauthorized practice of law. Something that a
25 lot of us don't like to think about, but what we

1 have when you have people who are unlicensed to
2 practice in this state they come in, they're
3 usually not dealing in criminal law. They're
4 usually dealing in real estate law or they're
5 dealing in foreclosures -- well, foreclosures is
6 real estate. But they're dealing in civil areas
7 that I have to then dive in. And I've had to go
8 out and talk to people who are experts in those
9 areas of the law and say, can you please explain
10 to me how this should work. And what -- so that
11 I can then compare what the person was doing.
12 What part of that was practicing law, what part
13 of that is not practicing law. So I've had to
14 understand the civil law. And I know a lot of
15 the civil law is not practiced in the courtroom
16 and so, just as you are mentioning, a lot of the
17 white collar crime, but also the unauthorized
18 practice. A lot of those, I've had to learn
19 enough. I don't claim to be able to practice it.
20 But enough to be able to understand it and work
21 my way through it that I feel confident that I
22 could understand when I was studying to be a
23 common pleas judge to handle whatever was before
24 me.

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

1 CHAIRMAN SMITH: Okay. Any other questions?

2 EXAMINATION BY SENATOR RANKIN:

3 Q. I want to commend you for offering your candidacy
4 as well. You've joined a list, a host of, I
5 won't call young candidates. Young in the sense
6 of less than 15 to 20 years of practice. You
7 graduated from law school in what year?

8 A. 1999.

9 Q. '99. And you have and that's still young,
10 although it seems perhaps long in service. We
11 have, again, interviewed a lot of folks and you
12 get the wrap of being too hot if you're on one
13 side of the civil versus criminal practice, or if
14 you're on the other too cold. You've answered
15 how you think you can be just right on rules of
16 the evidence. And your mastery of those, I
17 trust. Are you with the Attorney General's
18 office?

19 A. Yes, sir.

20 Q. Okay. And you ever participated in an actual
21 civil seating depositions, discovery, any of that
22 stuff?

23 A. I am -- yes, sir. I have participated from
24 various different points of view, not as the
25 counsel handling the case. I have been prepared

1 -- I've been prepped for a deposition on a civil
2 case that was related to a criminal case that I
3 worked on.

4 **Q. Being deposed?**

5 A. Being deposed.

6 **Q. Okay.**

7 A. I was working, obviously, with the workers' comp
8 case that I mentioned earlier. And I learned a
9 little -- I learned a lot from that, actually.

10 **Q. Forgive me for not listening to that closely, but**
11 **were you a litigant in that or witness in that?**

12 A. I was a litigant in that.

13 **Q. You put in there a hearing in September. Has**
14 **that already --**

15 A. It did. It made it all the way up until two days
16 before and then it settled.

17 **Q. Okay. Originally, in your PDQ, you put September**
18 **hearing, but that was moved?**

19 A. It settled.

20 **Q. Got you.**

21 A. So it's done now.

22 **Q. Congratulations.**

23 A. But -- thank you. But the interesting part about
24 that for me was in being the litigant and being
25 the witness and realizing how nervous I was in

1 preparing for that hearing. It gave me an
2 appreciation for what all of the witnesses must
3 feel as they're coming in the courtroom. I've
4 been in courtrooms my whole career, but I felt a
5 couple of days out from trial, I wanted to call
6 the attorney and say, are you going to prep me
7 and what do I need to bring and what time do I
8 have to be there. And what are you going to ask
9 me and what are they going to ask me? And all of
10 a sudden, it became a little more clear what my
11 victims and witnesses and -- are thinking as
12 we're getting ready for trial. And I think
13 that's -- it was a unique perspective to realize,
14 especially in this position, applying to be a
15 part of the bench to realize that it doesn't
16 matter how many times you've been in a courtroom
17 that when you're coming out at it from a
18 different angle, from a different perspective, or
19 even when you're coming at it in the same role
20 that you've done every time that everybody has to
21 learn and become comfortable. And I think you do
22 that, it starts from the bench and from the
23 judge. And I know I didn't have to go before the
24 court in that case.

25 **Q. You gave a deposition, though, in that case?**

1 A. I never did have to give a deposition in that
2 case. I was a different -- that was a case-- a
3 different case where I was a witness on a case
4 that was related to one of my criminal cases.
5 So, but I just -- so I've done, I've done those
6 parts and I've gone and sat in court to see what
7 was going on cases that were related to cases
8 that I was working with in the criminal arena.
9 So I've sat through and watched, so I have not
10 been the counsel on the case, but I have served
11 in different areas.

12 Q. And you have worked, in looking at your job --
13 resume here, in terms of the solicitor's office,
14 you have been steeped in prosecution?

15 A. Yes, sir.

16 Q. Which some then consider too hot likely versus
17 too cold, in terms of your ability to, forgive
18 the term, shake the perceived bias that you might
19 have as a prosecutor -- you just touched on your
20 ability to relate now to all litigants,
21 witnesses, et cetera. Is it -- can you totally
22 disassociate yourself from someone or your
23 experience, in terms of perhaps issuing some
24 sentence when you would be called upon to hand
25 down a judgement?

1 A. Absolutely. What I have found and especially in
2 my years -- my last few years at the Attorney
3 General's office it has really opened my eyes.
4 We get some very complex cases. Often times we
5 get cases because the decisions that ultimately
6 have to be made in those cases are not easy to
7 make. And we're going to have face victims and
8 explain to a victim's family that although their
9 loved one may have been killed, that the person
10 who did it was justified in doing so or that
11 there is not evidence beyond a reasonable doubt.
12 And there are times that I may believe that the
13 person is guilty of a crime, but that I had to
14 dismiss a case and I've had to look at that
15 victim's family and explain that that case can't
16 be proven beyond a reasonable doubt. And often
17 times -- and that is something I do, I don't
18 want to say a regular basis, that doesn't sound
19 right. But on a more regular basis now, because
20 of the types of cases that come to my office and
21 because I'm in charge of assigning cases.
22 Oftentimes I keep some of those cases that are
23 the more difficult, so that the attorneys that
24 I'm assigning cases to can get out and get into
25 the courtroom. And I work with those victims and

1 I work with the defense attorneys. And then
2 there are cases that, you know, a defense
3 attorney will call me for discovery and I'll say,
4 give me about three days, I'm working on -- I'm
5 looking through this. And, I mean, I've had a
6 case where, you know, I had to dismiss the case
7 before discovery was even turned over, because
8 once I reviewed the case, it was stand-your-
9 ground case and it was clear that the person
10 should not be prosecuted. And having to make
11 those decisions and having to face the victims
12 families and deliver difficult information, I
13 believe translates well to what I would have to
14 do on the bench. And handing out a sentence,
15 there is an appropriate resolution to every case.
16 That resolution is not always at one end or the
17 other. And I as an assistant solicitor have
18 certainly negotiated cases and worked on cases
19 where, you know, people have gotten a lower
20 sentence or a probation sentence, because that's
21 what was needed in that case. And even if the
22 crime was very severe, and I've had to answer for
23 that in different cases and in different
24 courtrooms. I believe being a prosecutor
25 actually would make me better for the bench,

1 especially with the cases I've been dealing with
2 throughout the state of South Carolina. I've
3 traveled the state. I'm in courtrooms throughout
4 the state. I deal with law enforcement
5 throughout the state. I know that most cases are
6 not perfect and that there's a difference set of
7 circumstances and a different situation. Anyone
8 who's worked with me as defense counsel knows I
9 want to know the story behind the case. I want
10 to know what's going on with the person. And I
11 look at every person individually. There are
12 people that get diversion sentence -- or get
13 diversion options that may not be your typical
14 candidate for diversion, but because of what's
15 going on in their lives and what counsel has
16 explained, that's the appropriate sentence. I'm
17 not somebody who follows very hard one way or the
18 other based on the -- just the crime. I look at
19 the entire case, the entire person that's before
20 me. And when I make an offer, when I go to
21 court, I look at that already. And I feel like
22 sitting on the bench and working with sentences,
23 one, you have to consider the recommendations and
24 negotiations that counsel has worked out, because
25 they know so much more about the case. But when

1 the sentence is left completely up to me, I'll be
2 looking them in the eye and saying, what's going
3 on? What led to this? How did we get here? And
4 most people are going to return to society and
5 they're going to return to the same streets that
6 we all live on. And I'm going to want to know
7 what I can do to make that person a productive
8 citizen of society when they return if they're
9 going to go to prison or if they're going to get
10 out, how can we monitor them so they get back on
11 the right path?

12 **Q. Quick question, perhaps quick answer, not --**

13 A. Yes, sir.

14 **Q. The last one wasn't quick enough. In terms of**
15 **what you think is the most important character**
16 **trait or measurement -- and you understand that**
17 **we have these Bench Bar surveys are the good and**
18 **the bad?**

19 A. Yes, sir.

20 **Q. Which you got both, perhaps more good than bad.**
21 **First, do you think that this is relevant for us**
22 **to consider the Bench Bar comments in balance?**

23 A. Absolutely. You've got to consider what the
24 attorneys who have been out there practicing with
25 me have seen over my career, so absolutely from

1 the Citizen's Committee to the Bar Committee to
2 the Bench Bar.

3 Q. Of the standards that we ask and that you,
4 perhaps -- have you participated ever in one of
5 these Bench Bar surveys?

6 A. Yes.

7 Q. So constitutional qualifications, ethical
8 fitness, professional academic ability,
9 character, reputation, experience, and judicial
10 temperament, what do you consider the number one
11 barometer of whether someone should be a judge or
12 not? If you can't pick one, I'll give you three.

13 A. Honestly, I think it's the relevant experience
14 that the attorney has had that they can bring to
15 the bench. And you started out by asking what I
16 thought the most important characteristic was and
17 I believe that's humility. It's understanding
18 what you know and being willing to ask when you
19 don't. And being willing to learn from everyone
20 around you and everyone before you. And the
21 relevant experience, I think, is what's
22 important. It's not, you know, strong, hot, or
23 cold, but it's the relevant experience to be able
24 to come in and run a courtroom and know how to
25 listen and know how to watch and know how to

1 learn so that ultimately, you can be the best
2 jurist that you can possibly be. And as far as
3 the Bench Bar, I have filled them out. And I
4 find that the ones that I'm able to really look
5 at well qualified are usually the ones that I've
6 been able to watch on the bench. Because I feel
7 like we all, we all come to this with different
8 experience. So we're all going to have strengths
9 and weaknesses. But the most important I believe
10 is humility. To be able to understand that you
11 have these strengths and weaknesses and learn
12 from them.

13 **Q. If one of the wraps on you is that your judicial**
14 **temperament, that they find you unqualified, how**
15 **would you respond to that, in terms of the Bench**
16 **Bar surveys of the 148 folk that have replied in?**

17 A. That there was probably a situation that explains
18 that. And if I knew that situation -- I'm not
19 perfect. And there are certainly days where I've
20 gotten frustrated with what's going on in the
21 courtroom or something related to it. And I'm
22 sure that there was a situation that that person
23 could explain. But I do believe that of the 143,
24 the people who have really spent time with me and
25 know me and have gotten to know me over my career

1 would believe that I do have the temperament that
2 would appropriate for the bench, especially at
3 this point in my career.

4 **Q. Now, legal family, folks in the law?**

5 A. Yes, sir. My father is a labor lawyer with
6 Gignilliat, Savitz & Bettis. So he's a civil
7 attorney.

8 **Q. He can counter balance your criminal?**

9 A. Absolutely. Actually --

10 **Q. Just right.**

11 A. Perfect. I actually grew up at the dinner table
12 learning all about civil law.

13 **Q. Reed Gignilliat, of the son of your -- yeah, my
14 fraternity brother.**

15 A. Okay.

16 **Q. That's all. Thank you.**

17 CHAIRMAN SMITH: All right. Thank you. Mr. Safran.

18 EXAMINATION BY MR. SAFRAN:

19 **Q. Thank you for being here. And I know sometimes
20 this whole process kind of feels like you're
21 going through the meat grinder and it's not an
22 easy thing. One thing that is important to
23 several of us. I mean, members of this
24 Commission are either small or solo
25 practitioners.**

1 A. Yes, sir.

2 Q. And over a period of time, it's becoming very
3 clear that there are demands in that context that
4 can be pretty daunting themselves.

5 A. Yes, sir.

6 Q. And you go to different courts, you have
7 different types of schedules. You may not
8 necessarily be on the pecking order of things, in
9 terms of rule, have a priority. But you may have
10 a mediation that's been set for six months, or
11 you may have something that is really essential
12 that you attend. On the other hand, we have
13 families. We have other lives. And there maybe
14 times that come up where you need to attend this
15 ballet. You may need to go and show up for this
16 graduation. How do you -- coming from a context
17 where you've kind of been working in rather large
18 environments, how do you empathize with that type
19 of situation and how would you respond as a
20 judge?

21 A. Although, the area that I practice in there are a
22 lot of people there. Our case loads are our own.
23 And I know I have not been a solo or small
24 practitioner. But my cases I have ownership of
25 and I'm the one that who really has to go and

1 deal with those, whether it's in Horry County or
2 Spartanburg or Charleston. And I have to deal
3 with the judges that are there as well. And I
4 can tell you a personal story. You know, when I
5 was in Richland County I could go across the hall
6 and I could leave and I could - I was right here
7 in Columbia. However, I found myself in
8 Chesterfield County in the middle of a two-week
9 trial and my daughter was doing her first solo
10 competition performance. And we were getting
11 into Friday and I approached the judge and I
12 said, I know you don't have to do this but my
13 daughter has a solo dance competition and I would
14 really give anything. They're going to try to
15 hold it until I get there. But I would give
16 anything just to make sure I don't miss it. And
17 if I could be there as she's preparing, she's
18 young and this is her first performance. And the
19 judge looked at me and he said, absolutely, I
20 wouldn't want you to miss that. And he said, you
21 know, we're going to wrap up here around 3:00. I
22 will never forget that. He knew we were going
23 into a second week. He knew I had a family and
24 as it turned out, defense counsel said, oh,
25 that's great, because my son has a game tonight

1 too. And it turned out it was really good. But I
2 learned that lesson. I was terrified the whole
3 week I was going to miss my daughter's first
4 performance. And as important as the law is and
5 as important as these cases are, we have to have
6 a work/life balance. You know, we've added in
7 the mental health part of our CLEs now, just to
8 take care of our own mental health as attorneys.
9 And a big part of that is because we don't take
10 care of our balance. There are going to be times
11 where work is going press and home's going press.
12 But I take the courtesy that was given to me in
13 that courtroom and I intend to offer that anytime
14 I can. I think communication is the bottom line.
15 We've got to communicate, be able to figure out
16 what the conflicts are. If you've got three
17 murder trials scheduled during the fall when
18 you're out of session, you know, you've got to
19 have time to properly prep each of those because
20 you're all attorneys too and you have a short
21 period of time during which you can actually be
22 in the courtroom, practice -- and try a week-long
23 case. And the judges have to be conscious of
24 that. And for anybody who has -- I know defense
25 attorneys sometimes coming in November will come

1 in and say, I've done 10 murders this year, they
2 have all gone to trial, can we please push this
3 to January. And as much as we may not want to,
4 because you say, well, I want to get this case
5 tried. The reality is they've got to prep each
6 of those separately and they're not all going to
7 be in their backyard. And that's what I've had
8 to deal with in the Attorney General's office.
9 They're not all in my backyard, so I may have a
10 judge calling me from Charleston or Horry wanting
11 me down there for a status conference that's
12 going to take five minutes, but I may have a
13 victim meeting in Columbia that doesn't take
14 precedent, like you said, over being called to
15 court. But, you know, you ask. And you
16 communicate and say this is what I have going on.
17 And, you know, I've been fortunate that the
18 judges have been understanding, that I've rarely
19 had to flip-flop things around. And I've been
20 fortunate that I was in the solicitor's office
21 for the first part of my career. But I recognize
22 now, more than ever, especially, you know, having
23 children, having family that you've got to have
24 the balance or we're not going to be able to be
25 the professions that we have studied -- the

1 professionals that we have studied to be.

2 Q. Just along those lines, we've had different
3 people who've screened this time, including some
4 very good sitting judges. And one thing that I
5 took away from those hearings that really struck
6 me was the comment by one when asked, what's your
7 function? And his comment was, I'm here to serve
8 the Bar. And it was a matter of whatever they
9 need me, whether it be coming in the morning
10 early to meet, have something done and stay late.
11 But that was the attitude. How do you approach,
12 in terms of your role, as it relates to the
13 members of the Bar?

14 A. I completely agree with that judge. I believe
15 that my job now is to serve the people of South
16 Carolina, serve the attorneys that I supervise
17 and, as a judge, believe it would be to serve the
18 Bar and to serve the people of South Carolina.
19 It's a very similar role, because the jurors have
20 families. They have demands on their schedule.
21 The court staff has demands on their schedule, as
22 well as the attorneys. And when you're the
23 judge, you're in a unique position where you do
24 control the schedule. And you need to take into
25 consideration everybody's demands. Now,

1 ultimately, we have to get the business done.
2 But, you know, Judge Williams used to come in
3 extra early. He's retired now. But he used to
4 come in extra early and he'd say, I'm available
5 at 8:00 if anyone wants to come and, you know,
6 help figure this out. And I always thought that
7 was so nice, because he didn't expect you to be
8 there. But if that's going to help, he was
9 there. He made himself available. And I think
10 that's the rule of the judiciary, is to make sure
11 that we are there and available and communicating
12 with the Bar, so that we can make court run as
13 efficiently as possible.

14 **Q. Last question.**

15 **A. Yes, sir.**

16 **Q. You've obviously been in front of a number of**
17 **judges and I think we all collectively have, your**
18 **father has, I'm sure. There was a period of time**
19 **where going in and getting blessed out by a judge**
20 **was basically considered to be a right of**
21 **passage. I don't think it's looked at that way**
22 **anymore. And I guess the question would be, in**
23 **terms of temperament, if you were to model**
24 **yourself after anybody that you've had an**
25 **experience with, who do you think it would be?**

1 A. There are two people that come to mind. I know I
2 should probably pick one, but the two people that
3 I would model myself after are Justice James and
4 Judge Letitia Verdin. Those are two judges that
5 I have felt comfortable practicing the law in
6 front of. Because both of them made me feel like
7 they were there to hear the case. They treated
8 everybody fairly in the courtroom. And they made
9 it easy to be in the courtroom and get the job
10 done. They didn't -- you didn't feel like you
11 were bothering them. You didn't feel like that
12 they knew so much more or were so much -- and not
13 that others do, those are just the two I would
14 model myself after. I think they're the most
15 significant from my experience.

16 **Q. Thank you.**

17 A. Thank you.

18 CHAIRMAN SMITH: Any further questions? All right,
19 Ms. Weiss, this concludes this portion of your
20 screening process. I want to take this
21 opportunity to remind you that pursuant to the
22 Commission's evaluative criteria, the Commission
23 expects candidates to follow the spirit, as well
24 as the letter of the ethics laws. And we will
25 view violations or the appearance of impropriety

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

9 MS. WEISS: Thank you. And I thank you all for your
10 time.

11 CHAIRMAN SMITH: Thank you. Y'all have a good
12 evening.

13 THE HONORABLE MARVIN H. DUKES, III:

14 CHAIRMAN SMITH: Judge Dukes, how you doing today?

15 JUDGE DUKES: Fine, thank you.

16 CHAIRMAN SMITH: This evening, I guess.

17 JUDGE DUKES: It's dark outside.

18 CHAIRMAN SMITH: All right. Judge Dukes, raise your
19 right hand, please, sir?

20 JUDGE DUKES, having been duly sworn, testifies as follows:

21 CHAIRMAN SMITH: All right. Judge Dukes, you got in
22 front of you, the personal -- your personal data
23 questionnaire and sworn statement. Are these
24 both documents that you've submitted to the
25 Commission?

1 JUDGE DUKES: They are, sir.

2 CHAIRMAN SMITH: Are they both correct, to the best of
3 your knowledge?

4 JUDGE DUKES: They are. I believe there's a couple of
5 amendments I've submitted. And with those
6 amendments they are.

7 CHAIRMAN SMITH: And hopefully, those amendments are
8 contained in that package before you. Are there
9 any other changes or updates that you need to
10 make at this time?

11 JUDGE DUKES: There are not.

12 CHAIRMAN SMITH: Do you have any objection to us
13 making these exhibits to your sworn testimony?

14 JUDGE DUKES: No.

15 CHAIRMAN SMITH: All right. Without objection we're
16 going to make these as exhibits. If you'll hand
17 them to Lindi for me, please, sir. All right.
18 Judge Dukes, the Judicial Merit Selection
19 Commission has thoroughly investigated your
20 qualifications for the bench. Our inquiry has
21 focused on nine evaluative criteria and has
22 included a ballot box survey, a thorough study of
23 your 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 any
2 economic conflicts of interest. We have received
3 no affidavits filed in opposition to your
4 election today and there are no witnesses present
5 to testify. Do you wish to make a brief opening
6 statement to the Commission?

7 (EXHIBIT 20 - JUDICIAL MERIT SELECTION COMMISSION
8 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE MARVIN H.
9 DUKES, III)

10 (EXHIBIT 21 - JUDICIAL MERIT SELECTION COMMISSION
11 SWORN STATEMENT OF THE HONORABLE MARVIN H. DUKES, III)

12 (EXHIBIT 22 - AMENDMENT TO PERSONAL DATA QUESTIONNAIRE
13 OF THE HONORABLE MARVIN H. DUKES)

14 CHAIRMAN SMITH: As the hour is late and I know you
15 have been at this for two weeks I will just thank
16 you all for your service and dispense with an
17 opening.

18 CHAIRMAN SMITH: Okay. Thank you very much, sir. All
19 right. Will you answer any questions that
20 counsel may have for you?.

21 JUDGE DUKES: I'd be happy to.

22 EXAMINATION BY MS. MOTTEL:

23 **Q. Thank you, Mr. Chairman. I note for the record**
24 **that based on the testimony contained in the**
25 **candidate's PDQ, which has been included in the**

1 record with the candidate's consent, Judge Dukes
2 meets the constitutional and statutory
3 requirements for this position regarding age,
4 residence, and years of practice. Judge Dukes,
5 how do you feel your legal and professional
6 experience thus far renders you qualified and
7 will assist you to be an effective circuit court
8 judge?

9 A. I practiced law in Beaufort for 20 years, a
10 typical small town practice. I did a little bit
11 of everything, some civil, some criminal, some
12 family court. And at some point our Master-in-
13 Equity was retiring and a group came to me and
14 said, would you have an interest in running for
15 this seat, because we think you'd be good at it.
16 And that was 10 and a half years ago. And I've
17 been Master-in-Equity for Beaufort for 10 and a
18 half years. During that time, I've heard --
19 we've been through the foreclosure crisis. We've
20 been through -- I've been through thousands of
21 cases. As many of you know, the Master-in-Equity
22 in Beaufort, like some counties that have full-
23 time Masters, operates pursuant to an order of
24 the Supreme court as a special circuit court
25 judge. So I've actually been a special circuit

1 court judge for 10 and a half years during the
2 time that I've been on the bench as Master. So
3 I've heard not just the typical equity cases, but
4 I've heard pretty much every non-jury civil
5 matter one can imagine. I've done guilty pleas,
6 certain criminal matters, that sort of thing.
7 I've basically the, and I brought an order -- a
8 copy of the order if you don't have it. But it's
9 an order that's reissued every year by the Chief
10 Justice that essentially grants special circuit
11 court status to the Master-in-Equity in Beaufort,
12 well to me, for the last 10 years. And so
13 through that qualification and the 20 years of
14 practice, I've 10 years of being on the bench.
15 And just general life experience that helps with
16 being a judge.

17 **Q. Thank you, Judge Dukes. The Commission received**
18 **339 ballot box surveys regarding you with 51**
19 **additional comments. The ballot box survey, for**
20 **example, contained the following positive**
21 **comment, "Judge Dukes has an excellent demeanor,**
22 **is knowledgeable of the law, fair to all parties**
23 **before him, even-handed and would make an**
24 **excellent circuit judge." "Judge Dukes has an**
25 **outstanding record of impartiality, fairness,**

1 **knowledge of the law and consideration for all**
2 **parties and their counsel. It is a pleasure to**
3 **appear before Judge Dukes." "Judge Dukes is one**
4 **of the best and most fair-minded judges serving**
5 **in the South Carolina court system." Seven of**
6 **the written comments of the 51 expressed concern.**
7 **Two comments raise a question over whether you**
8 **would show favoritism for local attorneys. Could**
9 **you please respond to any concern about that?**

10 A. And you, of course, have given me a heads up, as
11 all candidates do on the negative comments. And,
12 you know, I've thought about that. I do my best
13 to show the impartiality that some of the other
14 people had commented on. I do my best to not
15 show favoritism to anyone, either from Beaufort
16 or from anywhere else. So that would be improper
17 to show favoritism like that and I do my best not
18 to do it. I can't specifically address the
19 instance, because obviously there's no details.
20 But it would be wrong to show such favoritism and
21 I attempt to avoid it at every opportunity.

22 Q. **One additional concern indicated that you pushed**
23 **too heavily towards mediation or settlement.**
24 **Could you please respond or what response would**
25 **you offer to this concern?**

1 A. Too heavily is very subjective. I have found,
2 again, in over a decade of doing this that
3 parties will come to me, particularly with a
4 complex case and they will say, we have tried
5 mediation. We tried a day of mediation and
6 everyone walked out, it was a disaster. But as
7 all of you know, sitting there, getting ready to
8 begin a trial has a different feel than it does
9 months before the trial. And I have found
10 through experience that attempting to get the
11 parties, particularly if they're facing a two-day
12 trial, to spend 30 minutes to see if maybe they
13 can settle it is very advantageous and often
14 results in a settlement. I've also ordered
15 people to second meditations when I feel like the
16 first one was not helpful and that's been
17 successful. And at some point if I feel like
18 that's not successful, I would probably stop
19 that. But I've had very good results with it in
20 the past. And so I understand that's a
21 criticism, but I will accept it and it is the way
22 I do business and I'm sorry they feel that I do
23 it too much.

24 **Q. Thank you, Judge Dukes.**

25 **Q. Final area of concern indicated that you can be**

1 **slow or reluctant to rule on issues or in closed**
2 **cases. Can you please respond to this concern?**

3 A. I think my numbers say otherwise. Beaufort
4 County, the Fourteenth circuit has -- I looked
5 this morning. We have 10 percent of the
6 outstanding civil matters. There are 43,000,
7 something like that statewide. I think we have
8 roughly 4,000 civil matters. We have two circuit
9 court judges in the Fourteenth circuit and we
10 have me doing as many non-jury matters, jury
11 motions, everything that I can do. And Masters-
12 in-Equity don't have clerks and the fact is, I go
13 as fast as I can with accuracy. And I'm sorry
14 this person, the speed is not good enough for
15 them. I'm doing my best.

16 **Q. Thank you. Judge Dukes, you've indicated in your**
17 **PDQ that a lawsuit was filed against you in 2017**
18 **in the Federal Court by John and Rebecca Nell.**
19 **Please explain the nature and disposition of this**
20 **lawsuit?**

21 A. The Nells sued me under a theory that I was a
22 debt collector. I was the judge in a foreclosure
23 action on a income-producing condominium on
24 Hilton Head. I believe I had ordered a receiver
25 be put in place to collect the rents during the

1 pendency of the action. And they then filed the
2 Federal Court action. It's been dismissed. I
3 believe I sent the dismissal.

4 **Q. Yes, sir. And Judge Dukes, are there any areas**
5 **of the law, including subjective areas, that you**
6 **would need to additionally prepare in order to**
7 **serve as a circuit court judge? And how would**
8 **you handle that additional preparation?**

9 A. I'd like to think I prepare every day for the
10 case that's going to be in front of me for new
11 matters that are going to come up. In this case,
12 as you know, circuit court judge involves a
13 tremendous amount of General Sessions. The
14 amount of General Sessions that I've done over
15 the years as judge is minimal. Again, I've done
16 some pleas, some motions, warrants, that sort of
17 thing. And so I would prepare, as I prepare for
18 every new aspect of any case before me, a little
19 more heavily for the General Sessions portion of
20 it.

21 **Q. Thank you. Judge Dukes, what do you see as the**
22 **biggest challenge facing the circuit court**
23 **system?**

24 A. The importance -- the circuit court system, the
25 judicial department, all of it works because of

1 the perception of the public, fairness and access
2 to judgement, justice rather. And I think we've
3 got to work on that all the time. I don't know
4 if I see one biggest problem. There are some
5 parts of the state that have a backlog of cases.
6 Again, I've mentioned the numbers that we have in
7 Beaufort County. The access to justice. The
8 access, the ability to get a ruling on a case.
9 The ability to know that you could walk into
10 court and have impartial ruling in a reasonable
11 period of time is something that we've always got
12 to watch out for. I don't know if I see one
13 biggest problem. There are always problems that
14 we're looking at, civility in the courtroom.
15 Back to access to justice, we've got the expense,
16 sometimes, it's very - I have pro se litigants
17 come before me a lot, particularly in collection
18 matters, foreclosure matters, where an attorney
19 probably really would have helped them. In fact,
20 they probably wouldn't even be sitting in front
21 of me if they had hired an attorney to begin
22 with. But when you say, did you consult with an
23 attorney or think about seeing an attorney,
24 they'll say, if I had \$10,000 I wouldn't be here.
25 And right now I am on a sub-committee of a

1 committee of the Commission. I'm the lowest
2 person in the totem pole in an effort, access to
3 justice to change, some of the rules to allow
4 what the Bar calls unbundling, allowing a lawyer
5 to represent someone for a part of a case, maybe
6 for a much more affordable amount. And that is
7 something that is in most states now and is
8 working its way to South Carolina. So it's
9 access to justice. It's speedy justice. And
10 it's the perception of the public and the
11 impartiality of the system, I think, that we've
12 got to look at. There are problems in all of
13 that. I don't know if I can pin down one
14 problem, other than the delays inherent in a
15 overburdened judicial system.

16 **Q. Thank you. I have a few housekeeping matters to**
17 **address.**

18 A. Sure.

19 **Q. Judge Dukes, are you aware that as a judicial**
20 **candidate you are bound by the code of judicial**
21 **conduct as found in Rule 501 of the South**
22 **Carolina Appellate Court Rules?**

23 A. I am.

24 **Q. Judge Dukes, Since submitting your letter of**
25 **intent, have you contacted any members of the**

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Commission about your candidacy?

A. I have not.

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

A. No.

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

A. I am not and I'm unaware of any such person.

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

A. I do.

MS. MOTTEL: I would note that The Low Country's Citizens Committee reported Judge Dukes to be well qualified in the evaluative criteria of ethical fitness, professional and academic ability, character, reputation, experience, and judicial temperament. And qualified in the remaining criteria of constitutional qualifications, physical health, and mental stability. Mr. Chairman, I would note for the

1 record that any concerns raised during the
2 investigation by staff regarding Judge Dukes were
3 incorporated into the questioning of the
4 candidate today and I have no further questions.

5 CHAIRMAN SMITH: All right. Thank you very much. Any
6 questions for Judge Dukes? Senator Young.

7 EXAMINATION BY SENATOR YOUNG:

8 **Q. Thank you, Mr. Chairman. Judge Dukes, thank you**
9 **so much for your service to our state to the**
10 **judiciary and for your interest in continuing**
11 **your service as a circuit judge. On one question**
12 **I have is how would you describe your judicial**
13 **philosophy as it relates to the issues and/or the**
14 **facts that present themselves to you on the**
15 **bench?**

16 A. Well, I'm going to repeat myself a little bit in
17 some of the questions.

18 **Q. In the application of the law, those facts and**
19 **issues. I'm sorry if I wasn't clear.**

20 A. Well, my philosophy is as I receive those facts
21 and it begins with the receipt of the facts. I
22 want to make sure that all parties are heard,
23 because I think that goes back to the perception
24 of the public on the impartiality and the
25 fairness of the judicial system itself. And so,

1 my philosophy is to gather the facts as permitted
2 under the rules and apply the law as best as I
3 can through research and what I know.

4 **Q. Is it your belief that the -- you know, what do**
5 **you believe your role is as the judge, in terms**
6 **of reading the statute or reading the case law,**
7 **in particular the statutes and interpreting the**
8 **statutes. How should you --**

9 A. Oh, I think I understand what you're -- at the
10 circuit court level, the job of the judge is to
11 follow the law, not create the law, if that's
12 your question. And so, my role as judge is to
13 either gather the facts and of course, in a non-
14 jury case as you know I'm the finder of fact.
15 And I review the law. And so, in those
16 situations, non-jury cases are mostly what I hear
17 right now. I would listen to the facts and I
18 would apply the law, as-written, both in the
19 statues and in precedent.

20 **Q. All right. So you mentioned that there were**
21 **43,000 civil cases currently filed statewide; is**
22 **that right?**

23 A. It's a rough estimate, but yes, sir.

24 **Q. And about 10 percent of those are in the**
25 **Fourteenth circuit?**

1 A. That's right.

2 Q. You are the Beaufort County Master-in-Equity, do
3 you hear cases that are outside of Beaufort
4 County or as a special circuit judge or just
5 Beaufort County cases?

6 A. Very rarely I will be appointed as special
7 referee for a complex Jasper County case,
8 something like that. But 99., run some 9s out
9 there, percent of what I do is Beaufort County.

10 Q. Now, you have, in your 10 years, I think it's 10
11 years as a Master?

12 A. That's correct.

13 Q. You've been a special circuit judge at times
14 during that entire 10-year period; is that
15 correct?

16 A. The entire time, yes.

17 Q. And have you, do you have any estimate as to the
18 number of complex cases that you've heard in your
19 capacity as a special circuit judge?

20 A. Hundreds in 10 years. I mean, I don't keep track
21 that way. And, of course, the definition of
22 complex can vary. But I've heard numerous cases
23 that involved multiple millions of dollars. I
24 hear them all the time.

25 Q. You hear a fair amount of construction litigation

1 **cases?**

2 A. The trial itself, I don't, because those are
3 almost uniformly jury trial cases. The motions I
4 hear almost all of them, because Judge Mullen
5 conflicts out of most of them, because her
6 husband is involved in that type of litigation.
7 And so I've heard hundreds of summary judgement
8 motions, discovery motions. Basically, every
9 motion you can imagine, save and except for the
10 trial itself in construction litigation cases.

11 **Q. The practice that you were in before you were on**
12 **the bench, I noticed that you were in practice**
13 **with several other lawyers in Beaufort. And then**
14 **it looks like y'all went separate ways and opened**
15 **your own offices; is that right?**

16 A. That's right.

17 **Q. Were you a solo practitioner?**

18 A. I was for a number of years.

19 **Q. I would expect you are familiar with the**
20 **challenges that face lawyers who come from either**
21 **solo practices or from smaller firms, in terms of**
22 **their challenges on their time, especially if**
23 **they litigate, being pulled from court to court,**
24 **deposition to deposition, hearing to hearing?**

25 A. I think -- and if you ask in Beaufort, I think

1 I'm known as someone that is particularly
2 sensitive to those concerns. And my office, we
3 do our best to work with attorneys to work out
4 the most efficient scheduling for everyone.

5 Q. I noticed that you were -- and this is my first
6 year on this Commission, but I noticed that you
7 were a candidate for an at large circuit position
8 in 2013. Did you stay in the race? I don't
9 really --

10 A. I was found qualified and nominated for that
11 position. But the votes weren't there and as you
12 know, at some point it's time to step aside.

13 Q. I may have some additional questions in a moment,
14 but I'll yield. Thanks.

15 CHAIRMAN SMITH: Senator Rankin.

16 EXAMINATION BY SENATOR RANKIN:

17 Q. Judge, Marvin Dukes. I know you as Marvin. We
18 were in law school together. I'm glad to see you
19 up here.

20 A. Thank you, Sir.

21 Q. And obviously I know you. I haven't ever
22 appeared before you. But I am not surprised, but
23 I guess pleased to see the regard that your Bar
24 paints you, high regard your Bar holds you. At
25 least of the 339 folks that took the time to

1 comment about your temperament, experience,
2 reputation, character, ability, ethics, et
3 cetera. All for the most part, very highly rate
4 you as a fair, excellent candidate for circuit
5 court. You have been on the bench full-time for
6 the last 10 years?

7 A. That is correct.

8 Q. And it was part-time appointment before or --

9 A. No, it's been a full-time job for me. As a
10 matter of fact, Beaufort County Master has been a
11 full-time as long as I can remember. Judge
12 Coltrane was two years before me. Judge
13 Kemmerlin, who many of you may have known from
14 law school, was there about 15 years, I believe,
15 before that in a full-time capacity.

16 Q. And you have been screened by the Judicial Merit
17 Selection Committee, both as a --

18 A. Master-in-Equity.

19 Q. -- Master and as a --

20 A. Circuit Court judge.

21 Q. -- Circuit Court. What do you think the
22 challenge would be to shift over to a full-time
23 circuit court position versus what I would call a
24 Special Master with all the motions that you're
25 hearing. What would the difference be in your --

1 A. I mean, honestly, it would be the law on the
2 civil side is almost exactly the same. Rather
3 than being the finder of fact in a trial, I would
4 have the jury for the most part to do that job
5 for me. And it would involve some travel, which
6 actually is not a problem for me. I have enjoyed
7 my time as Master, but I live my life within
8 about a 100 feet of where my office is right now
9 in my working life. And my one child, my wife
10 and my one child is away at school. So it is no
11 problem at all for me to get in the car. And I
12 understand this is an at-large seat and I would
13 be called on to put a suitcase in the car and
14 drive whatever county for two-weeks, that is
15 absolutely no problem for me at this point. By
16 the same token I would be based, of course, like
17 all at-large sets in the county in which I live,
18 Beaufort, where I would be able to handle,
19 hopefully, this backlog of cases. Because,
20 again, we have two judges for the entire
21 Fourteenth Judicial Circuit. We have no part-
22 time retired judges working. We only have two
23 judges for the entire circuit, which is five
24 counties. So we frequently have the expense on
25 the state and the judicial department of

1 traveling judges coming in trying to cut into
2 that backlog. So there's a geographical reason.
3 To answer your question, I don't think the shift
4 would be that difficult.

5 **Q. To pull a jury in and you're there.**

6 A. I'd like to think it would be that easy, it's
7 probably a little more complicated, but, yes,
8 sir.

9 **Q. Past experience in looking at your PDQ, in terms**
10 **of the pre Master position, you did a lot of**
11 **family court. It looks like 70 percent domestic.**
12 **Is that correct, did I read that?**

13 A. That's probably correct. Before I ran for the
14 Master position, I was in sole practice. And
15 small town in Beaufort is growing, but it's still
16 a small town. And was very much a small town 10
17 years ago. As many of you know, sole
18 practitioner, you kind of take what comes in the
19 door. And for the period of time before I took
20 the Master position I was doing a good bit of
21 family court. So that percentage would vary back
22 and forth. I did a good bit of work in front of
23 Judge Kemmerlin, not jury, civil, mechanics lien
24 cases, a variety of things. But that number is
25 probably accurate for over a decade ago.

1 Q. And you've tried cases with a verdict?

2 A. Many, many, many.

3 Q. It's a different day now. We finished 30 years
4 ago. We just had our 30th year anniversary,
5 which seems ancient. And I'm just curious,
6 you've nodded your head in agreement with that,
7 it's different. It's a totally different market,
8 totally different game, I would say. It's --
9 some say good, some say not so good. As a judge
10 in a circuit court, not how -- do you see a
11 different role for a circuit court judge now than
12 had you been elected or succeeded as a family
13 court judge and take that narrow field apart?
14 You've been a judge for 10 years, as a circuit
15 court judge, do you think that there's a
16 different role out there for you than 30 years
17 ago, 20 years ago?

18 A. Well, I mean, the practice, certainly every thing
19 has changed in 30 years. The Bar is much larger
20 in South Carolina. Occasionally we have civility
21 problems in the courthouse. And I mean, and a
22 lot of that springs from television. I think
23 people watch TV trials and that kind of thing.
24 And think that in order to impress their clients
25 with, I'm doing a really good job as a lawyer,

1 they need to get a little loud or that kind of
2 thing. And so, I've civility issues that I do my
3 best to take care of almost immediately that we
4 didn't see in the past. But all in all, I can't
5 think of any tremendous negative, other than just
6 the modernization, the e-filing, that kind of
7 thing. And I think South Carolina, all in all,
8 has a great Bar. I mean, although I'm in
9 Beaufort, I see lawyers from Greenville,
10 Columbia, Horry County, everywhere come to do,
11 particularly the complex litigation motions, the
12 -- you know, that sort of thing. So we've got a
13 good Bar. It's all changed, there are more of
14 us. There are more cases. But, other than some
15 civility issues, I think that the goals are still
16 the same.

17 **Q. One negative that you heard was that you push**
18 **mediation. And I'm not sure how that would be**
19 **perceived as a negative unless the sense is**
20 **you're ducking your responsibility.**

21 A. I can't -- I don't -- you know that I don't know
22 what case that person was referring to or what
23 case it is perhaps they were referring to. So I
24 can't comment, specifically, on what they were
25 talking about. But I've had great success with

1 pushing mediation, which is exactly what the
2 complaint was. I understand that it's my duty to
3 try the case at some point if mediation fails and
4 I always will and always have. But I have found
5 that often times, the mediation that is months
6 before the trial, the parties are not in a
7 position really, to settle and it's a waste of
8 time. But as on the eve of trial when it's
9 impressed on the parties that even once I rule,
10 it could be appealed, this is not, perhaps, the
11 final day in this conflict that's eating them
12 alive and kept them awake at night and cost them
13 tens of thousands of dollars, but it could be.
14 And if they can come up with a settlement that we
15 like to say in my office, makes everyone equally
16 unhappy, the oftentimes we can bring people
17 together and end the case. And I do my best to
18 do that. I think that's the intent of the
19 judicial department and the legislature to have
20 arbitration and mediation when possible.

21 **Q. Mediation.**

22 A. Mediation. But certainly --

23 **Q. Not arbitration.**

24 A. Wealth. There's some case law in arbitration is
25 what I'm talking about.

1 **Q. Finally, in terms of this Bench Bar ballot box**
2 **that I asked you about, do you see that as a**
3 **useful tool to the Judicial Merit Selection**
4 **Committee and should it be regarded?**

5 A. I do. I mean, and for instance, the criticism
6 about local counsel being favored. I mean, that
7 is something I'll take to heart. And I will make
8 darn sure that there's not even the appearance of
9 that happening. Because there's at least one
10 person out there that thinks it is. And that's
11 one person too many. So I think it's a very
12 useful tool.

13 **Q. If the trend is, that would be considered as an**
14 **outlier, exceptional comment.**

15 A. I was glad to hear that.

16 **Q. You could be warned by the fact that the majority**
17 **in all punts say you are overwhelmingly**
18 **qualified.**

19 A. I was gratified to hear that.

20 **Q. All right. That's all I have.**

21 EXAMINATION BY CHAIRMAN SMITH:

22 **Q. Judge Dukes, let me ask you a couple of**
23 **questions.**

24 A. Certainly.

25 **Q. I'm looking through this. Obviously, I**

1 understand you've been a Master-in-Equity for a
2 while and a ton of civil experience. Do you ever
3 handle any criminal cases as a special circuit
4 court judge?

5 A. I was doing guilty pleas two weeks ago.

6 Q. Okay.

7 A. And the circuit court, special circuit court
8 order includes -- and I don't know if y'all would
9 like to see a copy of it. I brought it, it
10 includes General Sessions work, save and except
11 for the trials themselves. So the Supreme Court
12 has essentially put their blessing on me doing
13 every aspect of it, save and except for the
14 trials for the last 10 years.

15 Q. That would answer one of the concerns that I saw
16 expressed on this ballot boxes, saying you're a
17 little heavy-handed on criminal pleas, so how
18 would you respond to that?

19 A. I don't know which side, I guess they mean I
20 over-sentenced someone. I try to be fair. I try
21 to listen to ever aspect of every plea, prior
22 record, everything that's important. And I'm up
23 with the fair sentence. And I suppose it's like
24 any decision that I make or sometimes any of you
25 make. Someone is going to be less happy perhaps

1 than the other side.

2 **Q. When you, obviously, dealing with pleas a lot you**
3 **hear this from time to time and a solicitor comes**
4 **in there and negotiates with a defense attorney.**
5 **And they say we recommend 10 years or five years,**
6 **or whatever the recommendation is, and then you**
7 **have to listen to the facts of the case and see**
8 **and see whether you accept the recommendation.**
9 **In cases where you can't accept the**
10 **recommendation, what do you do, just sentence to**
11 **what you feel is appropriate either up or down or**
12 **do you give the attorney some type of indication**
13 **that you cannot accept the plea?**

14 **A. Well, if it's a negotiation, I would not accept**
15 **the plea. If it's a recommendation, I don't feel**
16 **as though I need to send them away. I think it's**
17 **still -- this is a time when I need to do my job**
18 **and just sentence it, even if I don't follow the**
19 **recommendation.**

20 **Q. So you don't allow the defendants to withdraw**
21 **their guilty plea if they -- if you can't go**
22 **along with the recommendation?**

23 **A. Not if it's not a nego- -- I really haven't run**
24 **into that specific situation. But I have a**
25 **feeling that it would depend on how far apart**

1 they were I would think. But if they had a
2 recommendation -- if they had a negotiated plea,
3 of course, all bets are off.

4 **Q. That's right, because they actually negotiated.**

5 A. But if they had a recommendation, I would
6 probably send them away and give them a moment to
7 think about it. Again, it's difficult without
8 the particular circumstances in front of me and
9 how far apart they might be from what I might
10 want to do.

11 **Q. I'm not familiar with the Fourteenth Circuit. I**
12 **don't go down there a lot, too far from Sumter**
13 **for me to travel there.**

14 A. You should come visit.

15 **Q. I wish they'd pay me to do -- to go there. I'd**
16 **be happy to. But I'm not familiar with what type**
17 **of alternative courts they have down there. But,**
18 **you know, we hear a lot these days about drug**
19 **courts, veterans courts, mental health courts.**
20 **What's your position in regards to those? Have**
21 **you had any interaction with them, find them to**
22 **be of any use to the criminal justice system?**

23 A. I haven't had much interaction with them. I know
24 they -- I know we have a drug court that we had a
25 while, then we didn't have. And I think it's

1 back now. But I'm all in favor of alternative
2 sentencing. I mean, there are plenty of first-
3 time offenders, you know, drug offenders that
4 probably should go through some kind of
5 alternative sentencing. I remember when I was on
6 county council reading what it cost to house a
7 detention center person every night. And
8 thinking, there's some people in there that could
9 maybe could be somewhere else. And I know that
10 the corrections department probably has a number
11 that far exceeds the Beaufort County per night,
12 per inmate number. And then there's the human
13 toll. I mean, you've got people in there for
14 things that maybe they shouldn't be. They're
15 going to lose their house. They're going to lose
16 their kids and that kind of thing. So I'm --
17 when it is warranted and sometimes it's not. But
18 a lot of times it is. I'm all in favor of
19 alternative sentencing, alternative courts.

20 **Q. And I'm sure you have this as Master, but you**
21 **probably have it more so if you're successful**
22 **with this candidacy if -- you would probably be a**
23 **administrative judge for either General Sessions**
24 **or Court of Common Pleas. And lawyers have**
25 **conflicts that they're going to run into from**

1 time to time practicing law, having depositions
2 already set and this motion is going to interfere
3 with the depositions or, you know, even the
4 personal natures of children having some type of
5 ball game that they would like to go see or
6 school program. How are you going handle those
7 type of requests to -- and as it relates to
8 moving a docket and making sure there's just
9 disposition of cases?

10 A. And again, this is where there's not much of a
11 learning curve here, because I've doing exactly
12 that for 10 and a half years. And if you ask the
13 Beaufort County Bar, I think you'll find that I'm
14 known as someone that will do everything he can
15 to work around those things. I mean, they're
16 only, you know, one of the case backups has to do
17 with continued, continuances. So we have to be
18 wary of that, we have to be mindful of that. But
19 -- I understand that there is life outside of the
20 courtroom. I was a sole practitioner. I was in
21 a firm. I've done all of those things. I have a
22 family and so I'm cognizant of that and go the
23 extra mile to try to make sure it is efficiently
24 scheduled for everyone.

25 Q. Okay. Judge, just a comment here and I want to

1 say this. You mentioned you've been a judge for
2 quite some time and to me when I look at these
3 ballot box surveys, they are helpful as I look
4 through this and I -- you know, I think sometimes
5 we obviously are pointing out where people have
6 some issues then. But I want to point out to
7 you, as Senator Rankin did, that you've been on
8 the bench for a long time. You've dealt with the
9 Beaufort County Bar. And when I look at these
10 and these are, you know, the unqualified where
11 you have are at a minimum. And well qualified
12 are exceedingly higher than everyone else. So I
13 want to tell you whatever you're doing down there
14 in Beaufort County, you are doing it well because
15 you're right, you're the finder of fact, as well
16 as a judge of the law and sometimes you can't
17 make everybody happy. But you must be doing
18 fairly well with that. So I want to commend you
19 in that regard on the job you're doing in your
20 current position and so I appreciate the service
21 you're providing.

22 A. Thank you. I would like to take that to the
23 other 45 courthouses at some point, but I
24 appreciate that.

25 CHAIRMAN SMITH: Any further questions of Judge Duker.

1 All right, Judge. Thank you so much. This
2 concludes this portion of your screening process.
3 I want to take this opportunity to remind you
4 that pursuant to the Commission's evaluative
5 criteria, the Commission expects candidate's to
6 follow the spirit, as well as the letter of the
7 ethics laws. And we will view violations or the
8 appearance of impropriety as serious and
9 potentially deserving of heavy weight and
10 screening deliberations. On that note, and as
11 you know, the record will remain open until the
12 formal release of the report of qualifications
13 and you may be called back at such time, if the
14 need should arise. I thank you for your interest
15 in offering for this position and I thank you for
16 your service to the State of South Carolina.

17 JUDGE DUKES: Thank you, Mr. Chairman and thank you
18 members of the Commission.

19 CHAIRMAN SMITH: Have a safe trip back.

20 (Executive Session)

21 CHAIRMAN SMITH: All right. We're coming out of
22 executive session. Mr. Safran moves that we lift
23 the veil and come out of executive session. All
24 in favor say, aye.

25 (Ayes are heard.)

1 CHAIRMAN SMITH: All opposed?

2 (No response is heard.)

3 CHAIRMAN SMITH: Ayes have it. Just for the record,
4 there have been decisions made during executive
5 session and no votes taken. Mr. Hitchcock moves
6 that we adjourn, Mr. Safran seconds. All in
7 favor say, aye.

8 (Ayes are heard.)

9 CHAIRMAN SMITH: All opposed?

10 (No response is heard.)

11 CHAIRMAN SMITH: Ayes have it. We stand adjourned
12 until 9:30 a.m. tomorrow morning.

13 (There being nothing further, the proceeding concluded at
14 8:00 p.m.)

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CERTIFICATE OF REPORTER

I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
CERTIFY THAT I REPORTED THIS PROCEEDING, ON TUESDAY, THE
28TH DAY OF NOVEMBER, 2017, AND THAT THE FOREGOING 149
PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY
STENOMASK REPORT OF SAID PROCEEDING.

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL
THIS 10TH DAY OF DECEMBER, 2017.

JENNIFER NOTTLE, COURT REPORTER
MY COMMISSION EXPIRES JULY 11, 2023