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**HEARING PROCEEDINGS**

*November 16, 2021*

**JUDICIAL MERIT SELECTION COMMISSION**

REPORTER: Patricia Bachand

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 SCOTT TALLEY

12 REPRESENTATIVE J. TODD RUTHERFORD

13 REPRESENTATIVE JEFFERY JOHNSON

14 ANDREW SAFRAN

15 LUCY GREY MCIVER

16 HOPE BLACKLEY

17 PETER STROM

18 ERIN B. CRAWFORD, CHIEF COUNSEL

19 \* \* \* \* \*

20 DATE: November 16th, 2021

21 LOCATION: Gressette Building

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

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25 REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

PAGE:

THE HONORABLE RALPH FERRELL COTHRAN, JR..... 8  
Examination by Dustin Stimson..... 11  
- Chairman Smith..... 14  
- Hope Blackley..... 16  
- Andrew Safran..... 17  
- Senator Sabb..... 20  
- Senator Rankin..... 20  
THE HONORABLE PAUL M. BURCH..... 22  
Examination by Richard Pearce..... 25  
- Chairman Smith..... 31  
- Senator Sabb..... 34  
- Hope Blackley..... 35  
- Andrew Safran..... 36  
- Senator Rankin..... 39  
THE HONORABLE BRIAN M. GIBBONS..... 42  
Examination by Madison Faulk..... 43  
- Chairman Smith..... 47  
- Senator Rankin..... 49  
- Andrew Safran..... 50  
THE HONORABLE MINDY W. ZIMMERMAN..... 53  
Examination by Madison Faulk..... 55  
- Chairman Smith..... 61  
THE HONORABLE DANIEL MCLEOD COBLE..... 64

1 Examination by Sharon Wilkinson..... 66

2 - Representative Rutherford..... 76

3 - Chairman Smith..... 77

4 THE HONORABLE AMY MCCULLOCH..... 80

5 Examination by Maura Baker..... 83

6 - Chairman Smith..... 95

7 - Hope Blackley..... 96

8 - Representative Rutherford..... 97

9 - Pete Strom..... 97

10 KATE WHETSTEON USRY..... 99

11 Examination by Emma Hall..... 101

12 - Senator Rankin..... 106

13 S. BOYD YOUNG..... 110

14 Examination by Roland Franklin..... 112

15 - Pete Strom..... 120

16 CERTIFICATE OF REPORTER..... 126

\* \* \* \* \*

REQUESTED INFORMATION INDEX

(No Information Requested.)

\* \* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX

EXHIBITS:	PAGE:
EXHIBIT NO. 1.....	9
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE RALPH FERRELL COTHRAN,	
JR.	
EXHIBIT NO. 2.....	9
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF	
THE HONORABLE RALPH FERRELL COTHRAN, JR.	
EXHIBIT NO. 3.....	23
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE PAUL M. BURCH	
EXHIBIT NO. 4.....	23
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF	
THE HONORABLE PAUL M. BURCH	
EXHIBIT NO. 5.....	42
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE BRIAN M. GIBBONS	
EXHIBIT NO. 6.....	42
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF	
THE HONORABLE BRIAN M. GIBBONS	
EXHIBIT NO. 7.....	54
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE MINDY W. ZIMMERMAN	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX (CONTINUED):

EXHIBITS:	PAGE:
EXHIBIT NO. 8.....	54
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF THE HONORABLE MINDY W. ZIMMERMAN	
EXHIBIT NO. 9.....	65
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE DANIEL MCLEOD COBLE	
EXHIBIT NO. 10.....	65
- JUDICIAL MERIT SELECTION COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE DANIEL MCLEOD COBLE	
EXHIBIT NO. 11.....	65
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF THE HONORABLE DANIEL MCLEOD COBLE	
EXHIBIT NO. 12.....	81
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF THE HONORABLE AMY MCCULLOCH	
EXHIBIT NO. 13.....	81
- JUDICIAL MERIT SELECTION COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE AMY MCCULLOCH	
EXHIBIT NO. 14.....	81
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF THE HONORABLE AMY MCCULLOCH	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX (CONTINUED):

EXHIBITS:	PAGE:
EXHIBIT NO. 15.....	100
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF KATE WHETSTONE USRY	
EXHIBIT NO. 16.....	100
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF KATE WHETSTONE USRY	
EXHIBIT NO. 17.....	111
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF S. BOYD YOUNG	
EXHIBIT NO. 18.....	111
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF S. BOYD YOUNG	

1 CHAIRMAN SMITH: We're going to on on the  
2 record here and welcome everybody to our Judicial Merit  
3 Selection Commission. And with that Ms. McIver moves that  
4 we go into executive session. All in favor signify by  
5 saying "aye."

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

7 CHAIRMAN SMITH: Opposed?

8 (Hearing none.)

9 CHAIRMAN SMITH: The ayes have it. We're in  
10 executive session.

11 (Off the record.)

12 CHAIRMAN SMITH: We're on the record. Mr.  
13 Safran moves that we come out of executive session. All in  
14 favor signify by saying "aye."

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

16 CHAIRMAN SMITH: All opposed?

17 (Hearing none.)

18 CHAIRMAN SMITH: The ayes have it. We are  
19 out of executive session. Let me state while we were in  
20 executive session there were no votes taken and no matters  
21 decided.

22 Judge Cothran, welcome. How are you doing  
23 this morning?

24 JUDGE COTHRAN: Thank you. I'm doing great.

25 CHAIRMAN SMITH: Will you raise your right



1 hand, please, sir.

2 JUDGE COTHRAN: Yes, sir.

3 WHEREUPON,

4 RALPH FERRELL COTHRAN JR., being duly sworn  
5 and cautioned to speak the truth, the whole truth and  
6 nothing but the truth, testifies as follows:

7 CHAIRMAN SMITH: Judge Cothran, before you,  
8 you have your personal data questionnaire and your -- let  
9 me get to you. I'm not prepared for you right now.

10 JUDGE COTHRAN: That's okay.

11 CHAIRMAN SMITH: Your personal data  
12 questionnaire and your sworn statement. Are both those  
13 documents that you have submitted to the Commission?

14 JUDGE COTHRAN: Yes, sir.

15 CHAIRMAN SMITH: Are they both correct?

16 JUDGE COTHRAN: Yes, sir.

17 CHAIRMAN SMITH: Any changes or updates that  
18 need to occur?

19 JUDGE COTHRAN: Not that I know of.

20 CHAIRMAN SMITH: Do you have any objection  
21 to us making those as part of your record of your sworn  
22 testimony here today?

23 JUDGE COTHRAN: No.

24 CHAIRMAN SMITH: Without objection. Will  
25 you give them to Lindi for me, please, sir, and she will

1 mark those as an exhibit to your sworn testimony.

2 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION  
3 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
4 HONORABLE RALPH FERRELL COTHRAN JR.)

5 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION  
6 COMMISSION SWORN STATEMENT OF THE HONORABLE RALPH  
7 FERRELL COTHRAN JR.)

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

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

22 JUDGE COTHRAN: Okay. I have enjoyed  
23 serving the people of South Carolina in my capacity. It's  
24 been really great. I appreciate this commission. This is  
25 the fourth time I've been before you all. You got a tough

1 job. But I think we've got the best judges anywhere in the  
2 country. And, you know, I consider it a privilege to serve  
3 this state and serve the Legislature and to serve you all.

4 I've enjoyed being on the bench. And,  
5 basically, everybody that comes before me wants the same  
6 thing, they want to be heard and understood. And I have  
7 done my best to do that, to give everybody an opportunity  
8 for me to hear and to understand what they're telling me.

9 And usually I find out when you give people  
10 that opportunity, they're satisfied. Because somebody  
11 loses every time they come before me, but usually when you  
12 give them -- it's those who get frustrated who think you  
13 have not heard them or not understood them.

14 So that's how I have practiced since I've  
15 been on the bench, is give everybody an opportunity to be  
16 heard and understood. And when you do that, even when you  
17 don't do what they tell you or you rule against them, they  
18 seem to be satisfied. And I understand that. I'm the same  
19 way. Everybody's the same way.

20 And I found out everybody that tells you  
21 something, it makes sense to them -- and sometimes it  
22 doesn't make sense to me but it makes sense to them, so I  
23 try to ask them to be sure that I understood what they're  
24 telling me. And that's how I've tried to practice as a  
25 judge throughout the state is to give everybody that

1 opportunity. And so far it seems to work. You know, I'm  
2 sure I get it wrong sometimes, but I do my best.

3 CHAIRMAN SMITH: Thank you, Judge Cothran.  
4 Will you answer questions from your screening attorney,  
5 please, sir.

6 EXAMINATION BY MR. STIMSON:

7 Q. Good morning, Judge Cothran.

8 A. Good morning.

9 Q. What do you think your reputation is among the  
10 attorneys that practice before you?

11 A. I hope it's good. I mean, that's very important  
12 to me, to give them just what I said, the opportunity to be  
13 heard and understood. And we have a lot of great attorneys  
14 in this state who do a really good job, who represent their  
15 clients. And, you know, many times you're in an  
16 adversarial situation and tempers can flare. I try to keep  
17 things calm and let them have opportunity to be heard and  
18 understand what they're telling me.

19 So I hope it's good. I mean, you know, that's  
20 one thing about being a judge, everybody lies to you in  
21 that no -- you know, they tell you what they think you want  
22 to hear. I understand that. They laugh at your jokes  
23 whether they're funny or not, and they pay all this  
24 attention.

25 And so, really, it's important to go through this

1 screening, 'cause I really find out when it's anonymous  
2 what they really do think of about me. 'Cause you don't  
3 know the truth when you're sitting there. But I think  
4 that's a good thing, that somebody can say what they want  
5 to about you without, you know, fear of any reprimand. So  
6 I hope it's good.

7 **Q. Thank you, sir. And what do you think your**  
8 **reputation is among the court personnel that you work with?**

9 A. I think it's really good. I enjoy the staff and  
10 the clerk staff in every county. I treat them with respect  
11 and I think the world of them. I made great friends. And  
12 I certainly hope I've never been short or rude to any of  
13 them.

14 **Q. Judge Cothran, the Commission received 583 ballot**  
15 **box surveys regarding you, with 44 additional comments.**  
16 **The ballot box survey contained the following positive**  
17 **comments as examples:**

18 "Great judge. Even-tempered. Fair and  
19 intelligent. An outstanding judge with great judicial  
20 temperament. A true asset to our judiciary."

21 Two out of those 44 written comments expressed  
22 some concern. Those two comments shared a similar tone,  
23 and they suggest that you can be unfair, possibly  
24 exhibiting favoritism and bias. What response would you  
25 offer to those concerns?

1           A.    Well, obviously, they didn't feel like I listened  
2 to them and understood them. And I hope that wasn't the  
3 case. But sometimes, you know, I think people get so  
4 enthralled in their situation, if you rule against them  
5 they just can't deal with it. I'm not sure why. And I  
6 hope that I certainly wasn't rude.

7                       Sometimes with Pro Se people -- you know, I've  
8 had some sovereign citizens and others who have been very  
9 difficult. And no matter what I do, I can't make them  
10 happy. So I don't know.

11           **Q.    Thank you, Judge Cothran.**

12                       MR. STIMSON: I would note that the Pee Dee  
13 Citizens Committee found Judge Cothran qualified in the  
14 evaluative criteria of constitutional qualifications,  
15 physical health and mental stability. The Pee Dee Citizens  
16 Committee found him well qualified in the evaluative  
17 criteria of ethical fitness, professional and academic  
18 ability, character, reputation, experience, and judicial  
19 temperament.

20 BY MR. STIMSON:

21           **Q.    I just have a few more housekeeping issues for**  
22 **you, Judge. Since submitting your letter of intent, have**  
23 **you contacted any members of the Commission about your**  
24 **candidacy?**

25           A.    No.

1 Q. Are you familiar with Section 2-19-70, including  
2 the limitations on contacting members of the General  
3 Assembly regarding your screening?

4 A. Yes.

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

9 A. No.

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

14 A. No, sir.

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

18 A. I have and I do.

19 MR. STIMSON: I would just note for the  
20 record that any concerns raised during the investigation  
21 regarding Judge Cothran were incorporated into the  
22 questioning of him today. Mr. Chairman, I have no further  
23 questions.

24 CHAIRMAN SMITH: Thank you very much. Judge  
25 Cothran, I apologize for this, but I've got to -- I got a

1 Fiscal Accountability Authority, I got to get on Zoom right  
2 now. But I do want to comment one thing. And with telling  
3 especially the sitting judges this is -- as you all may  
4 know, temperament, we think, is one of the most valued  
5 attributes and characteristics of a judge, and something  
6 that we take a hard look at.

7 And so when I look at your temperament  
8 rating, I just -- you know, we're going criticize and we're  
9 going to compliment. And here's a -- here's an opportunity  
10 for us to compliment you, is you have zero unqualified on  
11 temperament. And to find judges that hadn't ticked off  
12 some lawyer and given a anonymous ballot survey is a  
13 testament to the great work that you're doing.

14 Mr. Sabb and I routinely practice in front  
15 of you. I wish more -- I wish I was in court more often  
16 than I am. But I want to tell you, you have -- you have  
17 served this state and served the judicial branch with  
18 integrity and honesty. You have a well deserved reputation  
19 around the state as being a fair judge.

20 I look at these and it says, "Go-to judge."  
21 And that's exactly right. You know, we always have to call  
22 you sometimes to do that, and to accommodate the parties or  
23 to have settlement hearings and things to that effect, and,  
24 Judge, you never say "no."

25 So I thank you, personally. And I think the



1 Bar of the State of South Carolina thanks you for the great  
2 job you do. And so I know this is probably your last time  
3 before us, but I appreciate the work you do. And I hope  
4 you keep up the great job in the remaining part of your  
5 tenure. Thank you for your service.

6 JUDGE COTHRAN: Thank you, sir.

7 CHAIRMAN SMITH: And I'm going to turn it  
8 over to Senator Rankin. Yes, sir.

9 SENATOR RANKIN: Questions of Judge Cothran?  
10 Yes, ma'am.

11 MS. BLACKLEY: I just have a comment. Hi,  
12 I'm Hope Blackley. I'm a former clerk of court in the  
13 Upstate. And I want to say how wonderful it is to see two  
14 fellow colleagues who've written wonderful letters in  
15 regards to your character and what you've done in your  
16 judgeship. So that speaks a lot.

17 Because I don't think people realize the  
18 brunt of what staff gets, depending on the attitude of a  
19 judge. And it can be horrible sometimes. So thank you for  
20 being that person and being that judge who seems to care  
21 about everybody that comes in.

22 And your comment struck a bigger cord -- I'm  
23 probably going to get it wrong, but you said something --  
24 when people say things, they believe it. But you -- you  
25 know, what was it that you stated?

1 JUDGE COTHRAN: Every time somebody tells me  
2 something, they believe what they say. And, you know, they  
3 understand what they say. Sometimes I don't always  
4 understand what they say, but I ask them about it. Giving  
5 them the chance to be heard and understood is what  
6 everybody wants in every aspect of life.

7 MS. BLACKLEY: I don't know if too many  
8 people have that type of outlook for others. And that  
9 speaks to your character. So thank you for what you've  
10 done and what you do.

11 JUDGE COTHRAN: Thank you.

12 CHAIRMAN SMITH: So, apparently, I'm wrong.  
13 The Governor must have cancelled the Fiscal Accountability  
14 Authority meeting. Any further questions? Mr. Safran.

15 MR. SAFRAN: Judge, I haven't had the  
16 pleasure of appearing in front of you. But I agree when I  
17 go down these ballot boxes -- and, you know, people can  
18 pretty well say what they want to say, 'cause there's not  
19 anybody shining a light on them when they do it. But to  
20 see consistently, "pleasure," "even-tempered," "genuine  
21 gentleman," I think what you show is what we strive to kind  
22 of impress upon people, which is you can be a wonderful  
23 judge and you can maintain control of a courtroom without  
24 getting dictatorial, you know, without basically making  
25 folks feel somehow just ill at ease to come in.

1                   And, you know, you're one of the ones that,  
2 again, you ought to hold up as a model. Because we want  
3 folks that basically are willing to do exactly what you  
4 said: Listen, make an informed decision.

5                   And as you're saying, not everybody's going to  
6 win. But at least to be able to walk out of a courtroom  
7 and -- you know, you can always have the 24 hours to bitch  
8 about it, but then after that to say, "You know what, I get  
9 it. I may not agree completely, but I get it." That's all  
10 anybody wants.

11                   And not to criticize anybody else, but,  
12 obviously, we see from across the state, a lot of different  
13 comments that come in. And I guess the only thing I'd ask  
14 you is this. You don't just practice in the 3rd Circuit --  
15 or excuse me -- you don't just hold court there, you go  
16 around the state. Have you had any issues in other  
17 circuits maintaining decorum, maintaining control of the  
18 courtroom when you've run into the other Bars?

19                   JUDGE COTHRAN: No. I'm in Lexington right  
20 now, I got a hundred cases waiting on me, and I have  
21 traveled every circuit in the state. You know, you treat  
22 -- I do everything I can -- and the worst thing I think a  
23 judge can do is embarrass somebody. And I do everything I  
24 can to keep from embarrassing anybody in my courtroom.

25                   I can hear their case, I can rule, and I

1 don't have to embarrass them. I have a lot of power with  
2 that robe on, and the best thing I can do is never use it.

3 MR. SAFRAN: Well, and I guess just the last  
4 thing is this. Obviously, you practiced for a lot of years  
5 before you went on the bench, and I'm assuming you went in  
6 front of some judges that maybe you didn't want to  
7 necessarily copy.

8 JUDGE COTHRAN: No, I've been embarrassed a  
9 lot.

10 MR. SAFRAN: And I guess isn't reasonable  
11 and isn't really something we would all hope to expect that  
12 when somebody elevates to be on the bench, that they're not  
13 going to forget the lashings they take over the years, and  
14 hope that they ain't going to do that to somebody else?

15 JUDGE COTHRAN: I don't remember every case  
16 I won, but I remember every time I was embarrassed in a  
17 courtroom. And so I don't want to ever do that to anybody  
18 else. From the court reporter to the assistant clerk to  
19 the biggest lawyers in there, I don't want to embarrass  
20 anybody.

21 MR. SAFRAN: Well, Your Honor, thank you for  
22 your candor. And, also, thank you for really an exemplary  
23 record. And, again, maybe we'll have to find a way to --  
24 to bring you back and turn you back into 55 again so we'll  
25 have a few more years. Thank you.

1 JUDGE COTHRAN: Thank you.

2 CHAIRMAN SMITH: Senator Sabb.

3 SENATOR SABB: Just a couple of comments.

4 And I'll just say that there's nothing about Judge  
5 Cothran's performance on the bench that surprises any of us  
6 who got to know him back in the lawyer-practicing days. Of  
7 course, he and I were both assistant solicitors for the 3rd  
8 and --

9 CHAIRMAN SMITH: For Wade Kolb.

10 SENATOR SABB: Yeah, for Wade Kolb. We made  
11 Wade really, really -- we saved him in Clarendon and in  
12 Williamsburg. He never had anything to worry about, by and  
13 large, because of the character of folks like Judge  
14 Cothran. And so I just say that you've made all of us  
15 proud. And just keep up the good work.

16 JUDGE COTHRAN: Thank you so much.

17 CHAIRMAN SMITH: Senator Rankin.

18 SENATOR RANKIN: "Wise as a serpent but  
19 innocent as a dove," so sayeth not the Lord, but your  
20 preacher, Jared Hammett. Is that right? Am I pronouncing  
21 that correctly?

22 JUDGE COTHRAN: I didn't know he had done  
23 that.

24 SENATOR RANKIN: Well, you've kicked him and  
25 you have loved him, apparently, but I can't find better

1 words that really encapsulate these comments. And so to  
2 Murrell Smith's point, to have nary not one person raise an  
3 issue about your temperament is, as someone else has  
4 written about you, exemplary.

5 And so that's -- and your preacher says you  
6 also had a good heart. And so that is showing in  
7 everything that you do. And the people that you are  
8 holding court for appreciate you're wearing that robe  
9 lightly. And we do too. Thank you.

10 JUDGE COTHRAN: Thank you.

11 CHAIRMAN SMITH: I would point out, lastly,  
12 that he did succeed Tommy Cooper. So we've just had the  
13 same type of discussions with him, so you learned from the  
14 best.

15 JUDGE COTHRAN: I can't fill those shoes.  
16 That's like following Bear Bryant. I'm not close to Tommy,  
17 but he set a great example for me to follow. And he's --  
18 you know, he's a super person.

19 CHAIRMAN SMITH: Well, you're filling his  
20 shoes fairly well, so don't discount yourself. All right.  
21 With that being said, no further questions?

22 (Hearing none.)

23 CHAIRMAN SMITH: Judge Cothran, thank you  
24 for participating today. And let me remind you, too, that  
25 pursuant to the Commission's evaluative criteria, the

1 Commission expects candidates to follow the spirit as well  
2 as the letter of the ethics laws, and we will view  
3 violations or the appearance of impropriety as serious and  
4 potentially deserving of heavy weight in the screening  
5 deliberations.

6 As you may be aware, the record will remain  
7 open until the formal release of the report of  
8 qualifications and you may be called back at such time if  
9 the need arises.

10 I thank you for offering for this position.  
11 I thank you for your service to the State of South  
12 Carolina. I hope you're able to get in a deer stand or a  
13 dove field later this afternoon.

14 JUDGE COTHRAN: I don't think I'm going to  
15 make it. They got too much for me to do in Lexington. But  
16 I appreciate it. Thank you so much.

17 CHAIRMAN SMITH: Thank you. Good to see  
18 you.

19 JUDGE COTHRAN: Thank you.

20 (Candidate excused.)

21 CHAIRMAN SMITH: Good morning, Judge. How  
22 are you? Judge Burch, will you raise your right hand,  
23 please, sir.

24 WHEREUPON,

25 PAUL M. BURCH, being duly sworn and

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

3 CHAIRMAN SMITH: Judge Burch, we've got  
4 before you your personal data questionnaire and your sworn  
5 statement. Are both those documents that you have  
6 submitted to the Commission?

7 JUDGE BURCH: Yes, sir.

8 CHAIRMAN SMITH: Are they correct?

9 JUDGE BURCH: I looked over them. Unless  
10 something changed, it's correct.

11 CHAIRMAN SMITH: I hope nothing changed.  
12 Any changes or updates you're going to need to make to  
13 that?

14 JUDGE BURCH: No, sir.

15 CHAIRMAN SMITH: Do you mind us marking  
16 those as an exhibit to your sworn testimony here today?

17 JUDGE BURCH: That's okay.

18 CHAIRMAN SMITH: Hand that to Lindi for me,  
19 please, sir.

20 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION  
21 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
22 HONORABLE PAUL M. BURCH)

23 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION  
24 COMMISSION SWORN STATEMENT OF THE HONORABLE PAUL  
25 M. BURCH)



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

10                   There have been no affidavits filed today in  
11 opposition to your candidacy and no witnesses are here to  
12 testify. Do you wish to make a brief opening statement to  
13 the Commission?

14                   JUDGE BURCH: I'll keep it very brief.

15                   CHAIRMAN SMITH: Thank you.

16                   JUDGE BURCH: First of all, I want to thank  
17 the Commission, especially the Commission staff and  
18 Counsel, for the courtesy and the patience you have shown  
19 me during this reelection process for me.

20                   Counsel Crawford, I'm going to tell you that  
21 you have a crown jewel on your staff, and that's Lindi  
22 Putnam. I so much appreciate her courtesy in helping us  
23 through this process. It's a pleasure to be here. And I  
24 look forward to answering any questions that any of you  
25 have.

1                   And I guess the first question I can  
2 probably guess will be: "Why do you want to continue after  
3 thirty years?" Well, all of you know that I'm 67. And  
4 even though I'm not the youngest, age-wise, I'm your senior  
5 circuit judge. I've enjoyed my tenure. There's been some  
6 ups and downs.

7                   But I've had too many friends to retire and  
8 they have passed away within a year. In fact, I lost my  
9 best friend several years ago, and he retired in March and  
10 they buried him in July. And as long as I can keep my good  
11 health, I would like to continue to serve for you.

12                   I think with everything that's going on in  
13 Washington with the division we got, and now the pandemic  
14 has caused all kind of problems for all of us, we need  
15 stability. And I hope my past record shows that I can be a  
16 stable servant for you, if I'm reelected.

17                   My health, as far as I know, is good. And  
18 I'll certainly be willing to serve on for a few more years.

19                   CHAIRMAN SMITH: Thank you, Judge Burch.  
20 Will you answer questions from your staff counsel, please.

21 EXAMINATION BY MR. PEARCE:

22                   **Q. Good morning, Judge Burch.**

23                   A. Good morning, sir.

24                   **Q. What do you think your reputation is amongst the**  
25 **attorneys and court personnel that you've worked with on**

1 **cases and court matters?**

2 A. Well, I hope it's good. You know, the 4th  
3 Circuit is not the largest, population-wise. And the  
4 geographic, I'm pretty sure it's a -- it has to be the  
5 largest, geographic-wise. And we don't have that many  
6 attorneys in several of the smaller counties, like Marlboro  
7 and Dillon, but I've always gotten along good with those.

8 And in the last few years, I haven't worked  
9 outside the circuit a whole lot. Because all of you know  
10 that Judge Henderson had the eye problem, and his  
11 replacement unfortunately had some bad news but is doing  
12 much better.

13 So I've been the Chief Administrative Judge now  
14 for -- I think five or six years. And I've had a good  
15 working relationship not only with the attorneys, but all  
16 the clerks of court. So I feel like with the process you  
17 all have set up, if somebody had a problem with me, they'd  
18 be letting you know.

19 Q. Along those lines, Judge, this Commission has  
20 received as many as 556 ballot box survey participants  
21 regarding you, with 58 additional comments being provided.  
22 The ballot box survey, for example, contained the following  
23 examples amongst the 57 positive comments that were made  
24 about you:

25 "One of our best judges. Solid, fair, patient,

1 attentive, well respected, professional, courteous, kind,  
2 and an advocate of judicial efficiency."

3 One of the written comments expressed a concern  
4 that, quote, "He does not engage on complex matters. One  
5 cannot determine whether he understands the issues or cares  
6 about them." Unquote.

7 What response would you offer to this concern?

8 A. I'm going -- I'm going to consider that as a  
9 positive response because of the situation we find  
10 ourselves in over in the 4th Circuit.

11 Some of you that have kept up with the press know  
12 that Dillon County is one of our smallest counties. Three  
13 weeks ago we had three murders in one week, and then  
14 another murder the next week. That's four murders in less  
15 than two weeks. So with the situation with my fellow  
16 judges and the dilemma they found themselves in with their  
17 health issue, I have tried my best to keep our heads above  
18 water with the criminal case load.

19 And I've asked Tiffany to help us, as much as she  
20 can, to get me some help over on the civil side. But I can  
21 tell you, very frankly, that we're in good shape on the  
22 civil side.

23 So I think, probably, in looking at in a positive  
24 light, I know of two incidences that could have caused that  
25 comment. One of which was a case -- that comment had to

1 have come from something in the last six years. Otherwise,  
2 six years ago you would have heard that comment. So I  
3 think it's -- it had to be something recent.

4 And I know that we had numerous attorneys  
5 involved in some complex case that qualified it for the  
6 business court, you know, several of our judges have taken  
7 the classes and been, I guess, certified to do that. And I  
8 know that we got -- Judge Roger Young, I believe, was the  
9 one that came in and took over that. So that could be  
10 where that came from.

11 And the other possibility is something that I  
12 can't control. My wife can control it. We've had several  
13 -- we've had not only -- you know, she's on the school  
14 board and we've had some cases, but I don't believe it has  
15 anything to do with the school board.

16 I think the other possibility that caused that  
17 comment may be the McBee election case that went all the  
18 way to the Supreme Court two years ago, maybe three. I had  
19 to recuse myself in that case, and I feel like some of  
20 those attorneys wanted me to handle that.

21 And I just couldn't do it because my wife is the  
22 economic development director for Chesterfield County, and  
23 she had to work with the two competing candidates in that  
24 election. And I did not want to expose her to any undue  
25 pressure and in any way cause her problems.

1           So I just feel like that was somebody that was  
2 disappointed in me not handling those two particular cases.  
3 Because you think about it, in the last thirty years, a  
4 slew of you all would have been in court with me. And I  
5 hope I'm not improper in saying that, because you know my  
6 demeanor. And I believe in letting the lawyers do their  
7 thing.

8           I was told several years ago by a fellow circuit  
9 judge out of Alabama, he told me -- he said, "A judge just  
10 needs to know seven words, and use those words. And if you  
11 go beyond that, you're asking for trouble." And that was,  
12 "Order, sustained, overruled, granted, denied, recess, and  
13 adjourned." He said, "If you say anything more than that,  
14 you're asking for trouble."

15           So my philosophy is the judge's -- the judge's  
16 job is not that difficult if you will let the attorneys do  
17 the work. Sit back. And then when when you're asked to  
18 rule on something, do it. Otherwise, keep your mouth shut.  
19 So that's the philosophy I try to follow. Sometimes I  
20 can't do it, but that's what I try to do.

21           And I'm going to tell you, I'm convinced -- just  
22 like a recent South Carolina Bar president said, and I've  
23 heard him repeat it several times, "I'll stack the Bar of  
24 this state and the judiciary of this state up against any  
25 Bar and judiciary in the other 49 states." And I mean

1 that.

2 **Q. Judge, thank you.**

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

10 BY MR. PEARCE:

11 **Q. Judge Burch, since submitting your letter of**  
12 **intent, have you contacted any members of the Commission**  
13 **about your candidacy?**

14 A. No, sir.

15 **Q. Are you familiar with South Carolina Code Section**  
16 **2-19-70, including the limitations on contacting members of**  
17 **the General Assembly regarding your screening?**

18 A. Yes, sir, I am.

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

22 A. No, sir.

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

1 your behalf?

2 A. I have not.

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

6 A. I have.

7 MR. PEARCE: As a note to the Commission,  
8 since Judge Burch's last screening two lawsuits are pending  
9 at this time. Our investigation revealed them to be Pro Se  
10 Informa Pauperis inmate cases that name Judge Burch, but  
11 those pleadings have not been served on Judge Burch. I  
12 confirmed that with him in my investigation, and my  
13 investigation has revealed no cause for concern in either  
14 suit that is pending at this time.

15 And with that, Mr. Chairman, I would just  
16 note for the record that any concerns raised during the  
17 investigation regarding Judge Burch have been incorporated  
18 into the questioning and comments made today. And Mr.  
19 Chairman, I don't have any further questions.

20 CHAIRMAN SMITH: Thank you very much. Judge  
21 Burch, we started off -- we started the morning off fairly  
22 well with -- Judge Cothran preceded you, and then we have  
23 you. And one thing this Commission takes into great  
24 consideration is judicial temperament. And that's an issue  
25 that we believe is probably one of the most valuable assets



1 or attributes of a judge.

2           And so when we go through and we look at  
3 these ballot box surveys. And, you know, they're obviously  
4 anonymous and nobody -- you know, you can't really refute,  
5 don't know who said them. So when they're negative, I know  
6 sometimes they're hard to refute.

7           But when you look at these that are -- that  
8 are positive like yours -- I mean, you have probably more  
9 comments than any judge I've seen on here, and they're  
10 replete with just about the same thing: "Fair, gentleman,  
11 hard worker." Just everything we're looking for in a judge  
12 is contained within these comments. And that's a testament  
13 to your wonderful service, to the way you conduct yourself  
14 in the courtroom, and to how you treat everybody.

15           But the one that was most important to me that I  
16 just read, Judge, said that you treat the clerks, the  
17 staff, the court staff, the jurors, lawyers, bailiffs,  
18 everybody with such dignity and respect.

19           And so, Judge, for that, you know, we --  
20 'cause sometimes you receive criticism when you go through  
21 this process, and sometimes you receive praise. And let me  
22 tell you, you deserve the praise you're getting there. And  
23 I'll just tell you, keep up the good work, that you set a  
24 high bar for those who are following you as being the  
25 senior statesman of the judiciary, so to speak.

1           You're doing a wonderful job. And I want to  
2 thank you for your service to the State of South Carolina.

3           JUDGE BURCH: Thank you, Mr. Chairman. You  
4 know, you learn something new every day. And I learned a  
5 long time ago that if you're going to have to say something  
6 to an attorney that gets out of line, go back in chambers.  
7 It's been a long time since I've had to do that, which  
8 speaks well for the caliber of our Bar.

9           It's like I told the Bar members over the --  
10 over the Webex the other week, they asked me the one thing  
11 that I was concerned about, and I said I've always been  
12 concerned about more experienced attorneys -- I hate the  
13 term, to the word "railroad" -- but I guess the simplest  
14 way to say it, to be rude to our younger attorneys.

15           Because you know, even though they're more  
16 -- they know more law than any of us will ever know again,  
17 right before they take that Bar. So they know a lot, but  
18 yet they don't have courtroom experience.

19           And, you know, that's always irritated me a  
20 little bit, to see a younger attorney treated rudely. But,  
21 you know, if that gets out of hand, let's go back and talk  
22 about it.

23           But, Mr. Chairman, I appreciate your  
24 comments. I'm very humbled. And if you all see fit to  
25 keep me in this position for a few more years, I'll do my

1 best to try to see that justice is done.

2 CHAIRMAN SMITH: Well, thank you for that.  
3 Any further questions? Senator Sabb.

4 SENATOR SABB: Mr. Chairman, thank you. And  
5 my favorite one from the ballot box is that Judge Burch's  
6 character and temperament are above reproach, tough when he  
7 needs to be, but always fair.

8 And I tried a case in front of Judge Burch,  
9 one of my first ones, it had to be back in the early '90s,  
10 so you were probably just getting on the bench. And you  
11 probably don't remember the case, but it was a horrible  
12 case where a stepfather was abusing the kids. And after we  
13 convicted him, Judge Burch looked at him and asked him  
14 whether or not he had anything to say. And the guy said,  
15 "Your Honor, I loved the kids too much."

16 And Judge Burch looked at him and said, "You  
17 are a sick man." Of course you loaded him up, which I  
18 appreciated. 'Cause I always felt that if he was free,  
19 none of our children were safe.

20 And I've just had incredible experiences  
21 with you, as have the jurors. And I think that I'm a  
22 better lawyer as a result of appearing before judges like  
23 you. And, quite frankly, if it was appropriate when you  
24 came into the room, we probably would have just given you a  
25 standing ovation for the job that you're doing. So thank

1 you. We appreciate you.

2 JUDGE BURCH: Thank you, Senator. I  
3 remember one time being in Williamsburg, and I think you  
4 were assistant solicitor maybe.

5 SENATOR SABB: Yes, sir. Yes, sir.

6 JUDGE BURCH: And do you remember the guy  
7 that was back in that full courtroom, that belched out  
8 loud? And we had a -- I had the sheriff's department put  
9 him on the -- on the breathalyzer, and he registered  
10 something like 18.

11 SENATOR SABB: I remember that. I remember  
12 that. You just let him cool off for a little while -- let  
13 him cool off for a little while in the pokey. And he was  
14 fine after that, I believe.

15 JUDGE BURCH: One day when I retire, I'm  
16 going to try to get with my niece who is an editor for a  
17 publishing company, and we're going to try to get together  
18 and write a book, maybe. If I can get her to help me.

19 CHAIRMAN SMITH: Ms. Blackley.

20 MS. BLACKLEY: I think there's something to  
21 be said for support staff who gets excited when a judge is  
22 visiting. And it's like undescrivable when it's somebody  
23 like you and everybody's just super-excited. And I've  
24 heard that, being a former clerk, "Judge Burch is coming."  
25 And just nothing but positiveness around. So it's

1 appreciated. And I wanted to share that with you.

2 Because more times than not you always hear  
3 the negative, especially when you have visiting judges, of  
4 their reputation. But yours exceeds in positivity. So  
5 thank you for what you've done, and your outlook. And it  
6 means a lot.

7 Temperament is huge. And you obviously get  
8 it, especially when it comes to young lawyers and not  
9 embarrassing them. I think it's hard on everybody to sit  
10 and watch something like that happen. And, you know, they  
11 don't mean any harm but they're in process of learning.

12 But your reputation precedes you. And I  
13 just want you to know that, as a former staffer of the  
14 courts, there's nothing but positive things that have been  
15 said about your coming and your work.

16 JUDGE BURCH: Thank you, Madame  
17 Commissioner.

18 CHAIRMAN SMITH: Mr. Safran.

19 EXAMINATION BY MR. SAFRAN:

20 Q. Judge, we appreciate you being here. And I  
21 haven't had the pleasure, but I know you've been around for  
22 quite a while.

23 What I guess the Chairman said really cannot be,  
24 I guess, overstated is that we look at these circumstances  
25 and these ballot boxes. And, again, it's an easy shot to

1 take at people. And so there's no repercussion, you can  
2 say anything you want. And it can have some devastating  
3 effects. And the fact that people are saying what they're  
4 saying really rings very loudly. It means a lot.

5 And the thing that really impressed me, just in  
6 the few comments it's -- someone basically pointed out, "He  
7 never forgot what it was like to be a lawyer and never let  
8 the robe get too heavy."

9 And I know that, unfortunately, while everybody  
10 goes on the bench with the best of intentions, those things  
11 happen. And I know that you've been around the state. And  
12 for some reason there seems to be some sense, at least  
13 implicitly, that there's just Bars around the state that  
14 you got to literally as a judge take out your whip and your  
15 chair.

16 But I don't see that happening with you. I mean,  
17 have you been able to maintain decorum, behaving the way  
18 you've had. I haven't seen that, that's ever changed, has  
19 it?

20 A. It could be that the word has spread around,  
21 "Don't mess with Judge Burch." You know, those years I  
22 practiced law, things were different back then. And, you  
23 know, about all the circuit judges back then were very  
24 helpful.

25 But I remember one time coming down here to

1 Columbia and going before a certain federal judge  
2 representing the Town of Pageland -- gosh, I didn't think I  
3 was going to get out of that courthouse over there alive.

4 And that made an impression me, you know, treat  
5 everybody that's in that courtroom, if you were in that  
6 same position, that you would want to be treated.

7 Q. Well, I mean, you're echoing what -- the few  
8 times I've asked it, is that as a lawyer you remember when  
9 people really take it out on you. And I think what you've  
10 retained, which is wonderful, is the fact that you never  
11 forgot it, and you said, "I'm not doing this to somebody  
12 else."

13 And from what I'm understanding is, you can  
14 maintain that demeanor and still keep control. Isn't that  
15 pretty much what thirty years has done for you?

16 A. Yes, sir. And I've got three children, and most  
17 of you know that two of them are attorneys and the middle  
18 one is a SLED agent. So if I get out of line, I'm going to  
19 catch it at home before anybody else gets on me.

20 So they've had a lot of influence on me, because  
21 I want them to behave themselves and act properly in court.  
22 And I hope -- I know I've raised them right. And if I  
23 don't, then they're going to go back in chambers with me.

24 Q. Well, we appreciate it. It really is an  
25 outstanding job. And you do set an example that a lot of

1 folks really would gain a lot by following. And I  
2 appreciate your being here.

3 A. Thank you, Commissioner.

4 CHAIRMAN SMITH: Senator Rankin.

5 SENATOR RANKIN: Judge Burch, this exchange  
6 that you had with Chairman Smith earlier, I want to echo.  
7 It invoked something that I read by accident in a business  
8 journal, where they're highlighting this fellow's success,  
9 Charles Schwab Company, and how he had climbed the ranks.  
10 And one of the questions was, "What lessons did you learn  
11 in college?"

12 He relates that he had through his senior  
13 year a 4.0 average. He had one particularly difficult  
14 class -- ten-week class in some business strategy, and that  
15 was the last test he had to take to get a 4.0 average in  
16 college.

17 He'd done all the work and studied. And  
18 everybody comes into the class. They sit down, and the  
19 professor says, "I've taught you everything I know in the  
20 last ten weeks. The test is before you. And you all can  
21 turn over the paper now."

22 So he turns over the paper and it's a blank  
23 sheet of paper. And he says to them as they finally  
24 collect themselves, "What is the name of the person who  
25 cleans this building?"



1                   He didn't get it. The only test he failed.  
2 He did not get a 4.0 average out of school. Her name was  
3 Dotty. It was a lesson he said, as he looked back in life,  
4 that he never forgot: Pay attention to the people who do  
5 the real work and who count.

6                   And you, with this comment that Murrell  
7 asked you about, hit that mark. And that speaks to me  
8 because you are a people-person and you appreciate and  
9 emote and relate to people, high or low. And that just  
10 speaks volumes.

11                   And it's not a shock. I know who are you  
12 are and I know your walk. And it's just nice to see in  
13 combination with all the other wonderful things they said  
14 about your ability as a judge. So kudos to you.

15                   JUDGE BURCH: Thank you, Senator.

16                   CHAIRMAN SMITH: Any further questions?

17                   (Hearing none.)

18                   CHAIRMAN SMITH: Judge Burch, again,  
19 appreciate your service. The only negative thing I can say  
20 about you is, I think you hired Patrick Cont one year to be  
21 your clerk. And I don't know how you survived that year.  
22 I didn't -- I barely survived two years of college with  
23 him.

24                   JUDGE BURCH: Aren't we entitled to one  
25 mistake?

1                   CHAIRMAN SMITH: Well, I appreciate your  
2 service. And, again, thank you. And keep up the good  
3 work. And we look forward to hopefully seeing you in the  
4 courtroom, sooner rather than later.

5                   Judge Burch, let me take this opportunity to  
6 remind you that pursuant to the Commission's evaluative  
7 criteria, the Commission expects candidates to follow the  
8 spirit as well as the letter of the ethics laws. And we  
9 will view violations or the appearance of impropriety as  
10 serious and potentially deserving of heavy weight in the  
11 screening deliberations.

12                   As you're aware, the record will remain open  
13 until the formal release of the report of qualifications  
14 and you may be called back at such time if needed. I  
15 appreciate your service to the State of South Carolina and  
16 thank you for being here today.

17                   JUDGE BURCH: Thank you, Mr. Chairman. I  
18 will exit if I can get my head through this door.

19                   CHAIRMAN SMITH: Safe travels back to  
20 Pageland.

21                   (Candidate excused.)

22                   CHAIRMAN SMITH: Judge Gibbons, good  
23 morning.

24                   JUDGE GIBBONS: Good morning.

25                   CHAIRMAN SMITH: I appreciate you being here

1 today. Judge, will you raise your right hand, please, sir.

2 WHEREUPON,

3 BRIAN M. GIBBONS, being duly sworn and  
4 cautioned to speak the truth, the whole truth and nothing  
5 but the truth, testifies as follows:

6 CHAIRMAN SMITH: Judge Gibbons, before you  
7 is your personal data questionnaire and your sworn  
8 statement. Are these both documents that you've submitted  
9 to the Commission?

10 JUDGE GIBBONS: They are.

11 CHAIRMAN SMITH: Are they both correct?

12 JUDGE GIBBONS: They are.

13 CHAIRMAN SMITH: Any updates or changes that  
14 need to be made?

15 JUDGE GIBBONS: No, sir.

16 CHAIRMAN SMITH: Any objections to those  
17 becoming a exhibit to your sworn testimony here today?

18 JUDGE GIBBONS: None.

19 CHAIRMAN SMITH: If you'll hand those to  
20 Lindi for us, please, sir.

21 (EXHIBIT NO. 5 - JUDICIAL MERIT SELECTION  
22 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
23 HONORABLE BRIAN M. GIBBONS)

24 (EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION  
25 COMMISSION SWORN STATEMENT OF THE HONORABLE BRIAN

1 M. GIBBONS)

2 CHAIRMAN SMITH: Judge, as you're aware, the  
3 Judicial Merit Selection Commission has thoroughly  
4 investigated your qualifications for the bench. Our  
5 inquiry is focused on the nine evaluative criteria. In  
6 addition, we have reviewed your ballot box survey,  
7 conducted a thorough study of your application materials,  
8 verification of your compliance with state ethics laws, a  
9 search of newspaper articles in which your name appears, a  
10 study of previous screenings, and checks for economic  
11 conflicts of interest.

12 We've received no affidavits in opposition  
13 to your election and there are no witnesses present to  
14 testify. Do you wish to make a brief opening statement to  
15 the Commission?

16 JUDGE GIBBONS: No, I'll be glad to answer  
17 any questions you all have.

18 CHAIRMAN SMITH: Answer questions that your  
19 screening attorney may have for you, please, sir.

20 JUDGE GIBBONS: All right.

21 EXAMINATION BY MS. FAULK:

22 Q. Good morning, Judge.

23 A. Good morning.

24 Q. After serving about eight years or so on the  
25 Circuit Court, why do you want to continue serving as a

1 **Circuit Court judge?**

2 A. I love what I do. I love my community. I love  
3 my state. I love the public service of being a judge. I  
4 truly believe it was what I was meant to do.

5 **Q. What do you think your reputation is among the**  
6 **attorneys that practice before you?**

7 A. My opinion, I'd like to think that I have a -- I  
8 have a very good reputation. I always get along with all  
9 the lawyers who appear in front of me. I run, I think, a  
10 very good, relaxed courtroom, but at the same time a very  
11 respectful courtroom.

12 And I enjoy, you know, holding court the way I  
13 hold court. I think I have a good -- I think I have a good  
14 reputation. At least I hope that's what the ballot box  
15 survey said.

16 **Q. Judge, the Commission has received 615 ballot box**  
17 **surveys, with 43 survey comments. Some examples of these**  
18 **comments includes as follows:**

19 "Excellent, well-rounded judge with topnotch  
20 judicial temperament. Amazing temperament. Very  
21 intelligent and respectful to all. A true asset to the  
22 circuit bench. Judge Gibbons is an excellent example of  
23 what a Circuit Court judge should strive to be. He is  
24 knowledgeable, professional and courteous, but stern when  
25 needed."

1           **Three comments indicated some concerns. Two of**  
2 **the negative comments questioned the wisdom of some of your**  
3 **decisions, and implied that some of your decisions might be**  
4 **rushed. How might you respond to such concerns?**

5           A.    You know, I try to call it as I see it, the best  
6 I can. I try to issue prompt and thoughtful decisions.  
7 You know, prior to my being in the Circuit Court bench I  
8 was on the Family Court bench, where you have to make, you  
9 know, a lot of decisions pretty quickly.

10           I understand that concern. But again, I trust my  
11 gut. And I feel confident that usually my gut's correct.  
12 If I have an issue with something, obviously, I don't mind  
13 taking something under advisement and thinking about it  
14 longer.

15           And of course I've -- there's been instances in  
16 my career where I've granted motions to reconsider, alter,  
17 or amend if I thought maybe I did rush something or get it  
18 wrong.

19           But, you know, I just kind of would weigh that --  
20 those two, I guess, negative comments against the positive  
21 comments. You know, I certainly -- I try not to rush  
22 judgment on anything and I try to think about something.  
23 But I usually trust my gut.

24           **Q.    Thank you, sir.**

25           MS. FAULK: I would note that the Piedmont

1 Citizens Committee found Judge Gibbons to be well qualified  
2 in the evaluative criteria of ethical fitness, professional  
3 and academic ability, character, reputation, experience,  
4 and judicial temperament. The Committee also found Judge  
5 Gibbons to be qualified in the evaluative criteria of  
6 constitutional qualifications, physical health and mental  
7 stability.

8 The Citizens Committee included the  
9 following comments, "Judge Gibbons brings to the bench a  
10 degree of wisdom, thoughtfulness and common sense that  
11 reflects his significant experience as both a Family Court  
12 judge and Circuit Court judge. His substantial involvement  
13 in his community and his long tenure as a jurist are  
14 compelling evidence of his deep commitment to public  
15 service. He is an excellent Circuit Court judge."

16 BY MS. FAULK:

17 Q. I'm just going to ask some housekeeping questions  
18 next, and then you will finished hearing from me. Judge  
19 Gibbons, since submitting your letter of intent, have you  
20 contacted any members of the Commission about your  
21 candidacy?

22 A. No, I have not.

23 Q. Are you familiar with Section 2-19-70, including  
24 the limitations on contacting members of the General  
25 Assembly regarding your screening?

1 A. Yes.

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

6 A. I have not.

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

11 A. I have not, and nor am I aware.

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

15 A. Yes.

16 MS. FAULK: I would just note for the record  
17 that any concerns raised during the investigation regarding  
18 the candidate were incorporated into the questioning of the  
19 candidate today. Mr. Chairman, I have no further  
20 questions. Thank you.

21 JUDGE GIBBONS: Thank you.

22 CHAIRMAN SMITH: Thank you very much. Judge  
23 Gibbons, I'll tell you as we've told the previous judges  
24 that appeared in front of us, demeanor and temperament are  
25 probably some of the most important qualities that this



1 Commission sees and judges. And so I think it's important  
2 when we go through this, that we have that discussion with  
3 the judges about what their reputation is for demeanor and  
4 temperament.

5           And when we look through these -- and I know  
6 we got to take them with a grain of salt when you have  
7 ballot box surveys, they're anonymous surveys. But they  
8 are an indicator to us as to what your reputation is on the  
9 bench, especially when you have positive reviews through  
10 this. That tells us people who don't really have any  
11 consequences of talking negative about a judge could  
12 usually do that. And you see some crazy -- crazy ones of  
13 these.

14           But when I look through yours -- you have  
15 under the "Qualified for Temperament" there is -- there is  
16 one person out of 400-plus. And but the one that -- I just  
17 lost my place on here. The one that really struck a chord  
18 with me is -- it says, "He's a great guy. He's always nice  
19 to have as your judge. Too many people forget the demeanor  
20 of the judges is what people see and remember well beyond  
21 the decisions that they make. And I will never forget his  
22 demeanor in the way he treated the people in the  
23 courtroom."

24           So, Judge, you know, sometimes these are --  
25 these are places where you can get criticism, and sometimes

1 this is a place where you can get praise. And you get the  
2 praise today for setting a standard for judges in this  
3 state.

4 And I really appreciate that, and I know  
5 this Commission does, is having judges that uphold the  
6 integrity of the judiciary. And that's not by how you rule  
7 all the time. It's about how you treat people, you treat  
8 court staff, how you treat the litigants, how you treat the  
9 jurors and how you treat the attorneys.

10 And, apparently, you're doing a wonderful  
11 job at that. And so we appreciate your service. We thank  
12 you for holding up ideals of the judicial system, and  
13 representing them so well in the manner that you do.

14 So I personally want to thank you. And I  
15 know this Commission does. And keep up the good work.

16 JUDGE GIBBONS: Thank you, Mr. Chairman. I  
17 appreciate that.

18 CHAIRMAN SMITH: Any questions for Judge  
19 Gibbons? Senator Rankin.

20 SENATOR RANKIN: Judge Gibbons, I haven't  
21 appeared before you, but I -- again, we've look through and  
22 we try to see themes, I guess, and whether -- again, the  
23 outlier that one person out of hundreds that have commented  
24 on you, whether there is a theme of that. And happily for  
25 you, the reputation that think you have is borne out by

1 what folks are anonymously saying about you as well.

2 And so I see a great sense of humor, folks  
3 talking about you. But one thing particularly of note to  
4 me is the giving side that you have in this South Carolina  
5 -- I can't hardly say "Clemson" -- this Clemson letter by  
6 your friend David Fleming, how you give of yourself to the  
7 Palmetto Boys State, and your longtime engagement with  
8 them, and recognizing your duty to give back.

9 And so I want to commend you for that. My  
10 son went through that and got to be a counselor, I think  
11 one summer, for whatever brief period of time, and  
12 likewise, enjoyed it. So all that you all do, all that you  
13 do, we thank you for it.

14 JUDGE GIBBONS: Thank you, Senator. I  
15 appreciate that.

16 CHAIRMAN SMITH: Mr. Safran.

17 EXAMINATION BY MR. SAFRAN:

18 Q. Judge, it's good to see you again.

19 A. Yes, sir.

20 Q. The thing that I think we all focus on, as the  
21 Chairman said, is where folks ascend to the bench and they  
22 remember where they came from. I read in these things  
23 that, that hadn't been lost on you.

24 How important is it as a judge, to remember how  
25 things were when you were a lawyer when you're more or less

1 sitting up a little bit above everybody else and kind of  
2 having the -- kind of have control of the situation? I  
3 mean, how important is it --

4 A. I think it's vital. I mean, I think that's a  
5 great question. You know, you have to remember where you  
6 came from. I mean, I don't -- certainly, I don't take this  
7 job for granted.

8 I mean, I love what I do. But at the same time  
9 you have to -- when I was practicing law, I remember times  
10 when, you know, I may have been embarrassed by my  
11 performance and the judge let me know. 'Cause we're all  
12 human and make mistakes, and I never wanted to embarrass a  
13 lawyer in front of his or her client. And 'cause I  
14 remember, you know, that feeling, and so I've always tried  
15 hard to do that.

16 And so, yeah, I remember where I came from. And  
17 I'm going to make sure a lawyer is treated fairly and  
18 impartially, just like everybody else.

19 Q. Well, and let me ask just a follow-up along those  
20 lines. You've now had an opportunity to travel the state a  
21 little bit. Is there any Bar you've run into where you  
22 couldn't keep control of the courtroom without giving up  
23 the benefit of keeping a very relaxed and respectful  
24 demeanor?

25 A. No, there's been times where, you know, you get

1 frustrated, just like we all -- we all do, okay? And so  
2 some places -- some courthouses, I don't want to answer  
3 unless you specifically make me answer. Some Bars are more  
4 frustrating, let's use that word, better than others.

5 But it's -- you know, I try to handle it with as  
6 much grace as I can and with as much humility as I can.  
7 And I see the that, that usually works better than, you  
8 know, standing up and shouting or, you know, being that  
9 guy. 'Cause I'm just -- that's not me. I'm not that guy.

10 **Q. I appreciate your comments. Thank you.**

11 **A. Yes, sir. Thank you.**

12 CHAIRMAN SMITH: Any further questions?

13 (Hearing none.)

14 CHAIRMAN SMITH: Judge Gibbons, I appreciate  
15 you being here today. And thank you. I want to take this  
16 opportunity to remind you that pursuant to the Commission's  
17 evaluative criteria, the Commission expects candidates to  
18 follow the spirit as well as the letter of the ethics laws,  
19 and we will violations or the appearance of impropriety as  
20 serious and potentially deserving of heavy weight in the  
21 screening deliberations.

22 As you may be aware, the record will remain  
23 open until the formal release of the report of  
24 qualifications and you may be called back at such time if  
25 it becomes necessary.

1                   Otherwise, thank you for your service and  
2 thank you for being here today. And I wish you safe  
3 travels back to where you're holding court this week.

4                   JUDGE GIBBONS: Thank you very much. Thank  
5 all of you. Good to see you.

6                   (Candidate excused.)

7                   CHAIRMAN SMITH: I see you got a guest.  
8 Would like to introduce your guest?

9                   JUDGE ZIMMERMAN: Yes. This is my husband,  
10 Don Zimmerman.

11                  CHAIRMAN SMITH: Hey, Don. Welcome. How  
12 are you doing today?

13                  MR. ZIMMERMAN: Good. How are you all?

14                  CHAIRMAN SMITH: We're doing well. Judge,  
15 please raise your right hand.

16                  WHEREUPON,

17                  MINDY W. ZIMMERMAN, being duly sworn and  
18 cautioned to speak the truth, the whole truth and nothing  
19 but the truth, testifies as follows:

20                  CHAIRMAN SMITH: All right. Judge  
21 Zimmerman, before you, you have your personal data  
22 questionnaire and your sworn statement. Are those both  
23 documents you've submitted to the Commission?

24                  JUDGE ZIMMERMAN: Yes, sir.

25                  CHAIRMAN SMITH: And are they both correct?

1 JUDGE ZIMMERMAN: Yes, sir.

2 CHAIRMAN SMITH: And are there any changes  
3 or updates that need to be made?

4 JUDGE ZIMMERMAN: No, sir.

5 CHAIRMAN SMITH: Any objections to those  
6 being made as a exhibit to your testimony here today?

7 JUDGE ZIMMERMAN: No, sir.

8 CHAIRMAN SMITH: All right. Without  
9 objection. If you'll hand them to Lindi for me, please.

10 (EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION  
11 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
12 HONORABLE MINDY W. ZIMMERMAN)

13 (EXHIBIT NO. 8 - JUDICIAL MERIT SELECTION  
14 COMMISSION SWORN STATEMENT OF THE HONORABLE MINDY  
15 W. ZIMMERMAN)

16 CHAIRMAN SMITH: Judge Zimmerman, as you're  
17 aware, the Judicial Merit Selection Commission has  
18 thoroughly investigated your qualifications for the bench.  
19 Our inquiry is focused on the nine evaluative criteria. In  
20 addition, there has been a ballot box survey, a thorough  
21 study of your application materials, verification of your  
22 compliance with state ethics laws, a search of newspaper  
23 articles in which your name appears, a study of previous  
24 screenings, and checks for economic conflicts of interest.

25 There have been no affidavits filed in

1 opposition to your testimony and no witnesses are here to  
2 testify today. Do you wish to make a brief opening  
3 statement to the Commission?

4 JUDGE ZIMMERMAN: I Just want to thank you  
5 Commission for the five years -- almost five years that I  
6 have served in this capacity. And I look forward to  
7 answering any of your questions.

8 CHAIRMAN SMITH: Thank you very much.  
9 Answer questions that your staff attorney may have for you,  
10 please, ma'am.

11 EXAMINATION BY MS. FAULK:

12 Q. Good morning, Judge.

13 A. Good morning.

14 Q. After serving close to five years on the Family  
15 Court, why do you want to continue serving as a Family  
16 Court judge?

17 A. This has truly been an honor for me. I feel like  
18 that I am in a position to have an impact on people's  
19 lives. I take this responsibility very seriously. And I  
20 personally feel like that I've done a good job in trying to  
21 help the families that come to me with, really, very  
22 difficult situations. And I want to keep doing that work.

23 Q. Thank you, ma'am. Since your last screening a  
24 lawsuit was filed against you in 2018, in the District  
25 Court by Gary Thomas and Ferris Harvley, which appears to



1 be a civil rights action. Can you please tell us a little  
2 bit about the nature and disposition of that lawsuit?

3 A. Certainly. I have a file that I brought with me  
4 on that. Is it okay if I reference it?

5 CHAIRMAN SMITH: Yeah, absolutely.

6 A. Perfect. So this matter originally started when  
7 Ms. Harvley filed a lawsuit against the Department of  
8 Social Services in Laurens County. She asked for an ex  
9 parte emergency hearing which I granted. And that hearing  
10 was before me on June 19th of 2018.

11 At that time, Ms. Harvley alleged in her private  
12 action in Family Court, that DSS had kidnapped her  
13 children. At the hearing what came out is that Ms. Harvley  
14 had attempted to overdose on some sleeping pills, and when  
15 she got to the hospital she also tested positive for  
16 methamphetamine and she was alone with her children.

17 Law enforcement and DSS responded to the scene,  
18 and considered placing the children under emergency  
19 protective custody. Instead, Ms. Harvley asked that her  
20 sisters be given temporary custody of the children. And so  
21 they signed a safety plan.

22 Ms. Harvley somehow construed that as DSS taking  
23 her children. And so at the hearing in front of me, she  
24 indicated she no longer intended to comply with the safety  
25 plan, and that she was going to take her children back.

1           She also indicated on the record that she was  
2 still using methamphetamine, and made several references to  
3 what she believed were the health benefits of that  
4 substance, which led me to eventually place the children  
5 under emergency protective custody from the bench.

6           So I signed an order placing them in the custody  
7 of the Department. The Department continued placement with  
8 the sister instead of moving them in foster care.

9           Ms. Harvley was at the time engaged in a  
10 relationship with Mr. Gary Thomas. Mr. Thomas alleged that  
11 I furthered the kidnapping by the Department of Social  
12 Services when I placed the children in their care.

13           He filed that lawsuit. I don't believe I was  
14 ever served with the lawsuit, but the caseworker was. And  
15 as soon as she told me about it, I notified court  
16 administration who assisted in getting counsel for me. I  
17 filed a motion to dismiss. And I believe he appealed and  
18 it was likewise dismissed.

19           And I did not -- in addition, I did not report a  
20 complaint by Mr. Thomas. He sent me something indicating  
21 that he had filed a complaint with the Commission on  
22 Judicial Conduct and the Office of Disciplinary Counsel.  
23 But neither of them ever notified me of a complaint. So I  
24 don't know if a complaint happened, but I did want to  
25 disclose that he told me he had filed one.

1           Q.    Thank you very much, Judge.  What do you think  
2 your reputation is among the attorneys that practice before  
3 you?

4           A.    I believe I have a positive reputation.  I  
5 believe that I have a reputation for being a hard worker.  
6 I try to make myself available, as much as possible, to  
7 move cases and to try to ensure that people have access to  
8 the system.

9           Q.    Judge Zimmerman, the Commission received 415  
10 ballot box survey responses, with 42 survey comments.  Some  
11 examples of the comments included the following:

12                       "Judge Zimmerman is a passionate and committed  
13 advocate for the children in this state, and a true asset  
14 to the bench.  Very fair, professional, and dedicated to  
15 the position.  She also presided over one of our most  
16 difficult cases and was not intimidated.  Judge Zimmerman  
17 has done an outstanding job and has tried to make the  
18 Family Court a better place for lawyers and litigants.  It  
19 is a pleasure to appear before her."

20                       Seven comments expressed some concerns.  Of  
21 these, five referenced issues with judicial temperament.  
22 How would you address any concerns that your temperament  
23 may not be appropriate?

24           A.    So I will say when I first took the bench there  
25 is a shift in going from being a zealous advocate to being

1 a neutral. And I do believe that it -- you know, over  
2 time, I have gotten better.

3 I also will readily admit that I am tough on DSS.  
4 I believe DSS has a very important job, but I also try to  
5 make sure that their cases stay moving, and that children  
6 don't languish in foster care.

7 So I do believe that I -- that I'm neutral. And  
8 I believe that I try to be polite to everybody. But I will  
9 take those comments as constructive criticism, that, that  
10 may be something I need to continue to work on.

11 **Q. Thank you, ma'am.**

12 MS. FAULK: I would note that the Piedmont  
13 Citizens Committee reported that Judge Zimmerman is  
14 qualified in the evaluative criteria of constitutional  
15 qualifications, physical health and mental stability. The  
16 Citizens Committee further found Judge Zimmerman to be well  
17 qualified in the evaluative criteria of ethical fitness,  
18 professional and academic ability, character, reputation,  
19 experience, and judicial temperament.

20 The Committee commented, "Judge Zimmerman's  
21 boundless energy and enthusiasm for her work as a Family  
22 Court judge was striking to the Committee. She has  
23 accepted and excelled in a wide range of professional and  
24 community engagements while a Family Court judge, all of  
25 which reflect an inexhaustible work ethic and a commitment

1 to excellence. The Committee believes that Judge Zimmerman  
2 is an outstanding Family Court judge."

3 BY MS. FAULK:

4 Q. Judge, I'm just going to move through a couple of  
5 housekeeping issues, and then that will be it for me.

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

8 A. No.

9 Q. Are you familiar with Section 2-19-70, including  
10 the limitations on contacting members of the General  
11 Assembly regarding your screening?

12 A. Yes.

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

17 A. No.

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

22 A. No.

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

1           A.     Yes.

2                         MS. FAULK:  I would just note for the record  
3 that any concerns raised during the investigation regarding  
4 this candidate were incorporated into my questioning of the  
5 candidate today.  Mr. Chairman, I have no further  
6 questions.

7                         CHAIRMAN SMITH:  Thank you very much.  Judge  
8 Zimmerman, let me start off just by saying, what we're  
9 telling all the sitting judges, this Commission is very  
10 attuned to what the temperament and the demeanor of a judge  
11 is, especially a sitting judge, when we go through this.  
12 So we're carefully scrutinizing that from experiences as  
13 well as from the ballot box surveys.

14                         And I know the ballot box surveys are not  
15 always conservative.  Because people make them anonymously,  
16 and it's easy to throw stones when you don't have your name  
17 associated with it.  But the one thing that strikes me, and  
18 I'll say this is -- you know, we give criticism sometimes,  
19 and praise.  And this is a time we say "thank you" and "job  
20 well done."

21                         And when we look at your temperament is --  
22 you know, especially in the temperament, I think out of all  
23 these there's just a handful of them that say you're  
24 unqualified.  And the overwhelming -- the vast majority of  
25 them all say that you are highly qualified with your

1 temperament. And so I appreciate that -- or well  
2 qualified, not highly qualified. But I appreciate the job  
3 you're doing in your short tenure over there. You're  
4 setting an example for everybody.

5 The comments that I read are vastly, again,  
6 just saying what a great job you're doing, how  
7 accommodating you are and how fair you are. And that's all  
8 we ask that you be, is you be fair and you treat the staff,  
9 you treat the attorneys, you treat the litigants all with  
10 dignity and respect. And apparently you're doing that. So  
11 I want to tell you a job well done and keep it up.

12 JUDGE ZIMMERMAN: Thank you, Mr. Chairman.

13 CHAIRMAN SMITH: Any other questions?

14 (Hearing none.)

15 CHAIRMAN SMITH: And by the lack of  
16 questions, that tells you you're doing a good job. So  
17 Judge Zimmerman, I want to take this opportunity to remind  
18 you that pursuant to the Commission's evaluative criteria,  
19 the Commission expects candidates to follow the spirit as  
20 well as the letter of the ethics laws. And we will view  
21 violations or the appearance of impropriety as serious and  
22 potentially deserving of heavy weight in the screening  
23 deliberations.

24 As you're well aware, the record will remain  
25 open until the formal release of the report of

1 qualifications and you may be called back at such time if  
2 the need arises. I thank you for your service and thank  
3 you for being here today.

4 JUDGE ZIMMERMAN: Thank you so much.

5 CHAIRMAN SMITH: Safe travels.

6 JUDGE ZIMMERMAN: You all have a great day.

7 CHAIRMAN SMITH: All right. You too.

8 (Candidate excused.)

9 CHAIRMAN SMITH: Let's take a break, if we  
10 would. Mr. Safran moves that we go into executive session.  
11 All those in favor signify by saying "aye."

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

13 CHAIRMAN SMITH: All opposed?

14 (Hearing none.)

15 CHAIRMAN SMITH: We are in executive  
16 session.

17 (Off the record.)

18 CHAIRMAN SMITH: We're back on the record.  
19 And Mr. Strom makes a motion that we come out of executive  
20 session. All in favor signify by saying "aye."

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

22 CHAIRMAN SMITH: All opposed?

23 (Hearing none.)

24 CHAIRMAN SMITH: The ayes have it. Let me  
25 state while we were in executive session there were no



1 votes taken nor any matters decided. Mr. Strom, I think  
2 you've got something to place on the record.

3 MR. STROM: I do. Thank you, Mr. Chairman.  
4 I want to put on the record that Mr. Coble is a tenant in  
5 my office, sharing a portion of my building. We've had no  
6 discussion about this race at all. In fact, we haven't had  
7 any discussion, I think, since he's moved in.

8 I passed him in the lobby one time when he  
9 was meeting with one of his clients, and we said, "Hello."  
10 So that's the extent of any contact I've had with him,  
11 directly or indirectly, about any of that. I wanted to put  
12 that on the record for the purposes of these hearings.  
13 Thank you, Mr. Chairman.

14 CHAIRMAN SMITH: Thank you, Mr. Strom.

15 (Off-the-record discussion.)

16 CHAIRMAN SMITH: Raise your right hand.

17 WHEREUPON,

18 DANIEL MCLEOD COBLE, being duly sworn and  
19 cautioned to speak the truth, the whole truth and nothing  
20 but the truth, testifies as follows:

21 CHAIRMAN SMITH: Thank you very much.

22 Before you is your personal data questionnaire and your  
23 sworn statement. Are both those documents you have  
24 submitted to the Commission?

25 JUDGE COBLE: Yes, sir, that's correct.

1 CHAIRMAN SMITH: And are they correct?

2 JUDGE COBLE: They are correct. Yes, sir.

3 CHAIRMAN SMITH: Any updates or changes you  
4 need to make at this time?

5 JUDGE COBLE: No, sir.

6 CHAIRMAN SMITH: Do you have any objection  
7 to us marking those as exhibits to your sworn testimony  
8 here today?

9 JUDGE COBLE: No objection.

10 CHAIRMAN SMITH: Without objection. And  
11 will you hand them to Lindi to me, please, sir. We'll make  
12 those a part of the record.

13 (EXHIBIT NO. 9 - JUDICIAL MERIT SELECTION  
14 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
15 HONORABLE DANIEL MCLEOD COBLE)

16 (EXHIBIT NO. 10 - JUDICIAL MERIT SELECTION  
17 COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF  
18 THE HONORABLE DANIEL MCLEOD COBLE)

19 (EXHIBIT NO. 11 - JUDICIAL MERIT SELECTION  
20 COMMISSION SWORN STATEMENT OF THE HONORABLE  
21 DANIEL MCLEOD COBLE)

22 CHAIRMAN SMITH: Mr. Coble, the Judicial  
23 Merit Selection Commission has thoroughly investigated your  
24 qualifications for the bench. Our inquiry, as you know, is  
25 limited to the nine evaluative criteria, but also includes

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

6 There have been no affidavits filed in  
7 opposition to your candidacy and there are no witnesses  
8 here to testify. Do you wish to make a brief opening  
9 statement to the Commission?

10 JUDGE COBLE: Just briefly, thank you for  
11 the opportunity to be here. I look forward to your  
12 questions. Thank you.

13 CHAIRMAN SMITH: Thank you very much.  
14 Please answer the questions from staff counsel, please.  
15 Screening attorney. Sorry.

16 MS. WILKINSON: Thank you, Mr. Chairman. I  
17 note for the record that based on the testimony contained  
18 in the candidate's PDQ, which has been included in the  
19 record with Mr. Coble's consent, that he meets the  
20 constitutional and statutory requirements for this position  
21 regarding age, residence, and years of experience.

22 EXAMINATION BY MS. WILKINSON:

23 **Q. Mr. Coble, how do you feel your legal and**  
24 **professional experience thus far renders you qualified and**  
25 **will assist you to be an effective Circuit Court judge?**

1           A.    Well, thank you, Ms. Wilkinson.  And over the  
2 past decade, nearly, I've been in public service.  I  
3 started as an assistant solicitor here in the 5th Circuit,  
4 handling a wide range of criminal offenses.

5                   I second-seated several murder trials, other  
6 trials as well, burglaries, armed robberies, drug cases.  
7 And every day I felt like I was in the courtroom.  The 5th  
8 Circuit rarely took weeks off, so I was able to get in a  
9 courtroom, see attorneys, see judges and get that  
10 experience.

11                   My proudest achievement and accomplishment at the  
12 solicitor's office was being a part of the South Carolina's  
13 first Homeless Court.  We tried to help some of the -- one  
14 of the biggest population here in Columbia, the homeless,  
15 and trying to effect change.  We did a lot of good work, so  
16 I was proud of that effort working with the public  
17 defenders, Nelson Mullins, and municipal court here.

18                   After leaving the solicitor's office, I spent  
19 four years as a full-time magistrate judge here in Richland  
20 County.  It's one of the largest court systems --  
21 Magistrate Court systems in the state.  And we handled both  
22 criminal and civil.

23                   So I saw everything from the DUI, domestic  
24 violence, speeding tickets, false checks, shoplifting.  And  
25 on the civil side we saw personal injury cases, contract

1 cases, car accidents, contract disputes that you can all  
2 imagine were a wide range of issues. I handled it all.

3 And so I saw a lot and got to meet a lot of great  
4 people, see a lot of attorneys in action. I presided over  
5 dozens of jury trials on the civil side to a verdict, with  
6 attorneys on both sides really seeing how the system works,  
7 how the rules apply in real life. You know, it's not just  
8 on the book, but how it actually -- the application.

9 After a year, I was promoted to the Associate  
10 Chief Judge in Richland County, where I handled not only my  
11 courtroom but also administrative duties. And as you can  
12 imagine, that involved -- I wouldn't say disciplining the  
13 other judges, but talking with them.

14 And so that was difficult but it part of the  
15 process. It was a good learning experience about how to  
16 handle workers, schedules, calendars and judges, and  
17 keeping up with the law, keeping up with your courtroom,  
18 keeping up with your docket. I did that for four years.  
19 It was an honor to serve.

20 This past August, I retired as a magistrate and  
21 opened my own law practice, the Coble Law Group. It's a  
22 solo practice. As Mr. Strom said, I'm located off of North  
23 Trenholm Road.

24 And I handle a wide range of cases. You know, as  
25 you can imagine when you start your practice, you'll take

1 whatever comes in the door. So I'm focusing on DUI  
2 criminal. But I can say, you know, truthfully, that I've  
3 been a prosecutor, a judge, a criminal defense attorney, a  
4 plaintiff's lawyer, and now a civil defense attorney. So  
5 I'm kind of -- I've taken what I can get.

6 It's been fun and exhilarating, but also nerve-  
7 racking. You know, the experience you get being in private  
8 practice -- I remember last year chairman -- Chris Murphy  
9 asked me the question about, you know, How do you know what  
10 it's like to be -- when I ran last year, to be a private  
11 practice, to know that stress?

12 And I knew it from being a solicitor. But I can  
13 tell -- and as you all imagine, it's quite different when  
14 you're representing that client, that pit in your stomach  
15 when the judge takes the bench and you don't know what's  
16 going to happen. You're not just representing the state or  
17 someone else, but it's that client who paid you a lot of  
18 money, at least to them, and you're responsible for them.

19 So I got that pit in my stomach, kind of like  
20 today. But it's a good nervous and it kind of motivates  
21 you. And I may continue taking what comes in the door and  
22 learning the best that I can. And I hope that experience -  
23 - not just for me, my experience, but for my mentors and  
24 people who have taught me what I've learned and helped me  
25 get to where I am.

1 I'm constantly relying on them, following up  
2 with them, and listening to them when they tell me I'm  
3 doing something wrong or stupid. And I'm always staying in  
4 check. So I always appreciate my mentors. And that's  
5 something that will happen no matter what your position as  
6 a lawyer for the rest of your career.

7 Q. Mr. Coble, the Commission received 332 ballot box  
8 surveys regarding you, with 54 additional comments. The  
9 ballot box survey, for example, contained the following  
10 positive comments. And I quote:

11 "An outstanding person. Has been a terrific  
12 magistrate. Superb judicial temperament. Kind and fair to  
13 everyone. A very hard worker. Extremely smart. A true  
14 rising star in our profession and judiciary and our  
15 community." End quote.

16 Another commentator said, quote, "Daniel Coble is  
17 someone that I've known since law school. I think he would  
18 be the perfect Circuit Court judge. He is knowledgeable on  
19 the law and can get along with anyone. He has the ideal  
20 demeanor to be a Circuit Court judge." End quote.

21 And a third one stated, quote, "I've known Daniel  
22 Coble personally and professionally for a decade. He has  
23 the experience and -- he has experience and wisdom far  
24 beyond his years. He is fair to all parties. He is a  
25 great listener and makes well-reasoned decisions. I

1 appreciate that he always gives the reason for his  
2 decisions. I fully support his selection to the bench."  
3 End quote.

4 Thirteen of the written comments expressed  
5 concerns focusing on temperament and lack of experience.  
6 What response would you offer to the concern that you do  
7 not possess the proper judicial temperament?

8 A. Well, I think -- I hope I do. And I hope anyone  
9 that sees that was -- I hope they were wrong. But it's  
10 important for a judge to have the correct temperament,  
11 because we've all been in front of the judges who have made  
12 you feel bad, who have treated you poorly.

13 And the worst part about that, not in so  
14 much as a personal feeling, but it doesn't give you your  
15 day in court. It doesn't give your client their day in  
16 court.

17 So I've been in front of judges who have treated  
18 me poorly, and I've never taken that as a good sign as  
19 something that I wanted to emulate. What I want to do is  
20 say, okay, How do I make sure this person has their fair  
21 day in court?

22 Because if they aren't heard, if they don't get  
23 it right -- if I don't get it right, then it's going to  
24 come back to bite me and looks -- reflects poorly on our  
25 court system, our judicial system.



1           So I take that very seriously. Ethically, it is  
2 the most important thing I take seriously when it comes to  
3 what people think about me. But the temperament is  
4 extremely important because it reflects on what a judge  
5 needs to be, which is stoic, they need to be prepared, and  
6 they need to treat everybody fairly so that our court  
7 system in its entirety is a -- has the confidence that it  
8 deserves. So I always take it seriously.

9           If I'm ever -- if I ever treat anybody poorly, if  
10 I ever get robitus, I know that -- I'm one of six siblings.  
11 I know they'll let me know pretty quickly. But I also have  
12 my friends and mentors who will slap me down pretty  
13 quickly.

14           I was a magistrate for four years, so if I ever  
15 did anything wrong, I know they'll let me know. And that's  
16 the way it will continue to be, 'cause I think it -- you  
17 want to get better.

18           You're going to have bad days but you don't want  
19 to have -- you want to have as few as possible. You want  
20 to learn from those and never -- never take it out on a  
21 client or a litigant in front of you.

22           So I'll always take those seriously and I always  
23 want to know if I -- if I ever have a bad temper, which I  
24 don't believe I do. But, you know, you're not perfect, so  
25 you just want to do your best.

1           Q.    Mr. Coble, you talked about your experience, but  
2 given the fact that the ballot box did have a few concerns  
3 regarding your experience, would you like to add additional  
4 comments?

5           A.    Well, one thing that I -- this was kind of the  
6 same comments I got last year and focused somewhat on lack  
7 of civil experience. I just wanted to -- you know, as a  
8 magistrate judge we do handle civil cases. It's up to  
9 seventy-five hundred.

10                    But besides discovery, which aren't in the  
11 Magistrate's Court rules, we see just about everything you  
12 would see in the Court of Common Pleas. It's the motion  
13 for summary judgment, mediation, directed verdicts, the  
14 burden of proof in those trials. You see it all.

15                    You have the attorneys on both sides when it  
16 comes to those trials. The rules of evidence are  
17 applicable in both civil and criminal. So what I've tried  
18 to do when I was a magistrate was -- and I look back and  
19 people kind of thought I was weird, but I would volunteer  
20 for those tough cases with those litigants who would test  
21 you.

22                    And I wanted to get that experience on the civil  
23 side. And I would focus on the rules of evidence, which  
24 apply in both cases, so I'd be the most prepared judge I  
25 could be, and I could give every litigant a fair day in

1 trial, knowing that I was prepared and ready to go.

2           During my time -- I was trying to do the numbers,  
3 but last year when I ran -- the previous three years, I  
4 focused on getting as many civil CLE hours, since they're  
5 divided, as a magistrate, criminal, and civil. I believe I  
6 got fifty the previous three years.

7           And then at the last reporting, it was a little  
8 over 30 hours in CLE of civil. 'Cause I wanted to make  
9 sure I know that, I'm focused on that. And I'm showing  
10 that I'm working to get those accredited hours, so that  
11 when you appear in front of me in the Court of Common Pleas  
12 you don't get frustrated and say, "This judge doesn't know  
13 what he's doing. I'm not going to get my fair day."

14           I want to be the most prepared, the most ready,  
15 the hardest working judge. And I've done that through  
16 Magistrate's Court with those cases and now in private  
17 practice. I believe the majority of cases so far and  
18 clients are civil. And it's like learning a foreign  
19 language somewhat, when you get in there you have the  
20 rules, but when you apply it to those clients.

21           So it's a matter of -- well, I want more clients  
22 and keep to learning, but that's up to them. So I want to  
23 keep learning, though, get in the courtroom and keep  
24 growing that experience and that breadth of knowledge.

25           MS. WILKINSON: Mr. Chairman, I would note

1 that the Midlands Citizens Committee found Mr. Coble to be  
2 qualified in constitutional qualifications, physical health  
3 and mental stability, and well qualified in ethical  
4 fitness, professional and academic ability, character,  
5 reputation, experience, and judicial temperament.

6 The report commented in summary: "With his  
7 experience and devotion to the judicial system, he would be  
8 a definite asset to the bench."

9 Mr. Chairman, I have nothing further except  
10 for the housekeeping issues.

11 BY MS. WILKINSON:

12 Q. Mr. Coble, are you aware that as a judicial  
13 candidate you are bound by the Code of Judicial Conduct as  
14 found in Rule 501 of the South Carolina Appellate Court  
15 Rules?

16 A. I am.

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

20 A. I have not.

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

25 A. I have not.

1 Q. Are you familiar with Section 2-19-70, including  
2 the limitations on contacting members of the General  
3 Assembly regarding your screening?

4 A. I am.

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

9 A. I have not contacted and I'm not aware.

10 Q. Have you reviewed and do you understand the  
11 Commission's guidelines on pledging in South Carolina Code  
12 2-19-70(E)?

13 A. I've reviewed and I do understand.

14 MS. WILKINSON: Mr. Chairman, I would note  
15 for the record that any concerns raised during the  
16 investigation by staff regarding this candidate were  
17 incorporated into the questioning of Mr. Coble today. I  
18 have no further questions.

19 CHAIRMAN SMITH: Thank you very much. Any  
20 questions for Mr. Coble? Representative Rutherford.

21 REPRESENTATIVE RUTHERFORD: Mr. Chairman.

22 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

23 Q. Mr. Coble, didn't you write a book?

24 A. I've written a couple of books. Yes, sir.

25 Q. On what?

1           A.    The Rules of Evidence and Preliminary Hearings.

2           **Q.    And that was from information that you gathered**  
3 **by being a magistrate, is that what compelled you to do it?**

4           A.    Correct.  So I started writing when I was a  
5 magistrate, and I realize quickly that you have to know a  
6 lot about a lot.  And I would forget it and then I would  
7 start writing it down in a journal.  And then I realized  
8 that wasn't enough and it started accumulating.

9                        So I decided to keep writing it and try to teach  
10 -- and I teach a lot as well.  I try to teach my fellow  
11 magistrates -- and they teach me stuff as well -- but the  
12 rules of evidence, how to apply it, and how to make these  
13 trials move and stay efficient.

14           **Q.    Well, as I understand it from talking to your**  
15 **former Chief Magistrate, Judge Edmonds, you are sorely**  
16 **missed in the magistrate's in Richland County.  So thank**  
17 **you for what you've done.**

18           A.    Thank you.  I appreciate that,

19                        CHAIRMAN SMITH:  Mr. Coble, I have to admit,  
20 I appreciate your books and your daily e-mails.  I'm on  
21 that e-mail list, and those of us who have practiced for a  
22 while remember the Collins on evidence.  And I think that  
23 stopped being updated about ten or fifteen years ago.

24                        JUDGE COBLE:  I'm actually updating that one  
25 right now on the Bar, with some help of a lot -- a lot

1 folks. But we're trying to update that book as well.

2 CHAIRMAN SMITH: Well, that was my go-to  
3 book for evidence. And I ordered your books for evidence  
4 off of Amazon, so to the extent you got paid any money, it  
5 was peanuts, 'cause it was like ten dollars a book.

6 JUDGE COBLE: The reason I keep it -- it's  
7 at cost because I have two big fears, that people are going  
8 to say I copied somebody or that I got something wrong.  
9 And that way I can say, "You didn't pay any money so you  
10 can't complain."

11 CHAIRMAN SMITH: I don't blame you. But I  
12 appreciate you doing that. That's a service to all of us  
13 who practice law and who need constant reminders of the  
14 rules of evidence.

15 JUDGE COBLE: Thank you.

16 CHAIRMAN SMITH: So I appreciate that. I  
17 don't think there are any further questions. And let me  
18 say this, too, is we -- I was not present at your screening  
19 last year, but I think most everybody except Mr. Johnson  
20 was. So the lack of questions is because I think  
21 everybody's very familiar with you, from screening last  
22 year. So we've all taken time to review that as it relates  
23 to you. And let me compliment you, I know you practiced  
24 about nine or ten years; is that right?

25 JUDGE COBLE: Yes, sir.

1                   CHAIRMAN SMITH: And you got a lot of poise  
2 for a lawyer like that. So I appreciate your testimony  
3 today. And thank you for your service on the bench for all  
4 those years at Richland County. And thank you for keeping  
5 us updated.

6                   JUDGE COBLE: Thank you, sir.

7                   CHAIRMAN SMITH: With that, that concludes  
8 this portion of your screening process. So let me take  
9 this opportunity to remind you that pursuant to the  
10 Commission's evaluative criteria, the Commission expects  
11 candidates to follow the spirit as well as the letter of  
12 the ethics laws. And we will view violations or the  
13 appearance of impropriety as serious or potentially  
14 deserving of heavy weight in the screening deliberations.

15                   As you know, the record will remain open  
16 until the formal release of the report of qualifications  
17 and you may be called back at such time if the need arises.  
18 I thank you for participating today. And thank you for  
19 your service.

20                   JUDGE COBLE: Thank you, sir. Thank you  
21 all.

22                   CHAIRMAN SMITH: Take care.

23                   (Candidate excused.)

24                   CHAIRMAN SMITH: Good afternoon Judge  
25 McCulloch, how are you?



1 JUDGE MCCULLOCH: I'm good. Good afternoon.

2 CHAIRMAN SMITH: Are you ready to get  
3 started?

4 JUDGE MCCULLOCH: Yes, sir.

5 CHAIRMAN SMITH: Would you raise your right  
6 hand.

7 WHEREUPON,

8 AMY MCCULLOCH, being duly sworn and  
9 cautioned to speak the truth, the whole truth and nothing  
10 but the truth, testifies as follows:

11 CHAIRMAN SMITH: Thank you very much.  
12 Before you is your personal data questionnaire and your  
13 sworn statement. Are those both documents that you have  
14 submitted to the Commission?

15 JUDGE MCCULLOCH: Yes, sir.

16 CHAIRMAN SMITH: And are both of them  
17 correct?

18 JUDGE MCCULLOCH: Yes, sir. There was an  
19 amendment that I sent in last night, that I just wanted to  
20 make sure was part of your record.

21 CHAIRMAN SMITH: Did we get that amendment  
22 as part of the -- it's part of the record.

23 JUDGE MCCULLOCH: Yes, sir.

24 CHAIRMAN SMITH: Any changes or updates  
25 other than that amendment?

1 JUDGE MCCULLOCH: No, sir.

2 CHAIRMAN SMITH: Do you have any objection  
3 to us making those as exhibits to your sworn testimony?

4 JUDGE MCCULLOCH: No, sir.

5 CHAIRMAN SMITH: Without objection. If  
6 you'll hand those to Lindi for me, please, ma'am. And she  
7 will mark them as exhibit -- have them marked as exhibits.

8 (EXHIBIT NO. 12 - JUDICIAL MERIT SELECTION  
9 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
10 HONORABLE AMY MCCULLOCH)

11 (EXHIBIT NO. 13 - JUDICIAL MERIT SELECTION  
12 COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF  
13 THE HONORABLE AMY MCCULLOCH)

14 (EXHIBIT NO. 14 - JUDICIAL MERIT SELECTION  
15 COMMISSION SWORN STATEMENT OF THE HONORABLE AMY  
16 MCCULLOCH)

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

1                   There have been no affidavits filed in  
2 opposition to your candidacy and no one is here to testify.  
3 Do you wish to make a brief opening statement to the  
4 Commission?

5                   JUDGE MCCULLOCH: Yes, sir. I am honored  
6 and humbled to be here today. As this is my first time  
7 through the judicial selection process, I have a completely  
8 new respect for the process. I wanted to thank each of you  
9 for your preparation, time, and commitment.

10                   I want to thank the volunteers of the  
11 Citizens Committee and the South Carolina Bar participants.  
12 I especially want to thank Maura Baker, Lindi Putnam, and  
13 Erin Crawford for their professionalism and their  
14 dedication to the process. And I look forward to answering  
15 your questions.

16                   CHAIRMAN SMITH: Thank you very much. Will  
17 you answer questions that your screening attorney may have  
18 for you, please.

19                   JUDGE MCCULLOCH: Yes, sir.

20                   MS. BAKER: Thank you, Mr. Chairman. I note  
21 for the record that based on the testimony contained in the  
22 candidate's PDQ, which has been included in the record with  
23 the candidate's consent, Judge Amy McCulloch meets the  
24 constitutional and statutory requirements for this position  
25 regarding age, residence, and years of practice.

1 EXAMINATION BY MS. BAKER:

2 Q. Judge McCulloch, how do you feel your legal and  
3 professional experience thus far renders you qualified and  
4 will assist you to be an effective Circuit Court judge?

5 A. I am 57 years old and I have thirty-one years of  
6 experience in the legal profession. I initially clerked  
7 for a Circuit Court judge. I moved to the solicitor's  
8 office and prosecuted cases for five years.

9 I spent two years in private practice working  
10 with my husband, Joe McCulloch. I have represented clients  
11 in both the civil and criminal sides of Magistrate's Court,  
12 Family Court, Circuit Court, and Federal Court.

13 I have run for public office as the probate judge  
14 for six terms. I have served for twenty-three years as the  
15 probate judge. In the Probate Court we handle more complex  
16 litigation than people may sometimes realize. Many will  
17 contests, challenges to trusts, contract disputes, tax and  
18 real estate disputes are filed with the Probate Court. And  
19 over the years, the volume and the complexity of Probate  
20 Court litigation has grown tremendously.

21 As probate judge I have presided over complex  
22 litigation with numerous parties, issues and causes of  
23 action. These cases often involved issues regarding the  
24 legal formalities of will and trust documents, challenges  
25 based on the mental capacity of the decedent, allegations

1 of undue influence. These are fact-intensive cases  
2 involving expert and lay-witness testimony, much like civil  
3 litigation and typical of the Circuit Court.

4 My peers on the bench have recognized my  
5 experience in trying complex cases, and South Carolina  
6 Court Administration has assigned complicated litigation to  
7 me from other counties to resolve after a judge's recusal.

8 I was asked to serve as a substitute justice for  
9 the Supreme Court on a probate matter on appeal after a  
10 sitting justice recused himself.

11 I also handled the only jury trial in Richland  
12 County Probate Court. I've handled many trials where all  
13 the parties are pro se. And I have led the parties through  
14 testimony, evidence presentation and complicated matters of  
15 hearsay and the Dead Man's Statute, all while following the  
16 requirements of judicial canons and our rules.

17 Just like a Circuit Court judge, I am required to  
18 apply the same rules of evidence, the same rules of civil  
19 procedure in the Probate Court.

20 Over the years I've had sixteen judicial law  
21 clerks who I have guided to assist with research, trial  
22 preparation, and order drafting. My experience has  
23 prepared me well for the Circuit Court bench. And I am  
24 ready to work hard for you and the people of this state.

25 **Q. Thank you, Judge. And, Judge, how do you stay**

1 **current in non-probate legal matters, for example, criminal**  
2 **procedure?**

3 A. I believe I have stayed current with the rules of  
4 civil procedure and the rules of evidence, both of which  
5 govern the Probate Court litigation. Put simply, the same  
6 rules that apply in Circuit Court also apply in Probate  
7 Court. So I have firsthand everyday experience in applying  
8 these rules as a judge.

9 In addition, every year I exceed the mandatory  
10 CLE requirements attending education on evidence matters,  
11 order drafting, legal aspects of wrongful death and  
12 survival action that we jurisdictionally required to hear  
13 petitions for settlement.

14 I believe that my Probate Court experience  
15 translates directly to the Court of Common Pleas and the  
16 variety of civil matters encountered by Circuit Court  
17 judges.

18 I read the advance sheets and writings of other  
19 legal experts in our state and elsewhere. I receive and  
20 read e-blasts about recent cases.

21 While I do not have recent experience in handling  
22 criminal matters as a practicing attorney, I began my  
23 career as a Circuit Court law clerk and as an assistant  
24 solicitor for five years. As an assistant solicitor, I was  
25 responsible for running a docket, running plea court,

1 trying cases and leading a team.

2 My time as a law clerk and assistant solicitor  
3 taught me well, the fundamentals of criminal law both  
4 substantively and procedurally. And even though it has  
5 been a number of years, I have retained the necessary  
6 foundation to be an effective judge in General Sessions  
7 Court.

8 If elected I pledge to focus my training time on  
9 re-familiarizing myself with everyday procedures in Circuit  
10 Court, and to shadow other judges as they handle criminal  
11 and civil cases in the time between election and taking  
12 office.

13 In 2003, I started the Mental Health Court in  
14 Richland County, regularly interacting with solicitors,  
15 assistant solicitors, and public defenders and their staff,  
16 to work successfully to transfer defendants from  
17 prosecution and incarceration to treatment and life change.

18 I am responsible for commitment hearings for  
19 alcohol and drug abuse issues and mental health issues.  
20 This also includes judicial commitments from the  
21 solicitor's office related to the treatment and oversight  
22 of defendants found not competent to stand trial.

23 I have regularly engaged in meetings and  
24 committees to evaluate better processes, forms, and  
25 treatments. I am also responsible for supplemental

1 commitment hearings that frequently require engagement with  
2 the criminal processes, as many of the same individuals who  
3 are not compliant with their treatment also have pending  
4 charges on matters and restitution responsibilities.

5 I am certain that my experience from the  
6 solicitor's office and my relationships with law  
7 enforcement have allowed me to better appreciate the  
8 processes, the charges, when to question the defendants,  
9 answers to non-compliance questions, and when to know the  
10 connections of communications have been lost and the  
11 defendant needs to be reconnected to the system and  
12 services.

13 Q. Thank you, Judge. Judge, the Commission received  
14 598 ballot box surveys regarding you, with 104 additional  
15 comments. The ballot box contained the following positive  
16 comments, for example:

17 "No judge is more diligent, ethical, prepared or  
18 more sensitive to the needs of all citizens who appear in  
19 the Probate Court's lobby or the courtroom. Judge  
20 McCulloch possesses qualities that come only with proper  
21 judicial temperament, years as a lawyer that's practiced  
22 law with responsibility for real clients, served as a  
23 prosecutor, and years of experience being on the bench. In  
24 court and in public she conveys confidence, respect for the  
25 process and the litigants, professionalism and wisdom borne



1 of age and life experience, and the wisdom that comes from  
2 years on the bench resolving disputes between litigants in  
3 real time. Judge McCulloch's an exceptionally qualified  
4 probate judge and will be an exceptionally qualified  
5 circuit judge. She's extremely smart in the law and has  
6 pleasant temperament, and her deep experience as a Probate  
7 Court judge will serve her well."

8 Nineteen of the written comments expressed some  
9 concerns. One form of concern mentioned is a lack of  
10 recent experience in Circuit Court. What response would  
11 you offer to this concern?

12 A. I think this concern tells me several things. I  
13 believe we have a duty to continually stay involved in  
14 legal education, including reading and discussing new  
15 opinions and rule changes.

16 I currently do that and would continue to do  
17 that. I also believe that attorneys who do not litigate in  
18 Probate Court, or who have not been in my courtroom, may  
19 not understand that we are constantly engaging many of the  
20 same issues and rules.

21 Q. Judge, another concern indicated that you have  
22 poor judicial temperament, and that you can be rude or  
23 impatient with attorneys and parties. What response would  
24 you offer to this concern regarding your temperament?

25 A. When I first took office in 1999, I was 34 years

1 old. I'm sure I struggled at times with finding my  
2 footing, especially with older and more experienced  
3 attorneys. As I look back there are things that I would do  
4 and do handle differently with the benefit of legal and  
5 life experience since then.

6 I would never want anyone to feel that I was  
7 impatient or that I didn't give them their full opportunity  
8 to be heard. I want you to know that I will always strive  
9 to improve in this area.

10 Over the years I've handled very emotional family  
11 matters. I've handled cases where people are in crisis. I  
12 run my courtroom without a bailiff, and many times without  
13 a sheriff's deputy, to help maintain control and decorum.

14 I have had to verbally step into fights, ordering  
15 parties to sit down and stop talking. I have sometimes had  
16 to do this even when the party is represented, because the  
17 client has stopped listening their attorney and the  
18 attorney could not assist.

19 Through these experiences and hundreds of trials,  
20 I've learned how to be firm and fair, and to deal with just  
21 about anything that can happen in the courtroom.

22 I have worked in the same courthouse and with all  
23 levels of courthouse staff from maintenance, the clerk's  
24 office, the solicitor's office, the public defenders, the  
25 Master's office, the Deed's office and other judges for

1 twenty-eight years. I believe they would describe me as  
2 dedicated, committed to all areas of improvement, engaging  
3 and supportive. I have lifelong friendships.

4 I have run for election and reelection six times,  
5 all but the first time unopposed. I work hard to run my  
6 office efficiently. I push my staff to meet goals of  
7 quality and quantity.

8 During this pandemic it has been very  
9 complicated, but with the technology we already had in  
10 place, resume hearings. We have been successful in  
11 maintaining our normal docket if not escalating the court  
12 docket.

13 **Q. Judge McCulloch, you've disclosed in your PDQ**  
14 **that a lawsuit was filed against you in 2005, in the Court**  
15 **of Common Pleas, by Winona Estelle Patterson Adams. Please**  
16 **explain the nature or disposition of the lawsuit.**

17 A. This was an estate dispute that I was assigned  
18 from a recusal from Greenwood County. It involved a  
19 creditor filing a claim against the estate, and the estate  
20 opposing the sale of real estate in order to satisfy the  
21 claim.

22 I ordered that the real estate of the estate be  
23 sold to satisfy the claim. And the intestate heirs to the  
24 estate were the plaintiffs in this matter. It was  
25 ultimately dismissed in 2005.

1           Q.    Thank you, Judge.  Your SLED report indicated  
2 that there was a lawsuit filed against you in 2007, in the  
3 court -- the Common Pleas Court, by Stephen Freeman.  Can  
4 you please explain the nature and disposition of this  
5 lawsuit?

6           A.    Certainly.  This and the next one on your list, I  
7 believe, it was the same lawsuit filed in Federal Court are  
8 the same -- very similar, if not the same.  It involved an  
9 estate in my office.  And this plaintiff was the husband  
10 and the son of the deceased, and it involved a ruling  
11 regarding investment of insurance proceeds, that they were  
12 not happy with the ruling.

13                   I think many times Pro Se litigants are  
14 unfamiliar with the appeal process versus filing a lawsuit  
15 process.  And I think, ultimately, this was dismissed by  
16 both the State and Federal Court.

17           Q.    And that would be the 2006 case filed by Wendell  
18 Freeman in the U.S. District Court is the Federal Court  
19 case you just referenced.

20           A.    Yes, ma'am.

21           Q.    Judge McCulloch, your SLED report indicated that  
22 there was a lawsuit filed against you in 1997, in the  
23 Common Pleas Court, by Marcus Joseph.  Can you please  
24 explain the nature and disposition of this lawsuit?

25           A.    After our discussions and looking back, I was an

1 assistant solicitor and this was someone I had prosecuted.  
2 I believe it was dismissed at summary judgment motion for  
3 lack of service.

4 **Q. You disclosed in your PDQ that there was a**  
5 **lawsuit filed against you in 2012, in the Common Pleas**  
6 **Court, by Rogers Townsend and Robert Thomas. Can you**  
7 **please explain the nature and disposition of that suit?**

8 A. It was actually the court that was the defendant  
9 in this matter. But obviously, I am the court for purposes  
10 of anything related to this. It involved a guardianship  
11 and a conservatorship action, that confidential records  
12 were ordered sealed. The law firm believed they needed  
13 access to the records.

14 And, ultimately, it was disposed of based on an  
15 agreement of the parties to allow Rogers Townsend,  
16 specifically Mr. Thomas, to see the records of the  
17 guardianship conservatorship proceeding. It was dismissed  
18 at the State Court level, and then on appeal at the Supreme  
19 Court level, I believe.

20 **Q. And, Judge McCulloch, you disclosed in your PDQ**  
21 **that there was a suit filed against you in 2018, in the**  
22 **Common Pleas Court, by Darrell Goss and Sasha Gaskins.**  
23 **Please explain the nature and the disposition of this**  
24 **lawsuit.**

25 A. This is an inmate lawsuit to be allowed to get

1 married, both the plaintiffs had applied for a license. And  
2 at the time, we required in-person application. And I  
3 believe this matter was dismissed for lack of service.

4 MS. BAKER: The Citizens Committee report --  
5 I would note the Midlands Citizens Committee report found  
6 Judge McCulloch is well qualified as to the evaluative  
7 criteria of ethical fitness, character and judicial  
8 temperament. Judge McCulloch was found to be qualified in  
9 the evaluative criteria of constitutional qualifications,  
10 professional and academic ability, reputation, physical  
11 health, mental stability, and experience.

12 The Committee further commented that Judge  
13 McCulloch needs more experience outside probate cases, has  
14 a good understanding of the judicial system, and will make  
15 an excellent judge if qualified.

16 BY MS. BAKER:

17 Q. Judge McCulloch, I have a few housekeeping  
18 issues. Are you aware that as a judicial candidate you are  
19 bound by the Code of Judicial Conduct as found in Rule 501  
20 of the South Carolina Appellate Court Rules?

21 A. I am.

22 Q. Judge McCulloch, since submitting your letter of  
23 intent, have you contacted any members of the Commission  
24 about your candidacy?

25 A. No.

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

5 A. No.

6 Q. Are you familiar with Section 2-19-70, including  
7 the limitations on contacting members of the General  
8 Assembly regarding your screening?

9 A. I am.

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

14 A. I am not.

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

18 A. I am.

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

24 CHAIRMAN SMITH: Thank you very much. Any  
25 questions for Judge McCulloch?

1 (Hearing none.)

2 CHAIRMAN SMITH: Judge McCulloch, let me  
3 just say I've looked through your ballot box surveys. And  
4 we tell every candidate, you know, these are anonymous  
5 surveys. So, you know, anybody can throw rocks at you,  
6 that wants to throw rocks, or people can give you praise.  
7 It just depends on how it is.

8 But the one thing when I look through here,  
9 what's important to this Commission is temperament and the  
10 way you treat litigants, the way you treat attorneys, the  
11 way you treat staff. And the overwhelming majority -- I  
12 see some in there, but the overwhelming majority are you  
13 treat people with a lot -- with respect and with dignity.  
14 And that's something that you ought to be proud of.

15 And one thing when I look through here, too,  
16 they say you're the -- you're the shining star, that you're  
17 the bright spot of the Probate Court. And I'll say your  
18 tenure over here -- I've worked with you on study  
19 committees before.

20 And every time that the Probate Judges  
21 Association has an appointment, it seems to be that you are  
22 the one that is appointed. It may just be 'cause you're in  
23 Columbia and it's easy for you to get over here. But I  
24 think it's important to note that you do serve in a number  
25 of capacities.



1                   And I appreciate your service over the  
2 years. You've given invaluable benefit to the General  
3 Assembly on probate issues and you're kind of our go-to  
4 person when we need things. And so I just wanted to thank  
5 you for your years of service as a probate judge.

6                   JUDGE MCCULLOCH: Thank you very much.

7                   CHAIRMAN SMITH: Ms. Blackley.

8                   MS. BLACKLEY: I just want to put on the  
9 record, I know how probate can be, and the arguments that  
10 ensue with family members over -- from what I've heard from  
11 my friends in the Probate Court, over cans of soup,  
12 silverware and -- and I do know that there probably needs  
13 to be some consideration being given for security, and not  
14 having that placed on the probate judge.

15                   As I've sat in some of those hearings and  
16 just thinking, Wow, this could get more heated than some  
17 family court cases. So I wanted to just tell you to be  
18 encouraged.

19                   But we are very -- I am very concerned about  
20 temperament and going forward with that. But I understand  
21 how hard that is as well. But I just wanted to give a word  
22 of encouragement on that.

23                   JUDGE MCCULLOCH: Thank you.

24                   CHAIRMAN SMITH: Representative Rutherford.

25                   REPRESENTATIVE RUTHERFORD: You said

1 questions. I didn't have a question. I do have a  
2 statement, so that's why I didn't raise my hand the first  
3 time around.

4 CHAIRMAN SMITH: It's to late for statements  
5 from you.

6 REPRESENTATIVE RUTHERFORD: Yeah. So, you  
7 know, I was there with you from the beginning, 'cause you  
8 were my team leader when I started in 1996. And I didn't  
9 want to -- I think it was '95. It was that long ago. I  
10 didn't want to say anything, 'cause I didn't want you to  
11 cry like you did the first time I spoke on your behalf when  
12 you were running for probate judge. But it goes back that  
13 far. And I appreciate it.

14 And I looked at your comments. And  
15 overwhelmingly, four pages of glory -- of glowing comments  
16 about you. So you've done a great job over the years. And  
17 I appreciate your service and your public service and your  
18 dedication to it.

19 MR. STROM: And, Mr. Chairman, I'll add one  
20 comment.

21 CHAIRMAN SMITH: Mr. Strom.

22 MR. STROM: I've never appeared before Judge  
23 McCulloch, but I have been in her office and dealt with her  
24 staff. And the only way I can describe it is Ritz Carlton-  
25 like service. I mean, they do an outstanding job. And I

1 think that comes from the top.

2 JUDGE MCCULLOCH: Thank you. I'm certainly  
3 going to tell them that, that was the compliment. Thank  
4 you.

5 CHAIRMAN SMITH: Any other comments or  
6 questions?

7 (Hearing none.)

8 CHAIRMAN SMITH: Judge McCulloch, I  
9 appreciate you being here today. And let me take this  
10 opportunity to remind you that pursuant to the Commission's  
11 evaluative criteria, the Commission expects candidates to  
12 follow the spirit as well as the letter of the ethics laws.  
13 And we will view violations or the appearance of  
14 impropriety as serious and potentially deserving of the  
15 heavy weight in the screening deliberations.

16 As you may know, this record will remain  
17 open until the formal release of the report of  
18 qualifications and you may be called back at such time if  
19 the need arises. I appreciate you being here today and I  
20 thank you for service to the State of South Carolina.

21 JUDGE MCCULLOCH: Thank you all very much.

22 CHAIRMAN SMITH: Take care.

23 (Candidate excused.)

24 CHAIRMAN SMITH: Ms. Usry, how are you doing  
25 today?

1 MS. USRY: I'm well. How are you doing?

2 CHAIRMAN SMITH: I am well.

3 MS. USRY: Excellent.

4 CHAIRMAN SMITH: I see you have someone with  
5 you. Would you like to introduce him?

6 MS. USRY: He beat me to it already, but  
7 I'll do it again. My husband, Charles Usry, is here with  
8 me today. I also believe my father, Charles Whetstone, may  
9 show up shortly. He's probably looking for a parking spot.  
10 You all are moving fast.

11 CHAIRMAN SMITH: Well, we're trying to keep  
12 the train on the track.

13 MS. USRY: I like it.

14 CHAIRMAN SMITH: So, welcome Charles. Good  
15 to see you. Ms. Usry, will you please raise your right  
16 hand.

17 WHEREUPON,

18 KATE WHETSTONE USRY, being duly sworn and  
19 cautioned to speak the truth, the whole truth and nothing  
20 but the truth, testifies as follows:

21 CHAIRMAN SMITH: Before you, you have your  
22 personal data questionnaire and your sworn statement. Are  
23 both those statements that you have submitted to the  
24 Commission?

25 MS. USRY: I have.

1 CHAIRMAN SMITH: Are both of them correct?

2 MS. USRY: They are.

3 CHAIRMAN SMITH: Any changes or updates that  
4 need to be made at this time?

5 MS. USRY: No, sir.

6 CHAIRMAN SMITH: And do you have any  
7 objection to us making those as exhibits to your sworn  
8 testimony here today?

9 MS. USRY: No objections.

10 CHAIRMAN SMITH: Without objection. Will  
11 you hand them to Lindi, please, ma'am.

12 MS. USRY: Absolutely.

13 CHAIRMAN SMITH: And we will mark those as  
14 exhibits.

15 (EXHIBIT NO. 15 - JUDICIAL MERIT SELECTION  
16 COMMISSION PERSONAL DATA QUESTIONNAIRE OF KATE  
17 WHETSTONE USRY)

18 (EXHIBIT NO. 16 - JUDICIAL MERIT SELECTION  
19 COMMISSION SWORN STATEMENT OF KATE WHETSTONE  
20 USRY)

21 CHAIRMAN SMITH: Ms. Usry, the Judicial  
22 Merit Selection Commission has thoroughly investigated your  
23 qualifications for the bench. Our inquiry has focused on  
24 nine evaluative criteria and has included a ballot box  
25 survey, a thorough study of your application materials,

1 verification of your compliance with state ethics laws, a  
2 search of newspaper articles in which your name appears, a  
3 study of previous screenings, and checks for economic  
4 conflicts of interest.

5 We've had no affidavits filed today in  
6 opposition to your candidacy and there no witnesses present  
7 to testify. Do you wish to make a brief opening statement  
8 to the Commission?

9 MS. USRY: I look forward to answering any  
10 questions you have about the materials I've submitted. But  
11 I'll stand by those as my introduction.

12 CHAIRMAN SMITH: Thank you very much.  
13 Answer any questions that your screening attorney may have  
14 for you, please, ma'am.

15 MS. USRY: Thank you.

16 MS. HALL: Thank you, Mr. Chairman. I note  
17 for the record that based on the testimony contained in the  
18 candidate's PDQ, which has been included in the record with  
19 the candidate's consent, Ms. Usry meets the constitutional  
20 and statutory requirements for this position regarding age,  
21 residence, and years of practice.

22 EXAMINATION BY MS. HALL:

23 **Q. Ms. Usry, how do you feel your legal and**  
24 **professional experience thus far renders you qualified and**  
25 **will assist you to be an effective Circuit Court judge?**

1           A.    I believe that I have a depth and a variety of  
2 experience that I would bring with me, should I be lucky  
3 enough to ascend to the bench. My background goes as far  
4 back as even in law school, clerking for civil defense  
5 firms and civil plaintiff's firms, taking that forward to  
6 being able to be a law clerk for the Honorable Judge Knox  
7 McMahon, and seeing a variety of actions appear before him.

8                   From there the solicitor's office, I have eleven  
9 years of experience there, seeing all manner of cases  
10 arise, and handling intense cases that required a lot of  
11 work and patience in going through those cases.

12                   From there forward I've moved into civil practice  
13 now, and continue to build on that experience at this time  
14 in depositions, in trying cases, and working with clients.  
15 So I believe that I have a wide variety of experience that  
16 I would bring forward with me.

17           Q.    Thank you. I'm going to move onto the ballot  
18 box. So Ms. Usry, the Commission received 190 ballot box  
19 surveys regarding you, with 32 additional comments. The  
20 ballot box survey, for example, contained the following  
21 positive comments:

22                   "Kate is smart, hardworking, and levelheaded.  
23 I've worked with her since she graduated law school. She  
24 is exactly the type of person who needs to be elected to  
25 the bench. She would be the ideal trial judge. Very

1 experienced, intelligent, and has great temperament."

2 And finally: "Kate is always prepared for court  
3 and she is knowledgeable in the law."

4 Three of the written comments expressed concerns.  
5 All three of them indicated that you don't have adequate  
6 civil trial experience. What response would you offer to  
7 this concern?

8 A. Well, I believe that I have excellent civil trial  
9 experience. Going back again, I just mentioned, but even  
10 in law school, clerking for civil firms for plaintiffs and  
11 defense side, while working on the bench as Judge McMahon's  
12 law clerk and seeing a wide variety of civil matters from  
13 TROs to trials and various motions.

14 And in the past few years I've been able to bring  
15 further experience and depth to those prior times, by  
16 actually representing clients and working with clients in  
17 court and, you know, within the past year trying cases.

18 And I'm hoping to try some, potentially, even in  
19 the next couple of months that are coming up. So I  
20 continue to build on that solo experience every day.

21 Q. One comment also indicated a concern that your  
22 background in prosecution might cause bias on the bench.  
23 What response would you offer to this concern?

24 A. Well, I believe as lawyers we always are  
25 representing one side or the other. And, clearly, I have



1 been a prosecutor for eleven years, but I don't believe  
2 that, that hinders me in any way in taking on the role of  
3 an impartial jurist on the bench, to evaluate both sides of  
4 an issue from both perspectives.

5 And in fact, while I have that prosecution  
6 background, I've taken on some criminal defense cases in  
7 the past few years, and been able to experience things from  
8 that side of the "V," so to speak.

9 MS. HALL: I would note that the Midlands  
10 Citizen Committee reported that Ms. Usry is qualified in  
11 the evaluated criteria of constitutional qualifications,  
12 professional and academic ability, physical health, mental  
13 stability, experience, and judicial temperament, and well  
14 qualified in the evaluative criteria of ethical fitness,  
15 character and reputation.

16 The Committee noted, "Great criminal  
17 experience, limited civil, good temperament and  
18 reputation."

19 BY MS. HALL:

20 Q. And, lastly, there's just a couple of  
21 housekeeping issues. Ms. Usry, are you aware that as a  
22 judicial candidate, you are bound by the Code of Judicial  
23 Conduct as found in Rule 501 of the South Carolina  
24 Appellate Court Rules?

25 A. I do.

1 Q. Since submitting your letter of intent, have you  
2 contacted any members of the Commission about your  
3 candidacy?

4 A. I have not.

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

9 A. I have not.

10 Q. Are you familiar with Section 2-19-70, including  
11 the limitations on contacting members of the General  
12 Assembly regarding your screening?

13 A. I am of aware this, yes.

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

18 A. I am not.

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

22 A. Yes. Thank you.

23 MS. HALL: Mr. Chairman, I would note for  
24 the record that any concerns raised during the  
25 investigation by staff regarding the candidate were

1 incorporated into the questioning of the candidate today.

2 Mr. Chairman, I have no further questions.

3 CHAIRMAN SMITH: Thank you very much. And  
4 Ms. Usry, I would just like for you to know that your  
5 father has snuck into the back of the room over there. So,  
6 Charles, welcome. So you've now got your family complete.

7 MS. USRY: He wouldn't want to miss out.

8 CHAIRMAN SMITH: Any questions for Ms. Usry?

9 SENATOR RANKIN: I'm curious whether she  
10 wants him to stay where he is or come up front and join her  
11 husband.

12 MS. USRY: Well, you know, that's his pew in  
13 the church, so he may prefer the back.

14 SENATOR RANKIN: Mr. Chairman.

15 EXAMINATION BY SENATOR RANKIN:

16 Q. Ms. Usry, we screened you about twenty minutes  
17 ago, it seems like. And I'm trying to find the actual date  
18 of that. Remind me.

19 A. It was just last year.

20 Q. Twenty-five minutes ago.

21 A. Yes.

22 Q. And that was for a At Large Circuit Court seat as  
23 well, correct?

24 A. That's correct.

25 Q. And I know you all. I know your family. I know

1 your father. You all know John Monk? I think he wants to  
2 meet you. I think he's here to meet you.

3 A. I will definitely go shake his hand after this.

4 Q. He wasn't interested in meeting the lady in the  
5 back. But anyway, I am curious -- again, and we've heard  
6 the comments in terms of "not enough experience" or "just  
7 the right mix". And I think, perhaps, not this past couple  
8 days that I've invoked the Goldilocks analogy before: Just  
9 right.

10 In terms of your desire to be a judge -- and  
11 we've talked about this, I think -- you've got a father who  
12 offered a great model of judicial temperament and ability  
13 to, seemingly, make everyone feel like they were a part of  
14 the courtroom. That doesn't mean that, that would be your  
15 mark.

16 But in that vein, if not your father, who do you  
17 and would you most want to be associated with in the  
18 positive attributes of being a judge?

19 A. That is an excellent question. I have been lucky  
20 enough to appear in front of so many Circuit Court judges  
21 in our state, and there are different aspects of all of  
22 them that I would want to meld together to be my own unique  
23 version.

24 Obviously, Judge Tommy Cooper is the immediate  
25 one that comes to mind. His demeanor is impeccable. His

1 ability to handle complex issues in the courtroom/upset  
2 people in the courtroom is almost unmatched.

3           There are numerous justices with a depth of  
4 knowledge in the law that I aspire to obtain over years  
5 that would take clearly years -- in their years of  
6 experience that they've acquired that. And I would strive  
7 to also be that type of person.

8           SENATOR RANKIN: That's all.

9           CHAIRMAN SMITH: Any other questions?

10                           (Hearing none.)

11           CHAIRMAN SMITH: Ms. Usry, as we told one of  
12 the previous candidates, you've been screened last year,  
13 and you were thoroughly screened. And so I think most of  
14 those questions were answered last year, so that's the  
15 benefits of running two years in a row.

16           MS. USRY: Excellent.

17           CHAIRMAN SMITH: I just want to remark you  
18 point out Tommy Cooper. And Mr. Sabb and I were bragging  
19 earlier yesterday, I guess, about having Tommy Cooper. And  
20 he actually showed up over here, 84 years old, running as a  
21 retired judge, and you still have lawyers complimenting him  
22 every time he comes up here. So that's a testament to the  
23 type of character he has.

24                           With that being said, this will conclude  
25 this portion of our screening process. I want to take this

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

7 As you may know, this record will remain  
8 open until the formal release of the report of  
9 qualifications and you may be called back at such time if  
10 the need shall arise.

11 I appreciate you being here today. And  
12 thank you for your service to the State of South Carolina.  
13 You all have a great day.

14 MS. USRY: Thank you all. I appreciate all  
15 of your time. Thank you.

16 (Candidate excused.)

17 CHAIRMAN SMITH: We're going to take a ten-  
18 minute break. The next candidate is about ten minutes  
19 away.

20 (Off the record.)

21 CHAIRMAN SMITH: We're back on the record.  
22 Mr. Safran moves that we go into executive session. All in  
23 favor signify by saying "aye."

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

25 CHAIRMAN SMITH: All opposed?

1 (Hearing none.)

2 CHAIRMAN SMITH: The ayes have it. We're in  
3 executive session.

4 (Off the record.)

5 CHAIRMAN SMITH: Let's go back on the  
6 record. Senator Talley moves that we come out of executive  
7 session. All in favor signify by saying "aye."

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

9 CHAIRMAN SMITH: All opposed?

10 (Hearing none.)

11 CHAIRMAN SMITH: The ayes have it. We're  
12 out of executive session. Let me also put on the record,  
13 so while we were in executive session there were no votes  
14 taken and nothing decided. We'll stand at ease.

15 (Off the record.)

16 CHAIRMAN SMITH: I see you have a familiar  
17 guest that we saw last year. Would you like to reintroduce  
18 her to the Commission?

19 MR. YOUNG: I'd love to. This is my wife,  
20 Laura Young. She is an assistant public defender over here  
21 in Richland County.

22 CHAIRMAN SMITH: Well, welcome. Mr. Young,  
23 will you raise your right hand, please, sir.

24 WHEREUPON,

25 S. BOYD YOUNG, being duly sworn and

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

3 CHAIRMAN SMITH: And before you, you have  
4 your personal data questionnaire and your sworn statement.  
5 Are those both documents that you have submitted to the  
6 Commission?

7 MR. YOUNG: Yes, sir.

8 CHAIRMAN SMITH: Are they correct?

9 MR. YOUNG: Yes, sir.

10 CHAIRMAN SMITH: Any changes or updates that  
11 need to be made at this time?

12 MR. YOUNG: No, sir.

13 CHAIRMAN SMITH: And do you have any  
14 objection to us making those as exhibits to your sworn  
15 testimony here today?

16 MR. YOUNG: I do not.

17 CHAIRMAN SMITH: If you'll hand that to  
18 Lindi for me, please, sir. And we'll mark that as an  
19 exhibit.

20 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION  
21 COMMISSION PERSONAL DATA QUESTIONNAIRE OF S. BOYD  
22 YOUNG)

23 (EXHIBIT NO. 18 - JUDICIAL MERIT SELECTION  
24 COMMISSION SWORN STATEMENT OF S. BOYD YOUNG)

25 CHAIRMAN SMITH: Mr. Young, the Judicial



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

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

13 MR. YOUNG: No, sir.

14 CHAIRMAN SMITH: Thank you very much. Will  
15 you answer questions your screening attorney may have for  
16 you.

17 MR. FRANKLIN: Thank you, Mr. Chairman. I  
18 note for the record that based on the testimony contained  
19 in the candidate's PDQ, which has been included in the  
20 record with the candidate's consent, Boyd Young meets the  
21 constitutional and statutory requirements for this position  
22 regarding age, residence, and years of practice.

23 EXAMINATION BY MR. FRANKLIN:

24 Q. Mr. Young, how do you feel that your legal and  
25 professional experience this far renders you qualified and

1 **will assist you to become an effect Circuit Court judge?**

2 A. Well, I think I've been trying cases in State  
3 Court for twenty-one years now, both in South Carolina and  
4 some in Georgia, and I think that my experience as a trial  
5 lawyer appearing in almost -- I think I've appeared in  
6 every circuit.

7 I've appeared in most -- a vast majority of the  
8 Circuit Court judges around the state. And I think that my  
9 knowledge, experience, and sort of broad depth of legal  
10 experience in dealing with lots of various issues would  
11 make me well qualified for the South Carolina bench.

12 I know that we in South Carolina have, in my  
13 opinion, some of the most qualified judges. And the way  
14 that we select our judges helps us maintain a high quality  
15 of judicial caliber and acumen. And I think I would be a  
16 good addition.

17 Q. Mr. Young, the Commission received 214 ballot box  
18 surveys regarding you, with 48 additional comments. The  
19 ballot box survey, for example, contained the following  
20 positive comments:

21 "Boyd Young's practice is challenging and  
22 difficult. His depth of knowledge is considerable and a  
23 force to be reckoned with. Few can understand legal  
24 concepts like Boyd. He would serve well on the bench."

25 Secondly: "Boyd Young is well qualified in every

1 category. He has a brilliant legal mind and a tremendous  
2 strength of character. His current position shows that he  
3 is capable of dealing with complex legal matters and making  
4 tough decisions. He would be a welcome addition to the  
5 bench."

6 Third: "There are few judges in this state who  
7 have as much courtroom experience, evidentiary experience,  
8 and litigation prowess as Mr. Young. Our state would be  
9 very well served by having a judge of his character."

10 However, nine of the written comments expressed  
11 concerns. For example, the vast majority of the negative  
12 comments note that your legal practice has been limited to  
13 criminal law, and therefore, question your ability to  
14 preside over civil trials. How would you respond to that  
15 criticism?

16 A. Well, I would say that in doing capital cases --  
17 and I know -- and I'm not saying that putting together a  
18 penalty phase capital case is the same thing as trying a  
19 complex civil case. But you are investigating and looking  
20 into somebody's background, and trying to find the "but  
21 for" answer as to how something happened and why it  
22 happened.

23 And it is a lot like putting together complex  
24 civil cases. I wouldn't say that I don't have any civil  
25 experience. In capital cases you get involved in ancillary

1 matters with the family, with the clients. You know, right  
2 now because my client's father died during the course of  
3 our representation and left -- and wrote the rest of the  
4 family out of his will and left everything to my client,  
5 and he's like, "Well, what do I do with this?"

6 And we had to check and it was like, "Well, I  
7 don't have a IOTA account. I got to find somebody to  
8 handle the money."

9 And so I did, I found an attorney who was willing  
10 to sign on. But I had to file the will and act as the  
11 personal representative for the estate. And, you know,  
12 that was ten years ago and it's still ongoing.

13 I'm getting sued by the -- a couple of land  
14 developers because they're fighting over how the house was  
15 foreclosed on, which was before I ever filed the will. But  
16 we're carrying on and getting through it. I've been able  
17 to help some good probate lawyers and they're helping me  
18 out pro bono, so we're about to get it closed.

19 But, you know, I do think that I am involved in a  
20 lot of civil cases and civil matters. And I do think that  
21 putting together a complex penalty phase case is a lot like  
22 the civil case. I don't think I would have any trouble in  
23 the civil arena.

24 I've spent the past year -- I think it was  
25 suggested to me by the Citizens Review Committee, "Well

1 have you attended any civil CLEs?"

2 And if you'll look at my CLE transcript, most  
3 recently you will note that I did take advantage of the  
4 pandemic time and all of the Webinars, to go to a lot of  
5 civil CLEs. And I have learned a lot from that experience,  
6 and I think it's helped me to become a better lawyer.

7 **Q. Another concern questions your ability to be**  
8 **impartial to the state in criminal matters given your**  
9 **professional background with the Commission on Indigent**  
10 **Defense. What response would you offer to that criticism?**

11 A. Well, I understand the role of an advocate and  
12 the role that they play in representing a particular  
13 client. I've never considered myself to be a cause lawyer.  
14 I have always been an advocate for individuals. And that's  
15 where my concern lies.

16 I think that any of the prosecutors that I have  
17 worked with or have done cases with would tell you that's  
18 not a concern, that I am going to follow the law the way  
19 the law dictates, and rule accordingly.

20 **Q. Mr. Young, you indicated in your PDQ that you**  
21 **were named as a personal representative in a lawsuit filed**  
22 **in State Court in 2017, the plaintiff is U.S. Bank Trust**  
23 **National Association. Please explain the nature and**  
24 **disposition of the lawsuit.**

25 A. I think I did. I'm happy to elaborate more on

1 what all is going on with it. Once we filed the will, we  
2 found out the cousin had used the father's name to buy a  
3 different house. And so all that stuff is still going on.

4 I'm the personal representative. The estate  
5 doesn't have a position on the foreclosure and have -- we  
6 had said as the Estate, you know, we're not trying to  
7 reclaim any property.

8 There are two land development companies that are  
9 at issue with each other about -- I think the bank's at  
10 issue with the people who bought it at the tax sale, and  
11 the bank didn't get their money for the foreclosure, and so  
12 those two parties are fighting it out with each other. We  
13 have no issue in it, other than just them having to name  
14 the Estate is the only reason that I'm involved in it.

15 **Q. You mentioned that you have appeared in almost**  
16 **every circuit, and before almost every judge in South**  
17 **Carolina. Who would you seek to emulate in terms of work**  
18 **ethic and judicial temperament if elected to the Circuit**  
19 **Court?**

20 A. That's a loaded question, I guess. You know, I  
21 think that I've taken something away from almost every  
22 judge that I've appeared in front of, both positive  
23 experiences and negative experiences.

24 I would have to start with former Chief Justice  
25 Finney and Vic Rawl, who I've clerked for, in their

1 acknowledgment that the law dictates what the right answer  
2 is. You don't get your personal feelings involved in it.  
3 Just follow the law, and don't worry about what you think  
4 the result should be.

5 I would have to say, you know, from probably  
6 Judge Peiper and Justice James and their ability to sort of  
7 stay above the fray that -- as the judge, advocates are  
8 going to get into squabbles with each other. But as the  
9 judge that's not your role and concern to try and take a  
10 side in their advocacy.

11 I think, you know, I'm in front of Judge Brown  
12 right now and we're -- in a murder trial in Chesterfield.  
13 And from him and with Judge Hocker, who recently did a  
14 complicated plea with us, their ability to make the record  
15 and make sure that everything is in the record that needs  
16 to be in the record, I think that's important.

17 I think from -- probably from Judge Lee and Judge  
18 Goodstein, their ability to show compassion while  
19 maintaining neutrality and to listen to all the parties and  
20 make sure that everybody has their day in court and has  
21 their say is important. And those are probably, I guess,  
22 my top six.

23 **Q. Thank you, Mr. Young.**

24 MR. FRANKLIN: I would note that the  
25 Midlands Citizens Committee reported that Mr. Young is

1 qualified in the evaluative criteria of constitutional  
2 qualifications, physical health and mental stability and  
3 experience. The Commission found him well qualified in the  
4 evaluative criteria of ethical fitness, professional and  
5 academic ability, character, reputation, and judicial  
6 temperament.

7 The Committee noted that Mr. Young has  
8 excellent criminal experience but has very little civil  
9 experience. The Committee noted, however, that Mr. Young  
10 is willing to get up to speed on civil. And some of the  
11 Committee found Mr. Young qualified.

12 BY MR. FRANKLIN:

13 Q. Now, for a few housekeeping issues. Mr. Young,  
14 are you aware that as a judicial candidate you are bound by  
15 the Code of Judicial Conduct as found in Rule 501 of the  
16 South Carolina Appellate Court Rules?

17 A. I am.

18 Q. Since submitting your letter of intent, have you  
19 contacted any members of the Commission about your  
20 candidacy?

21 A. I have not.

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



1 A. I have not.

2 Q. Are you familiar with Section 2-19-70, including  
3 the limitations on contacting members of the General  
4 Assembly regarding your screening?

5 A. I am.

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

10 A. I am not.

11 Q. Have you reviewed and do you understand the  
12 Commission's guidelines on pledging in S.C. Code 2-19-  
13 70(E)?

14 A. Yes.

15 MR. FRANKLIN: Mr. Chairman, I would note  
16 for the record that any concerns raised during the  
17 investigation by staff regarding the candidate were  
18 incorporated into the questioning of the candidate today.  
19 Mr. Chairman, I have no further questions.

20 CHAIRMAN SMITH: Thank you very much. Any  
21 questions for Mr. Young? Mr. Strom.

22 MR. STROM: Mr. Young, I don't know you, and  
23 I've just been reading through your PDF and I just looked  
24 at your letters of reference and found something that sways  
25 me greatly.

1                   Kassy Alia, I don't know if any of you all  
2 know her, her husband Greg was a Forest Acres police  
3 officer. And he was shot in 2015, just right across from  
4 our office. And we've gotten to know Kassy, and we helped  
5 her with the probate stuff. And since then she's become a  
6 good friend of ours.

7                   And she wrote a letter and it says, "Mr.  
8 Young served on the defense for the individual who killed  
9 my husband. As a result, I had the experience of  
10 interacting with him in a unique way. During that time,  
11 Mr. Young demonstrated respect and compassion toward our  
12 family. The way he and his team handled the defense,  
13 maintained the dignity not only of his client but for our  
14 family, this made a very tragic, painful experience as  
15 smooth as it could be. I'm thankful for that. Because of  
16 this interaction our family was given the space to find  
17 healing and peace."

18                   And when you have a victim in a situation  
19 like that write a letter for a defense lawyer, that tells  
20 me all I need to know about you.

21                   So thank you as a member of the Bar for  
22 having that kind of compassion and doing your job and  
23 looking out for the other side as well.

24                   MR. YOUNG: Well, thank you, Mr. Strom.  
25 And, you know, I'm sorry that I didn't get the crowd -- the

1 standing room-only crowd that you did over at the law  
2 school, your talk. I had to -- I had to drag my wife with  
3 me to try and put a couple more bodies in the seats. But  
4 thank you very much.

5 That case -- in dealing with that case, you  
6 know, I knew it was an emotional case. And I did reach out  
7 to her and Greg's family, early on in the case, and let  
8 them know that we weren't going to do anything to tarnish  
9 his reputation. We weren't trying to go there.

10 We wanted to resolve the case. And I think  
11 that reaching out -- and that led us to reach a negotiated  
12 settlement. And if anybody recalls the story, I know that  
13 plea was pretty well covered when we did ultimately resolve  
14 the case.

15 But the statement both from her and her  
16 family, and from my client on recognizing the harm and the  
17 ripple effect that, that type of harm has in the community,  
18 and trying to make peace with it, was one of the most  
19 moving things that I've had the fortunate pleasure to be a  
20 part of.

21 And I haven't -- and, you know, I have a  
22 number of letters from victims' family members after cases  
23 are resolved, that endorse my approach. Like, I'm not  
24 going in there trying to just attack everybody as an  
25 advocate.

1 MR. STROM: I also note that former Judge  
2 Jeff Young wrote a letter for you, and the deputy solicitor  
3 from the 11th Circuit.

4 MR. YOUNG: Yes, sir. You know, I wish I  
5 could put more than five letters in, I guess. Because I  
6 think every -- at least every solicitor's office that I've  
7 worked with having -- I guess -- you know, I guess, defense  
8 has a reputation as being this no holds barred, guns  
9 blazing, we're going to attack everybody including the  
10 court reporter during a trial.

11 And that's just sort of not my style and not  
12 how I approach things. And I don't think it's effective as  
13 an advocate for a client. I think -- I think, you know,  
14 probably in my younger days as a young PD, that might have  
15 appealed to me.

16 But I learned pretty quickly that, that's  
17 not how you get positive results and develop positive  
18 relationships. You know, you're going to be back before  
19 these people and you're going to have to deal with them  
20 again.

21 MR. STROM: Well, I don't know about the  
22 others, but that one letter did it for me. Thank you.

23 MR. YOUNG: Well, thank you.

24 CHAIRMAN SMITH: Any further questions?

25 (Hearing none.)

1                   CHAIRMAN SMITH: Mr. Young, like the others  
2 before you, you were before us last year. And we verified  
3 it was less than a year ago -- or about a year ago, and so  
4 we're very familiar with your qualifications and with you  
5 as a candidate. So don't let the lack of questions leave  
6 you concerned.

7                   We will certainly -- we got enough  
8 information that I think we talked about before, that you  
9 attended The Citadel and the Summerall Guards, and then  
10 entered law school and had a very wide -- a broad  
11 experience with the law. So I appreciate you being here  
12 today.

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

21                   As you may know, the record will remain open  
22 until the formal release of the report of qualifications  
23 and you may be called back at such time if the need arises.

24                   So I thank you for being here today. I'm  
25 sorry to drag you away. You're in a murder trial, you

1 said?

2 MR. YOUNG: Yes, sir. A murder trial in  
3 Chesterfield. It was a capital case, but through some of  
4 the negotiations we got them to withdraw most of the death  
5 penalty. So we're trying it as a triple-murder case.

6 CHAIRMAN SMITH: You got a long drive back  
7 home too. So I mean --

8 MR. YOUNG: Well, Judge Brown's been really  
9 patient with me.

10 CHAIRMAN SMITH: Well, good. Well, thank  
11 you for being here. And thank you for your service to the  
12 State of South Carolina.

13 MR. YOUNG: Thank you.

14 (Candidate excused.)

15 CHAIRMAN SMITH: With that being said,  
16 Representative Johnson moves that we go into executive  
17 session. All in favor say "aye."

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

19 CHAIRMAN SMITH: All opposed?

20 (Hearing none.)

21 CHAIRMAN SMITH: The ayes have it. We are  
22 in executive session.

23 (OFF THE RECORD AT 3:26 P.M.)

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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 125 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

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IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 24TH DAY OF NOVEMBER 2021.



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<b>Exhibits</b>	<b>211116PB.</b> <b>JMSC_Coble_</b> <b>Exh 10</b> 5:9 65:16	(	<b>19th</b> 56:10	<b>3</b>
<b>211116PB.</b> <b>JMSC_</b> <b>Cothran_Exh 1</b> 4:3 9:2	<b>211116PB.</b> <b>JMSC_Coble_</b> <b>Exh 11</b> 5:12 65:19	<b>(E)</b> 31:5 94:17 105:21	<b>2</b>	<b>3</b> 23:20
<b>211116PB.</b> <b>JMSC_</b> <b>Cothran_Exh 2</b> 4:7 9:5	<b>211116PB.</b> <b>JMSC_</b> <b>McCulloch_</b> <b>Exh 12</b> 5:15 81:8	<b>1</b> 9:2	<b>2-19-</b> 120:12	<b>30</b> 74:8
<b>211116PB.</b> <b>JMSC_Burch_</b> <b>Exh 3</b> 4:10 23:20	<b>211116PB.</b> <b>JMSC_</b> <b>McCulloch_</b> <b>Exh 13</b> 5:18 81:11	<b>10</b> 65:16	<b>2-19-70</b> 14:1 30:16 31:5 46:23 60:9 76:1 94:6,17 105:10, 21 120:2	<b>32</b> 102:19
<b>211116PB.</b> <b>JMSC_Burch_</b> <b>Exh 4</b> 4:13 23:23	<b>211116PB.</b> <b>JMSC_</b> <b>McCulloch_</b> <b>Exh 14</b> 5:21 81:14	<b>104</b> 87:14	<b>2-19-70(E)</b> 14:17 47:14 60:25 76:12	<b>332</b> 70:7
<b>211116PB.</b> <b>JMSC_</b> <b>Gibbons_Exh 5</b> 4:16 42:21	<b>211116PB.</b> <b>JMSC_</b> <b>McCulloch_</b> <b>Exh 15</b> 6:3 100:15	<b>11</b> 65:19	<b>2003</b> 86:13	<b>34</b> 88:25
<b>211116PB.</b> <b>JMSC_</b> <b>Gibbons_Exh 6</b> 4:19 42:24	<b>211116PB.</b> <b>JMSC_Usry_</b> <b>Exh 16</b> 6:6 100:18	<b>11th</b> 123:3	<b>2005</b> 90:14,25	<b>3:26</b> 125:23
<b>211116PB.</b> <b>JMSC_</b> <b>Zimmerman_</b> <b>Exh 7</b> 4:22 54:10	<b>211116PB.</b> <b>JMSC_Usry_</b> <b>Exh 17</b> 6:9 111:20	<b>12</b> 81:8	<b>2006</b> 91:17	<b>3rd</b> 18:14 20:7
<b>211116PB.</b> <b>JMSC_</b> <b>Zimmerman_</b> <b>Exh 8</b> 5:3 54:13	<b>211116PB.</b> <b>JMSC_Young_</b> <b>Exh 18</b> 6:12 111:23	<b>13</b> 81:11	<b>2007</b> 91:2	<b>4</b> 23:23
<b>211116PB.</b> <b>JMSC_Coble_</b> <b>Exh 9</b> 5:6 65:13		<b>14</b> 81:14	<b>2012</b> 92:5	<b>4.0</b> 39:13,15 40:2
		<b>15</b> 100:15	<b>2015</b> 121:3	<b>400-plus</b> 48:16
		<b>16</b> 100:18	<b>2017</b> 116:22	<b>415</b> 58:9
		<b>17</b> 111:20	<b>2018</b> 55:24 56:10 92:21	<b>42</b> 58:10
		<b>18</b> 35:10 111:23	<b>214</b> 113:17	<b>43</b> 44:17
		<b>190</b> 102:18	<b>24</b> 18:7	<b>44</b> 12:15,21
		<b>1996</b> 97:8		<b>48</b> 113:18
		<b>1997</b> 91:22		<b>49</b> 29:25
		<b>1999</b> 88:25		<b>4th</b> 26:2 27:10



<b>5</b>	<b>8</b>	58:7 92:13	<b>Adams</b>	9:18 24:10
<b>5</b>	<b>8</b>	<b>accident</b>	90:15	43:12 54:25
42:21	54:13	39:7	<b>add</b>	66:6 82:1 101:5
<b>501</b>	<b>84</b>	<b>accidents</b>	73:3 97:19	112:9
75:14 93:19	108:20	68:1	<b>addition</b>	<b>afternoon</b>
104:23 119:15		<b>accommodate</b>	9:11 43:6 54:20	22:13 79:24
<b>54</b>	<b>9</b>	15:22	57:19 85:9	80:1
70:8	<b>9</b>	<b>accommodating</b>	113:16 114:4	<b>age</b>
<b>55</b>	<b>9</b>	62:7	<b>additional</b>	66:21 82:25
19:24	65:13	<b>accomplishment</b>	12:15 26:21	88:1 101:20
<b>556</b>	<b>90s</b>	67:11	70:8 73:3 87:14	112:22
26:20	34:9	<b>account</b>	102:19 113:18	<b>age-wise</b>
<b>57</b>	<b>95</b>	115:7	<b>address</b>	25:4
26:23 83:5	97:9	<b>Accountability</b>	58:22	<b>agent</b>
<b>58</b>	<b>A</b>	15:1 17:13	<b>adequate</b>	38:18
26:21		<b>accredited</b>	103:5	<b>agree</b>
<b>583</b>	<b>ability</b>	74:10	<b>adjourned</b>	17:16 18:9
12:14	13:18 30:8	<b>accumulating</b>	29:13	<b>agreement</b>
<b>598</b>	40:14 46:3	77:8	<b>administration</b>	92:15
87:14	59:18 75:4	<b>achievement</b>	57:16 84:6	<b>Alabama</b>
<b>5th</b>	93:10 104:12	67:11	<b>administrative</b>	29:9
67:3,7	107:12 108:1	<b>acknowledgmen</b>	26:13 68:11	<b>alcohol</b>
<b>6</b>	114:13 116:7	<b>t</b>	<b>admit</b>	86:19
	118:6,14,18	118:1	59:3 77:19	<b>Alia</b>
<b>6</b>	119:5	<b>acquired</b>	<b>advance</b>	121:1
42:24	<b>absolutely</b>	108:6	85:18	<b>alive</b>
<b>615</b>	56:5 100:12	<b>Acres</b>	<b>advantage</b>	38:3
44:16	<b>abuse</b>	121:2	116:3	<b>allegations</b>
<b>67</b>	86:19	<b>act</b>	<b>adversarial</b>	83:25
25:3	<b>abusing</b>	38:21 115:10	11:16	<b>alleged</b>
<b>7</b>	34:12	<b>action</b>	<b>advisement</b>	56:11 57:10
	<b>academic</b>	56:1,12 68:4	45:13	<b>allowed</b>
<b>7</b>	13:17 30:8 46:3	83:23 85:12	<b>advocacy</b>	87:7 92:25
54:10	59:18 75:4	92:11	118:10	<b>alter</b>
<b>70(E)</b>	93:10 104:12	<b>actions</b>	<b>advocate</b>	45:16
120:13	119:5	102:7	27:2 58:13,25	<b>Amazing</b>
	<b>accepted</b>	<b>actual</b>	116:11,14	44:20
	59:23	106:17	122:25 123:13	<b>Amazon</b>
	<b>access</b>	<b>acumen</b>	<b>advocates</b>	78:4
		113:15	118:7	<b>amend</b>
			<b>affidavits</b>	45:17

<b>AMENDED</b> 65:17 81:12	113:5	102:10 109:10	<b>assisted</b> 57:16	95:10
<b>amendment</b> 80:19,21,25	<b>appears</b> 9:15 24:8 43:9 54:23 55:25	<b>arises</b> 22:9 63:2 79:17 98:19 124:23	<b>Associate</b> 68:9	<b>attributes</b> 15:5 32:1 107:18
<b>Amy</b> 80:8 81:10,13, 15 82:23	66:4 101:2 112:6	<b>armed</b> 67:6	<b>Association</b> 95:21 116:23	<b>attuned</b> 61:10
<b>analogy</b> 107:8	<b>Appellate</b> 75:14 93:20 104:24 119:16	<b>articles</b> 9:15 24:7 43:9 54:23 66:3	<b>assuming</b> 19:5	<b>audibly</b> 7:6,15 63:12,21 109:24 110:8 125:18
<b>ancillary</b> 114:25	<b>applicable</b> 73:17	81:23 101:2 112:6	<b>attack</b> 122:24 123:9	<b>August</b> 68:20
<b>anonymous</b> 12:1 15:12 32:4 48:7 95:4	<b>application</b> 9:13 24:6 43:7 54:21 66:1 68:8 81:22 93:2 100:25 112:4	<b>ascend</b> 50:21 102:3	<b>attempted</b> 56:14	<b>Authority</b> 15:1 17:14
<b>anonymously</b> 50:1 61:15	<b>applied</b> 93:1	<b>aspect</b> 17:6	<b>attempting</b> 14:12 30:25 47:9 60:20 76:7 94:12 105:16 120:8	<b>average</b> 39:13,15 40:2
<b>answering</b> 24:24 55:7 82:14 101:9	<b>apply</b> 68:7 73:24 74:20 77:12 84:18 85:6	<b>aspects</b> 85:11 107:21	<b>attended</b> 116:1 124:9	<b>aware</b> 14:12 22:6 30:25 41:12 43:2 47:9,11 52:22 54:17 60:20 62:24 75:12 76:7,9 93:18 94:12 104:21 105:13, 16 119:14 120:8
<b>answers</b> 87:9	<b>appointed</b> 95:22	<b>aspire</b> 108:4	<b>attending</b> 85:10	
<b>apologize</b> 14:25	<b>appointment</b> 95:21	<b>Assembly</b> 14:3,11 30:17, 24 46:25 47:8 60:11,19 76:3,6 94:8,11 96:3 105:12,15 120:4,7	<b>attention</b> 11:24 40:4	
<b>apparently</b> 17:12 20:25 49:10 62:10	<b>applying</b> 85:7	<b>asset</b> 12:20 44:21 58:13 75:8	<b>attentive</b> 27:1	
<b>appeal</b> 84:9 91:14 92:18	<b>appointed</b> 95:22	<b>assets</b> 31:25	<b>attitude</b> 16:18	<b>aye</b> 7:5,6,14,15 63:11,12,20,21 109:23,24 110:7,8 125:17, 18
<b>appealed</b> 57:17 123:15	<b>appointment</b> 95:21	<b>assigned</b> 84:6 90:17	<b>attorney</b> 11:4 33:6,20 43:19 55:9 66:15 69:3,4 82:17 85:22 89:17,18 101:13 112:15 115:9	<b>eyes</b> 7:9,18 63:24 110:2,11 125:21
<b>appearance</b> 22:3 41:9 52:19 62:21 79:13 98:13 109:4 124:18	<b>appreciated</b> 34:18 36:1	<b>assist</b> 66:25 83:4 84:21 89:18 101:25 113:1	<b>attorneys</b> 11:10,13 25:25 26:6,15 28:4,20 29:16 33:12,14 38:17 44:6 49:9 58:2 62:9 67:9 68:4,6 73:15 88:17,23 89:3	
<b>appeared</b> 47:24 49:21 97:22 113:5,7 117:15,22	<b>approach</b> 122:23 123:12	<b>assistant</b> 19:18 20:7 35:4 67:3 85:23,24 86:2,15 92:1 110:20		
<b>appearing</b> 17:16 34:22	<b>area</b> 89:9			
	<b>areas</b> 90:2			
	<b>arena</b> 115:23			
	<b>arguments</b> 96:9			
	<b>arise</b>			
				<b>B</b>
				<b>back</b> 19:24 20:6 22:8 29:17 33:6,21 34:9 35:7 37:22,

<p>23 38:23 40:3 41:14,19 50:8 52:24 53:3 56:25 63:1,18 71:24 73:18 79:17 89:3 91:25 97:12 98:18 102:4 103:9 106:5,13 107:5 109:9,21 110:5 123:18 124:23 125:6</p> <p><b>background</b> 102:3 103:22 104:6 114:20 116:9</p> <p><b>bad</b> 26:11 71:12 72:18,23</p> <p><b>bailiff</b> 89:12</p> <p><b>bailiffs</b> 32:17</p> <p><b>Baker</b> 82:12,20 83:1 93:4,16 94:19</p> <p><b>ballot</b> 9:12 12:14,16 15:12 17:17 24:5 26:20,22 32:3 34:5 36:25 43:6 44:14,16 48:7 54:20 58:10 61:13,14 66:1 70:7,9 73:2 81:21 87:14,15 95:3 100:24 102:17,18,20 112:3 113:17,19</p> <p><b>bank</b> 116:22 117:11</p> <p><b>bank's</b></p>	<p>117:9</p> <p><b>bar</b> 16:1 29:22,23, 25 32:24 33:8,9, 17 51:21 77:25 82:11 121:21</p> <p><b>barely</b> 40:22</p> <p><b>barred</b> 123:8</p> <p><b>Bars</b> 18:18 37:13 52:3</p> <p><b>based</b> 66:17 82:21 83:25 92:14 101:17 112:18</p> <p><b>basically</b> 10:5 17:24 18:3 37:6</p> <p><b>Bear</b> 21:16</p> <p><b>beat</b> 99:6</p> <p><b>began</b> 85:22</p> <p><b>beginning</b> 97:7</p> <p><b>behalf</b> 14:11,13 30:24 31:1 47:8,10 60:19,21 76:6,8 94:11,13 97:11 105:15,17 120:7,9</p> <p><b>behave</b> 38:21</p> <p><b>behaving</b> 37:17</p> <p><b>belched</b> 35:7</p>	<p><b>believed</b> 57:3 92:12</p> <p><b>believes</b> 60:1</p> <p><b>bench</b> 9:10 10:4,15 19:5,12 20:5 24:3 34:10 37:10 43:4 44:22 45:7,8 46:9 48:9 50:21 54:18 57:5 58:14,24 65:24 69:15 71:2 75:8 79:3 81:19 84:4, 23 87:23 88:2 100:23 102:3,25 103:11,22 104:3 112:2 113:11,24 114:5</p> <p><b>benefit</b> 51:23 89:4 96:2</p> <p><b>benefits</b> 57:3 108:15</p> <p><b>bias</b> 12:24 103:22</p> <p><b>big</b> 78:7</p> <p><b>bigger</b> 16:22</p> <p><b>biggest</b> 19:19 67:14</p> <p><b>bit</b> 33:20 51:1,21 56:2</p> <p><b>bitch</b> 18:7</p> <p><b>bite</b> 71:24</p> <p><b>Blackley</b> 16:11,12 17:7 35:19,20 96:7,8</p>	<p><b>blame</b> 78:11</p> <p><b>blank</b> 39:22</p> <p><b>blazing</b> 123:9</p> <p><b>board</b> 28:14,15</p> <p><b>bodies</b> 122:3</p> <p><b>bono</b> 115:18</p> <p><b>book</b> 35:18 68:8 76:23 78:1,3,5</p> <p><b>books</b> 76:24 77:20 78:3</p> <p><b>borne</b> 49:25 87:25</p> <p><b>bought</b> 117:10</p> <p><b>bound</b> 75:13 93:19 104:22 119:14</p> <p><b>boundless</b> 59:21</p> <p><b>box</b> 9:12 12:15,16 24:5 26:20,22 32:3 34:5 43:6 44:14,16 48:7 54:20 58:10 61:13,14 66:1 70:7,9 73:2 81:21 87:14,15 95:3 100:24 102:18,20 112:3 113:17,19</p> <p><b>boxes</b> 17:17 36:25</p>	<p><b>Boyd</b> 110:25 111:21, 24 112:20 113:21,24,25</p> <p><b>Boys</b> 50:7</p> <p><b>bragging</b> 108:18</p> <p><b>branch</b> 15:17</p> <p><b>breadth</b> 74:24</p> <p><b>break</b> 63:9 109:18</p> <p><b>breathalyzer</b> 35:9</p> <p><b>BRIAN</b> 42:3,23,25</p> <p><b>briefly</b> 66:10</p> <p><b>bright</b> 95:17</p> <p><b>brilliant</b> 114:1</p> <p><b>bring</b> 19:24 102:2,16 103:14</p> <p><b>brings</b> 46:9</p> <p><b>broad</b> 113:9 124:10</p> <p><b>brought</b> 56:3</p> <p><b>Brown</b> 118:11</p> <p><b>Brown's</b> 125:8</p> <p><b>brunt</b> 16:18</p> <p><b>Bryant</b> 21:16</p>
---	--	--	---	---

<b>build</b> 102:13 103:20	<b>calm</b> 11:17	<b>capacities</b> 95:25	19:15 27:18,25 28:5,17,19 34:8, 11,12 91:17,19 114:18,19 115:21,22 122:5,6,7,10,14 125:3,5	<b>chairman</b> 7:1,7,9,12,16, 18,25 8:7,11,15, 17,20,24 9:8 11:3 14:22,24 16:7 17:12 20:2, 9,17 21:11,19, 23 22:17,21 23:3,8,11,15,18 24:1,15 25:19 31:15,19,20 33:3,23 34:2,4 35:19 36:18,23 39:4,6 40:16,18 41:1,17,19,22, 25 42:6,11,13, 16,19 43:2,18 47:19,22 49:16, 18 50:16,21 52:12,14 53:7, 11,14,20,25 54:2,5,8,16 55:8 56:5 61:5,7 62:12,13,15 63:5,7,9,13,15, 18,22,24 64:3, 13,14,16,21 65:1,3,6,10,22 66:13,16 69:8 74:25 75:9 76:14,19,21 77:19 78:2,11, 16 79:1,7,22,24 80:2,5,11,16,21, 24 81:2,5,17 82:16,20 94:19, 23,24 95:2 96:7, 24 97:4,19,21 98:5,8,22,24 99:2,4,11,14,21 100:1,3,6,10,13, 21 101:12,16 105:23 106:2,3,
<b>building</b> 39:25 64:5	<b>cancelled</b> 17:13	<b>capacity</b> 9:23 55:6 83:25		
<b>Burch</b> 22:22,25 23:3,7, 9,14,17,22,25 24:1,14,16 25:19,22 30:4, 11 31:10,11,17, 21 33:3 34:8,13, 16 35:2,6,15,24 36:16 37:21 39:5 40:15,18, 24 41:5,17	<b>candidacy</b> 9:19 13:24 24:11 30:13 46:21 60:7 66:7 75:19 82:2 93:24 101:6 105:3 112:10 119:20	<b>capital</b> 114:16,18,25 125:3		
<b>Burch's</b> 31:8 34:5	<b>candidate</b> 22:20 41:21 47:18,19 53:6 61:4,5 63:8 75:13 76:16 79:23 93:18 94:21,22 95:4 98:23 104:22 105:25 106:1 109:16,18 119:14 120:17, 18 124:5 125:14	<b>car</b> 68:1	<b>cases</b> 18:20 26:1 28:14 29:2 31:10 58:7,16 59:5 67:6,25 68:1,24 73:8,20, 24 74:16,17 83:8,23 84:1,5 85:20 86:1,11 89:11 93:13 96:17 102:9,10, 11,14 103:17 104:6 113:2 114:16,24,25 115:20 116:17 122:22	
<b>burden</b> 73:14	<b>candidate's</b> 66:18 82:22,23 101:18,19 112:19,20	<b>care</b> 16:20 57:8,12 59:6 79:22 98:22	<b>caseworker</b> 57:14	
<b>burglaries</b> 67:6	<b>candidates</b> 22:1 28:23 41:7 52:17 62:19 79:11 98:11 108:12 109:2 124:16	<b>carefully</b> 61:12	<b>catch</b> 38:19	
<b>buried</b> 25:10		<b>cares</b> 27:5	<b>category</b> 114:1	
<b>business</b> 28:6 39:7,14		<b>Carlton-</b> 97:24	<b>caused</b> 25:14 27:24 28:16	
<b>buy</b> 117:2		<b>Carolina</b> 9:23 14:16 16:1 22:12 29:22 30:15 31:4 33:2 41:15 47:13 50:4 60:24 75:14 76:11 82:11 84:5 93:20 94:16 98:20 104:23 105:20 109:12 113:3,11,12 117:17 119:16 125:12	<b>cautioned</b> 8:5 23:1 42:4 53:18 64:19 80:9 99:19 111:1	
<b>C</b>		<b>Carolina's</b> 67:12	<b>certified</b> 28:7	
<b>calendars</b> 68:16	<b>candor</b> 19:22	<b>carrying</b> 115:16	<b>chair</b> 37:15	
<b>caliber</b> 33:8 113:15	<b>canons</b> 84:16	<b>case</b> 13:3 18:25		
<b>call</b> 15:21 45:5	<b>cans</b> 96:11			
<b>called</b> 22:8 41:14 52:24 63:1 79:17 98:18 109:9 124:23	<b>capable</b> 114:3			

8,14 108:9,11, 17 109:17,21,25 110:2,5,9,11,16, 22 111:3,8,10, 13,17,25 112:14,17 120:15,19,20 123:24 124:1 125:6,10,15,19, 21	67:24 101:3 112:7 <b>Chesterfield</b> 28:22 118:12 125:3 <b>Chief</b> 26:13 68:10 77:15 117:24 <b>children</b> 34:19 38:16 56:13,16,18,20, 23,25 57:4,12 58:13 59:5 <b>chord</b> 48:17 <b>Chris</b> 69:8 <b>church</b> 106:13 <b>circuit</b> 18:14,21 25:5 26:3,9 27:10 29:8 37:23 43:25 44:1,22, 23 45:7 46:12, 15 66:25 67:3,8 70:18,20 83:4,7, 12 84:3,17,23 85:6,16,23 86:9 88:5,10 101:25 106:22 107:20 113:1,6,8 117:16,18 123:3 <b>circuits</b> 18:17 <b>circumstances</b> 36:24 <b>Citadel</b> 124:9 <b>Citizen</b> 104:10	<b>citizens</b> 13:8,13,15 30:4 46:1,8 59:13,16 75:1 82:11 87:18 93:4,5 115:25 118:25 <b>civil</b> 27:20,22 56:1 67:22,25 68:5 69:4 73:7,8,17, 22 74:4,5,8,18 83:11 84:2,18 85:4,16 86:11 102:4,5,12 103:6,8,10,12 104:17 114:14, 19,24 115:20, 22,23 116:1,5 119:8,10 <b>claim</b> 90:19,21,23 <b>Clarendon</b> 20:11 <b>class</b> 39:14,18 <b>classes</b> 28:7 <b>CLE</b> 74:4,8 85:10 116:2 <b>cleans</b> 39:25 <b>Clemson</b> 50:5 <b>clerk</b> 12:10 16:12 19:18 35:24 40:21 85:23 86:2 102:6 103:12 <b>clerk's</b> 89:23	<b>clerked</b> 83:6 117:25 <b>clerking</b> 102:4 103:10 <b>clerks</b> 26:16 32:16 84:21 <b>CLES</b> 116:1,5 <b>client</b> 51:13 69:14,17 71:15 72:21 89:17 115:4 116:13 121:13 122:16 123:13 <b>client's</b> 115:2 <b>clients</b> 11:15 64:9 74:18,20,21 83:10 87:22 102:14 103:16 115:1 <b>climbed</b> 39:9 <b>close</b> 21:16 55:14 <b>closed</b> 115:18 <b>Coble</b> 64:4,18,25 65:2, 5,9,15,18,21,22 66:10,23 68:21 70:7,16,22 73:1 75:1,12 76:17, 20,23 77:19,24 78:6,15,25 79:6, 20 <b>Coble's</b> 66:19 <b>Code</b> 14:16 30:15	31:4 47:13 60:24 75:13 76:11 93:19 94:16 104:22 105:21 119:15 120:12 <b>colleagues</b> 16:14 <b>collect</b> 39:24 <b>college</b> 39:11,16 40:22 <b>Collins</b> 77:22 <b>Columbia</b> 38:1 67:14 95:23 <b>combination</b> 40:13 <b>commend</b> 50:9 <b>comment</b> 15:2 16:11,22 27:25 28:2,17 40:6 97:20 103:21 <b>commentator</b> 70:16 <b>commented</b> 49:23 59:20 75:6 93:12 <b>comments</b> 12:15,17,21,22 18:13 20:3 21:1 26:21,23 27:3 31:18 32:9,12 33:24 37:6 44:17,18 45:1,2, 20,21 46:9 52:10 58:10,11, 20 59:9 62:5 70:8,10 71:4
---	--	---	---	---

73:4,6 87:15,16 88:8 97:14,15 98:5 102:19,21 103:4 107:6 113:18,20 114:10,12 <b>commission</b> 7:3 8:13 9:3,6,9, 21,24 12:14 13:23 22:1 23:6, 21,24 24:2,13, 17 26:19 30:12 31:7,23 41:7 42:9,22,25 43:3, 15 44:16 46:20 48:1 49:5,15 52:17 53:23 54:11,14,17 55:3,5 57:21 58:9 60:7 61:9 62:19 64:24 65:14,17,20,23 66:9 70:7 75:18 79:10 80:14 81:9,12,15,18 82:4 87:13 93:23 95:9 98:11 99:24 100:16,19,22 101:8 102:18 105:2 109:2 110:18 111:6, 21,24 112:1,12 113:17 116:9 119:3,19 124:16 <b>Commission's</b> 14:16 21:25 31:4 41:6 47:13 52:16 60:24 62:18 76:11 79:10 94:16 98:10 105:20 109:1 120:12	124:15 <b>Commissioner</b> 36:17 39:3 <b>commitment</b> 46:14 59:25 82:9 86:18 87:1 <b>commitments</b> 86:20 <b>committed</b> 58:12 90:2 <b>Committee</b> 13:13,16 30:4,6 46:1,4,8 59:13, 16,20,22 60:1 75:1 82:11 93:4, 5,12 104:10,16 115:25 118:25 119:7,9,11 <b>committees</b> 86:24 95:19 <b>common</b> 46:10 73:12 74:11 85:15 90:15 91:3,23 92:5,22 <b>communications</b> 87:10 <b>community</b> 44:2 46:13 59:24 70:15 122:17 <b>companies</b> 117:8 <b>company</b> 35:17 39:9 <b>compassion</b> 118:18 121:11, 22 <b>compelled</b> 77:3 <b>compelling</b> 46:14	<b>competent</b> 86:22 <b>competing</b> 28:23 <b>complain</b> 78:10 <b>complaint</b> 57:20,21,23,24 <b>complete</b> 106:6 <b>completely</b> 18:9 82:7 <b>complex</b> 27:4 28:5 83:15, 21 84:5 108:1 114:3,19,23 115:21 <b>complexity</b> 83:19 <b>compliance</b> 9:14 24:6 43:8 54:22 66:2 81:22 101:1 112:5 <b>compliant</b> 87:3 <b>complicated</b> 84:6,14 90:9 118:14 <b>compliment</b> 15:9,10 78:23 98:3 <b>complimenting</b> 108:21 <b>comply</b> 56:24 <b>concepts</b> 113:24 <b>concern</b> 12:22 27:3,7 31:13 45:10 71:6 88:9,11,12,	21,24 103:7,21, 23 116:7,15,18 118:9 <b>concerned</b> 33:11,12 96:19 124:6 <b>concerns</b> 12:25 14:20 31:16 45:1,4 47:17 58:20,22 61:3 71:5 73:2 76:15 88:9 94:20 103:4 105:24 114:11 120:16 <b>conclude</b> 108:24 124:13 <b>concludes</b> 79:7 <b>conduct</b> 32:13 57:22 75:13 93:19 104:23 119:15 <b>conducted</b> 43:7 <b>confidence</b> 72:7 87:24 <b>confident</b> 45:11 <b>confidential</b> 92:11 <b>confirmed</b> 31:12 <b>conflicts</b> 9:16 24:9 43:11 54:24 66:5 81:25 101:4 112:8 <b>connections</b> 87:10 <b>consent</b> 66:19 82:23	101:19 112:20 <b>consequences</b> 48:11 <b>conservative</b> 61:15 <b>conservatorship</b> 92:11,17 <b>considerable</b> 113:22 <b>consideration</b> 31:24 96:13 <b>considered</b> 56:18 116:13 <b>consistently</b> 17:20 <b>constant</b> 78:13 <b>constantly</b> 70:1 88:19 <b>constitutional</b> 13:14 30:5 46:6 59:14 66:20 75:2 82:24 93:9 101:19 104:11 112:21 119:1 <b>constructive</b> 59:9 <b>construed</b> 56:22 <b>Cont</b> 40:20 <b>contact</b> 14:11 30:23 47:7 60:18 64:10 76:5 94:10 105:14 120:6 <b>contacted</b> 13:23 30:12 46:20 60:6 75:18 76:9 93:23 105:2
--	---	---	--	--

119:19	108:18,19	<b>country</b>	93:20 95:17	<b>creditor</b>
<b>contacting</b>	<b>copied</b>	10:2	96:11,17 101:25	90:19
14:2 30:16	78:8	<b>county</b>	103:2,17 104:24	<b>criminal</b>
46:24 60:10	<b>copy</b>	12:10 27:12	106:22 107:20	27:18 67:4,22
76:2 94:7	19:7	28:22 56:8	113:1,3,8	69:2,3 73:17
105:11 120:3	<b>cord</b>	67:20 68:10	116:22 117:19	74:5 83:11 85:1,
<b>contained</b>	16:22	77:16 79:4	118:20 119:16	22 86:3,10 87:2
12:16 26:22	<b>correct</b>	84:12 86:14	123:10	104:6,16 114:13
32:12 66:17	8:15 23:8,10	90:18 110:21	<b>Court's</b>	116:8 119:8
70:9 82:21	42:11 45:11	<b>couple</b>	87:19	<b>crisis</b>
87:15 101:17	53:25 64:25	20:3 60:4 76:24	<b>courteous</b>	89:11
102:20 112:18	65:1,2 71:10	103:19 104:20	27:1 44:24	<b>criteria</b>
113:19	77:4 80:17	107:7 115:13	<b>courtesy</b>	9:11,12 13:14,
<b>contests</b>	100:1 106:23,24	122:3	24:18,22	17 21:25 24:4
83:17	111:8	<b>court</b>	<b>courthouse</b>	30:5,7 41:7 43:5
<b>continually</b>	<b>correctly</b>	12:8 15:15	38:3 89:22,23	46:2,5 52:17
88:13	20:21	16:12 18:15	<b>courthouses</b>	54:19 59:14,17
<b>continue</b>	<b>cost</b>	19:18 21:8	52:2	62:18 65:25
25:2,11 43:25	78:7	25:25 26:1,16	<b>courtroom</b>	79:10 81:20
55:15 59:10	<b>Cothran</b>	28:6,18 29:4	17:23 18:6,18,	93:7,9 98:11
69:21 72:16	7:22,24 8:2,4,7,	32:17 38:21	24 19:17 32:14	100:24 104:11,
88:16 102:13	10,14,16,19,23	43:25 44:1,12,	33:18 35:7 38:5	14 109:2 112:3
103:20	9:4,7,8,22 11:3,	13,23 45:7,8	41:4 44:10,11	119:1,4 124:15
<b>continued</b>	7 12:14 13:11,	46:11,12,15	48:23 51:22	<b>criticism</b>
57:7	13 14:10,21,25	49:8 53:3 55:15,	67:7,9 68:11,17	32:20 48:25
<b>contract</b>	16:6,9 17:1,11	16,25 56:12	74:23 87:19	59:9 61:18
67:25 68:1	18:19 19:8,15	57:15 58:18	88:18 89:12,21	114:15 116:10
83:17	20:1,14,16,22	59:22,24 60:2	107:14 108:2	<b>criticize</b>
<b>control</b>	21:10,15,23	66:25 67:13,17,	114:7	15:8 18:11
17:23 18:17	22:14,19 31:22	20,21 70:18,20	<b>courtroom/upset</b>	<b>crowd</b>
28:12 38:14	<b>Cothran's</b>	71:15,16,21,25	108:1	121:25 122:1
51:2,22 89:13	20:5	72:6 73:11,12	<b>courts</b>	<b>crown</b>
<b>conveys</b>	<b>counsel</b>	74:11,16 75:14	36:14	24:21
87:24	24:18,20 25:20	83:4,7,11,12,15,	<b>cousin</b>	<b>cry</b>
<b>convicted</b>	57:16,22 66:14	18,20 84:3,6,9,	117:2	97:11
34:13	<b>counselor</b>	12,17,19,23	<b>covered</b>	<b>curious</b>
<b>convinced</b>	50:10	85:5,6,7,14,15,	122:13	106:9 107:5
29:21	<b>count</b>	16,23,25 86:7,	<b>Crawford</b>	<b>current</b>
<b>cool</b>	40:5	10,13 87:24	24:20 82:13	85:1,3 114:2
35:12,13	<b>counties</b>	88:7,10,18	<b>crazy</b>	<b>custody</b>
<b>Cooper</b>	26:6 27:12 84:7	90:11,14 91:3,7,	48:12	56:19,20 57:5,6
21:12 107:24		16,18,23 92:6,8,		
		9,18,19,22		

<b>D</b>	<p><b>dealt</b> 97:23</p> <p><b>death</b> 85:11 125:4</p> <p><b>decade</b> 67:2 70:22</p> <p><b>deceased</b> 91:10</p> <p><b>decedent</b> 83:25</p> <p><b>decided</b> 7:21 64:1 77:9 110:14</p> <p><b>decision</b> 18:4</p> <p><b>decisions</b> 45:3,6,9 48:21 70:25 71:2 114:4</p> <p><b>decorum</b> 18:17 37:17 89:13</p> <p><b>dedicated</b> 58:14 90:2</p> <p><b>dedication</b> 82:14 97:18</p> <p><b>Dee</b> 13:12,15 30:3</p> <p><b>Deed's</b> 89:25</p> <p><b>deep</b> 46:14 88:6</p> <p><b>deer</b> 22:12</p> <p><b>defendant</b> 87:11 92:8</p> <p><b>defendants</b> 86:16,22 87:8</p> <p><b>defender</b> 110:20</p> <p><b>defenders</b></p>	<p>67:17 86:15 89:24</p> <p><b>defense</b> 69:3,4 102:4 103:11 104:6 116:10 121:8, 12,19 123:7</p> <p><b>definite</b> 75:8</p> <p><b>degree</b> 46:10</p> <p><b>deliberations</b> 22:5 41:11 52:21 62:23 79:14 98:15 109:6 124:20</p> <p><b>demeanor</b> 29:6 38:14 47:24 48:3,19, 22 51:24 61:10 70:20 107:25</p> <p><b>demonstrated</b> 121:11</p> <p><b>denied</b> 29:12</p> <p><b>department</b> 35:8 56:7 57:7, 11</p> <p><b>depending</b> 16:18</p> <p><b>depends</b> 95:7</p> <p><b>depositions</b> 102:14</p> <p><b>depth</b> 102:1 103:15 108:3 113:9,22</p> <p><b>deputy</b> 89:13 123:2</p> <p><b>describe</b> 90:1 97:24</p>	<p><b>deserve</b> 32:22</p> <p><b>deserved</b> 15:18</p> <p><b>deserves</b> 72:8</p> <p><b>deserving</b> 22:4 41:10 52:20 62:22 79:14 98:14 109:5 124:19</p> <p><b>desire</b> 107:10</p> <p><b>determine</b> 27:5</p> <p><b>devastating</b> 37:2</p> <p><b>develop</b> 123:17</p> <p><b>developers</b> 115:14</p> <p><b>development</b> 28:22 117:8</p> <p><b>devotion</b> 75:7</p> <p><b>dictates</b> 116:19 118:1</p> <p><b>dictatorial</b> 17:24</p> <p><b>died</b> 115:2</p> <p><b>differently</b> 89:4</p> <p><b>difficult</b> 13:9 29:16 39:13 55:22 58:16 68:14 113:22</p> <p><b>dignity</b> 32:18 62:10 95:13 121:13</p>	<p><b>dilemma</b> 27:16</p> <p><b>diligent</b> 87:17</p> <p><b>Dillon</b> 26:7 27:12</p> <p><b>directed</b> 73:13</p> <p><b>directly</b> 64:11 85:15</p> <p><b>director</b> 28:22</p> <p><b>disappointed</b> 29:2</p> <p><b>Disciplinary</b> 57:22</p> <p><b>disciplining</b> 68:12</p> <p><b>disclose</b> 57:25</p> <p><b>disclosed</b> 90:13 92:4,20</p> <p><b>discount</b> 21:20</p> <p><b>discovery</b> 73:10</p> <p><b>discussing</b> 88:14</p> <p><b>discussion</b> 48:2 64:6,7,15</p> <p><b>discussions</b> 21:13 91:25</p> <p><b>dismiss</b> 57:17</p> <p><b>dismissed</b> 57:18 90:25 91:15 92:2,17 93:3</p> <p><b>disposed</b> 92:14</p>
----------	---	--	--	--



<b>disposition</b> 56:2 90:16 91:4, 24 92:7,23 116:24	<b>drag</b> 122:2 124:25	<b>economic</b> 9:16 24:9 28:22 43:10 54:24 66:5 81:25 101:3 112:8	51:12	<b>enjoyed</b> 9:22 10:4 25:5 50:12
<b>dispute</b> 90:17	<b>drive</b> 125:6	<b>editor</b> 35:16	<b>embarrassed</b> 19:8,16 51:10	<b>ensue</b> 96:10
<b>disputes</b> 68:1 83:17,18 88:2	<b>drug</b> 67:6 86:19	<b>Edmonds</b> 77:15	<b>embarrassing</b> 18:24 36:9	<b>ensure</b> 58:7
<b>District</b> 55:24 91:18	<b>DSS</b> 56:12,17,22 59:3,4	<b>education</b> 85:10 88:14	<b>emergency</b> 56:9,18 57:5	<b>entered</b> 124:10
<b>divided</b> 74:5	<b>DUI</b> 67:23 69:1	<b>effect</b> 15:23 67:15 113:1 122:17	<b>emote</b> 40:9	<b>enthralled</b> 13:4
<b>division</b> 25:13	<b>duly</b> 8:4 22:25 42:3 53:17 64:18 80:8 99:18 110:25	<b>effective</b> 66:25 83:4 86:6 101:25 123:12	<b>emulate</b> 71:19 117:17	<b>enthusiasm</b> 59:21
<b>docket</b> 68:18 85:25 90:11,12	<b>duties</b> 68:11	<b>effects</b> 37:3	<b>encapsulate</b> 21:1	<b>entirety</b> 72:7
<b>documents</b> 8:13 23:5 42:8 53:23 64:23 80:13 83:24 111:5	<b>duty</b> 50:8 88:13	<b>efficiency</b> 27:2	<b>encountered</b> 85:16	<b>entitled</b> 40:24
<b>dollars</b> 78:5	<b>E</b>	<b>efficient</b> 77:13	<b>encouraged</b> 96:18	<b>Erin</b> 82:13
<b>domestic</b> 67:23	<b>e-blasts</b> 85:20	<b>efficiently</b> 90:6	<b>encouragement</b> 96:22	<b>escalating</b> 90:11
<b>Don</b> 53:10,11	<b>e-mail</b> 77:21	<b>effort</b> 67:16	<b>End</b> 70:15,20 71:3	<b>estate</b> 83:18 90:17,19, 20,22,24 91:9 115:11 117:4,6, 14
<b>door</b> 41:18 69:1,21	<b>e-mails</b> 77:20	<b>elaborate</b> 116:25	<b>endorse</b> 122:23	<b>Estelle</b> 90:15
<b>Dotty</b> 40:3	<b>earlier</b> 39:6 108:19	<b>elected</b> 86:8 102:24 117:18	<b>energy</b> 59:21	<b>ethic</b> 59:25 117:18
<b>dove</b> 20:19 22:13	<b>early</b> 34:9 122:7	<b>election</b> 28:17,24 43:13 86:11 90:4	<b>enforcement</b> 56:17 87:7	<b>ethical</b> 13:17 30:7 46:2 59:17 75:3 87:17 93:7 104:14 119:4
<b>downs</b> 25:6	<b>ease</b> 17:25 110:14	<b>elevates</b> 19:12	<b>engage</b> 27:4	<b>Ethically</b> 72:1
<b>dozens</b> 68:5	<b>easy</b> 36:25 61:16 95:23	<b>eleven</b> 102:8 104:1	<b>engaged</b> 57:9 86:23	<b>ethics</b> 9:14 22:2 24:7 41:8 43:8 52:18 54:22 62:20 66:3 79:12
<b>drafting</b> 84:22 85:11	<b>echo</b> 39:6	<b>embarrass</b> 18:23 19:1,19	<b>engagement</b> 50:7 87:1	
	<b>echoing</b> 38:7		<b>engagements</b> 59:24	
			<b>engaging</b> 88:19 90:2	
			<b>enjoy</b> 12:9 44:12	

81:23 98:12 101:1 109:3 112:5 124:17 <b>evaluate</b> 86:24 104:3 <b>evaluated</b> 104:11 <b>evaluative</b> 9:11,12 13:14, 16 21:25 24:4 30:5 41:6 43:5 46:2,5 52:17 54:19 59:14,17 62:18 65:25 79:10 81:20 93:6,9 98:11 100:24 104:14 109:2 112:3 119:1,4 124:15 <b>even-tempered</b> 12:18 17:20 <b>eventually</b> 57:4 <b>everybody's</b> 10:19 18:5 35:23 78:21 <b>everyday</b> 85:7 86:9 <b>evidence</b> 46:14 73:16,23 77:1,12,22 78:3, 14 84:14,18 85:4,10 <b>evidentiary</b> 114:7 <b>EXAMINATIO</b> <b>N</b> 11:6 25:21 36:19 43:21 50:17 55:11 66:22 76:22 83:1 101:22	106:15 112:23 <b>examples</b> 12:17 26:23 44:17 58:11 <b>exceed</b> 85:9 <b>exceeds</b> 36:4 <b>excelled</b> 59:23 <b>excellence</b> 60:1 <b>excellent</b> 44:19,22 46:15 93:15 99:3 103:8 107:19 108:16 119:8 <b>exceptionally</b> 88:3,4 <b>exchange</b> 39:5 <b>excited</b> 35:21 <b>excuse</b> 18:15 <b>excused</b> 22:20 41:21 53:6 63:8 79:23 98:23 109:16 125:14 <b>executive</b> 7:4,10,13,19,20 63:10,15,19,25 109:22 110:3,6, 12,13 125:16,22 <b>exemplary</b> 19:22 21:4 <b>exhibit</b> 9:1,2,5 23:16, 20,23 42:17,21, 24 54:6,10,13 65:13,16,19	81:7,8,11,14 100:15,18 111:19,20,23 <b>exhibiting</b> 12:24 <b>exhibits</b> 65:7 81:3,7 100:7,14 111:14 <b>exhilarating</b> 69:6 <b>exit</b> 41:18 <b>expect</b> 19:11 <b>expects</b> 22:1 41:7 52:17 62:19 79:10 98:11 109:2 124:16 <b>experience</b> 13:18 30:9 33:18 46:3,11 59:19 66:21,24 67:10 68:15 69:7,22,23 70:23 71:5 73:1, 3,7,22 74:24 75:5,7 83:3,6 84:5,22 85:7,14, 21 87:5,23 88:1, 6,10 89:5 93:11, 13 101:24 102:2,9,13,15 103:6,9,15,20 104:7,13,17 107:6 108:6 112:25 113:4,9, 10 114:7,25 116:5 119:3,8,9 121:9,14 124:11 <b>experienced</b> 33:12 89:2	103:1 <b>experiences</b> 34:20 61:12 89:19 117:23 <b>expert</b> 84:2 <b>experts</b> 85:19 <b>explain</b> 90:16 91:4,24 92:7,23 116:23 <b>expose</b> 28:24 <b>expressed</b> 12:21 27:3 58:20 71:4 88:8 103:4 114:10 <b>extent</b> 64:10 78:4 <b>extremely</b> 70:13 72:4 88:5 <b>eye</b> 26:10 <hr/> <b>F</b> <hr/> <b>fact</b> 25:8 37:3 38:10 64:6 73:2 104:5 <b>fact-intensive</b> 84:1 <b>failed</b> 40:1 <b>fair</b> 12:18 15:19 26:25 32:10 34:7 58:14 62:7, 8 70:12,24 71:20 73:25 74:13 89:20 <b>fairly</b> 21:20 31:21	51:17 72:6 <b>false</b> 67:24 <b>familiar</b> 14:1 30:15 46:23 60:9 76:1 78:21 94:6 105:10 110:16 120:2 124:4 <b>families</b> 55:21 <b>family</b> 45:8 46:11 55:14,15 56:12 58:18 59:21,24 60:2 83:12 89:10 96:10,17 106:6,25 115:1, 4 121:12,14,16 122:7,16,22 <b>fast</b> 99:10 <b>father</b> 99:8 106:5 107:1,11,16 115:2 <b>father's</b> 117:2 <b>FAULK</b> 43:21 45:25 46:16 47:16 55:11 59:12 60:3 61:2 <b>favor</b> 7:4,14 63:11,20 109:23 110:7 125:17 <b>favorite</b> 34:5 <b>favoritism</b> 12:24
--	--	---	--	---

<b>fear</b> 12:5	56:3 115:10	<b>fit</b> 33:24	<b>foreign</b> 74:18	<b>FRANKLIN</b> 112:17,23
<b>fears</b> 78:7	<b>filed</b> 9:18 24:10	<b>fitness</b> 13:17 30:8 46:2	<b>Forest</b> 121:2	118:24 119:12
<b>federal</b> 38:1 83:12 91:7, 16,18	54:25 55:24	59:17 75:4 93:7	<b>forget</b> 19:13 48:19,21	120:15
<b>feel</b> 13:1 17:25	21,25 66:6 82:1	104:14 119:4	<b>forgot</b> 77:6	<b>frankly</b> 27:21 34:23
26:16 28:19	83:18 90:14	<b>flare</b> 11:16	<b>form</b> 88:9	<b>fray</b> 118:7
29:1 45:11	91:2,7,17,22	<b>Fleming</b> 50:6	<b>formal</b> 22:7 41:13	<b>free</b> 34:18
55:17,20 66:23	92:5,21 101:5	<b>focus</b> 50:20 73:23	52:23 62:25	<b>Freeman</b> 91:3,18
71:12 83:2 89:6	115:15 116:21	86:8	79:16 98:17	<b>frequently</b> 87:1
101:23 107:13	117:1	<b>focused</b> 9:10 24:4 43:5	109:8 124:22	<b>friend</b> 25:9 50:6 121:6
112:24	<b>filing</b> 90:19 91:14	54:19 73:6 74:4, 9 81:20 100:23	<b>formalities</b> 83:24	<b>friends</b> 12:11 25:7
<b>feeling</b> 51:14 71:14	<b>fill</b> 21:15	112:2	<b>forms</b> 86:24	72:12 96:11
<b>feelings</b> 118:2	<b>filling</b> 21:19	<b>focusing</b> 69:1 71:5	<b>fortunate</b> 122:19	<b>friendships</b> 90:3
<b>fellow</b> 16:14 27:15	<b>finally</b> 39:23 103:2	<b>folks</b> 17:25 18:3	<b>forward</b> 24:24 41:3 55:6	47:24 51:13
29:8 77:10	<b>find</b> 10:9 12:1 15:11	20:13 39:1 50:1, 2,21 78:1	66:11 82:14	56:23 71:11,17
<b>fellow's</b> 39:8	19:23 20:25	<b>follow</b> 21:17 22:1	96:20 101:9	72:21 74:11
<b>felt</b> 34:18 67:7	27:9 106:17	29:19 41:7	102:5,12,16	106:10 107:20
<b>FERRELL</b> 8:4 9:4,7	114:20 115:7	52:18 62:19	<b>foster</b> 57:8 59:6	117:22 118:11
<b>Ferris</b> 55:25	121:16	79:11 98:12	<b>found</b> 10:20 13:13,16	<b>frustrated</b> 10:12 52:1
<b>field</b> 22:13	<b>finding</b> 89:1	109:3 116:18	27:16 30:4,6	74:12
<b>fifteen</b> 77:23	<b>fine</b> 35:14	118:3 124:16	46:1,4 59:16	<b>frustrating</b> 52:4
<b>fifty</b> 74:6	<b>finished</b> 46:18	<b>follow-up</b> 51:19	75:1,14 86:22	<b>full</b> 35:7 89:7
<b>fighting</b> 115:14 117:12	<b>Finney</b> 117:25	<b>footing</b> 89:2	93:5,8,19	<b>full-time</b> 67:19
<b>fight</b> 89:14	<b>firm</b> 89:20 92:12	<b>force</b> 113:23	104:23 115:9	<b>fully</b> 71:2
<b>file</b>	<b>firms</b> 102:5 103:10	<b>foreclosed</b> 115:15	117:2 119:3,11, 15 120:24	<b>fun</b> 69:6
	<b>firsthand</b> 85:7	<b>foreclosure</b> 117:5,11	<b>foundation</b> 86:6	
	<b>Fiscal</b> 15:1 17:13		<b>fourth</b> 9:25	

<p><b>fundamentals</b> 86:3</p> <p><b>funny</b> 11:23</p> <p><b>furthered</b> 57:11</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gain</b> 39:1</p> <p><b>Gary</b> 55:25 57:10</p> <p><b>Gaskins</b> 92:22</p> <p><b>gathered</b> 77:2</p> <p><b>General</b> 14:2,11 30:17, 24 46:24 47:8 60:10,19 76:2,6 86:6 94:7,11 96:2 105:11,15 120:3,7</p> <p><b>gentleman</b> 17:21 32:10</p> <p><b>genuine</b> 17:20</p> <p><b>geographic</b> 26:4</p> <p><b>geographic-wise</b> 26:5</p> <p><b>Georgia</b> 113:4</p> <p><b>get along</b> 44:8 70:19</p> <p><b>Gibbons</b> 41:22,24 42:3,6, 10,12,15,18,23 43:1,16,20 44:22 46:1,5,9, 19 47:21,23</p>	<p>49:16,19,20 50:14 52:14 53:4</p> <p><b>give</b> 8:25 10:7,9,12, 15,25 11:12 50:6,8 61:18 71:14,15 73:25 89:7 95:6 96:21</p> <p><b>giving</b> 17:4 50:4 51:22</p> <p><b>glad</b> 43:16</p> <p><b>glory</b> 97:15</p> <p><b>glowing</b> 97:15</p> <p><b>go-to</b> 15:20 78:2 96:3</p> <p><b>goals</b> 90:6</p> <p><b>Goldilocks</b> 107:8</p> <p><b>good</b> 11:7,8,11,14,19 12:4,6,9 20:15 21:6 22:17,21 25:10,17,22,23 26:2,7,14 27:21 32:23 41:2,22, 24 43:22,23 44:8,10,13 49:15 50:18 53:5,13 55:12, 13,20 62:16 67:15 68:15 69:20 71:18 79:24 80:1 93:14 99:14 104:17 113:16 115:17 121:6 125:10</p>	<p><b>Goodstein</b> 118:18</p> <p><b>gosh</b> 38:2</p> <p><b>Goss</b> 92:22</p> <p><b>govern</b> 85:5</p> <p><b>Governor</b> 17:13</p> <p><b>grace</b> 52:6</p> <p><b>graduated</b> 102:23</p> <p><b>grain</b> 48:6</p> <p><b>granted</b> 29:12 45:16 51:7 56:9</p> <p><b>great</b> 7:24 9:24 11:13 12:11,18,19 15:13 16:1,4 21:17 31:23 48:18 50:2 51:5 62:6 63:6 68:3 70:25 97:16 103:1 104:16 107:12 109:13</p> <p><b>greatly</b> 120:25</p> <p><b>Greenwood</b> 90:18</p> <p><b>Greg</b> 121:2</p> <p><b>Greg's</b> 122:7</p> <p><b>Group</b> 68:21</p> <p><b>growing</b> 74:24</p>	<p><b>grown</b> 83:20</p> <p><b>guardianship</b> 92:10,17</p> <p><b>Guards</b> 124:9</p> <p><b>guess</b> 18:13 19:3,10 25:1,2 28:7 33:13 36:23,24 45:20 49:22 108:19 117:20 118:21 123:5,7</p> <p><b>guest</b> 53:7,8 110:17</p> <p><b>guided</b> 84:21</p> <p><b>guidelines</b> 14:16 31:4 47:13 60:24 76:11 94:16 105:20 120:12</p> <p><b>guns</b> 123:8</p> <p><b>gut</b> 45:11,23</p> <p><b>gut's</b> 45:11</p> <p><b>guy</b> 34:14 35:6 48:18 52:9</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>HALL</b> 101:16,22 104:9,19 105:23</p> <p><b>Hammett</b> 20:20</p> <p><b>hand</b> 8:1 22:22 23:18 33:21 42:1,19</p>	<p>53:15 54:9 64:16 65:11 80:6 81:6 97:2 99:16 100:11 107:3 110:23 111:17</p> <p><b>handful</b> 61:23</p> <p><b>handle</b> 28:20 52:5 68:16,24 73:8 83:15 86:10 89:4 108:1 115:8</p> <p><b>handled</b> 67:21 68:2,10 84:11,12 89:10, 11 121:12</p> <p><b>handling</b> 29:2 67:4 85:21 102:10</p> <p><b>happen</b> 36:10 37:11 69:16 70:5 89:21</p> <p><b>happened</b> 57:24 114:21,22</p> <p><b>happening</b> 37:16</p> <p><b>happily</b> 49:24</p> <p><b>happy</b> 13:10 91:12 116:25</p> <p><b>hard</b> 15:6 32:6,11 36:9 51:15 58:5 70:13 84:24 90:5 96:21</p> <p><b>hardest</b> 74:15</p>
--	---	---	---	---

<b>hardworking</b> 102:22	77:1 86:18 87:1 90:10 96:15	<b>Hocker</b> 118:13	<b>house</b> 115:14 117:3	<b>impartially</b> 51:18
<b>harm</b> 36:11 122:16,17	<b>hearsay</b> 84:15	<b>hold</b> 18:2,15 44:13	<b>housekeeping</b> 13:21 46:17 60:5 75:10 93:17 104:21 119:13	<b>impatient</b> 88:23 89:7
<b>Harvley</b> 55:25 56:7,11, 13,19,22 57:9	<b>heart</b> 21:6	<b>holding</b> 21:8 44:12 49:12 53:3	<b>huge</b> 36:7	<b>impeccable</b> 107:25
<b>hate</b> 33:12	<b>heated</b> 96:16	<b>holds</b> 123:8	<b>human</b> 51:12	<b>implicitly</b> 37:13
<b>head</b> 41:18	<b>heavy</b> 22:4 37:8 41:10 52:20 62:22	<b>home</b> 38:19 125:7	<b>humbled</b> 33:24 82:6	<b>implied</b> 45:3
<b>heads</b> 27:17	79:14 98:15 109:5 124:19	<b>homeless</b> 67:13,14	<b>humility</b> 52:6	<b>important</b> 11:11,25 32:15 47:25 48:1 50:24 51:3 59:4 71:10 72:2,4 95:9,24 118:16, 21
<b>healing</b> 121:17	<b>heirs</b> 90:23	<b>honesty</b> 15:18	<b>humor</b> 50:2	<b>impress</b> 17:22
<b>health</b> 13:15 25:11,17 27:17 30:6 46:6 57:3 59:15 75:2 86:13,19 93:11 104:12 119:2	<b>helped</b> 69:24 116:6 121:4	<b>honor</b> 19:21 34:15 55:17 68:19	<b>hundred</b> 18:20 73:9	<b>impressed</b> 37:5
<b>hear</b> 10:8 11:22 18:25 36:2 85:12	<b>helpful</b> 37:24	<b>Honorable</b> 9:4,6 23:22,24 42:23,25 54:12, 14 65:15,18,20 81:10,13,15 102:6	<b>hundreds</b> 49:23 89:19	<b>impression</b> 38:4
<b>heard</b> 10:6,13,16 11:13,17 17:5 28:2 29:23 35:24 71:22 89:8 96:10 107:5	<b>helping</b> 24:22 115:17	<b>honored</b> 82:5	<b>husband</b> 53:9 83:10 91:9 99:7 106:11 121:2,9	<b>improper</b> 29:5
<b>hearing</b> 7:8,17 21:22 40:17 46:18 52:13 56:9,13, 23 62:14 63:14, 23 95:1 98:7 108:10 110:1,10 123:25 125:20	<b>helps</b> 113:14	<b>hope</b> 11:11,19 12:6, 12 13:2,6 16:3, 12 19:11,14 22:12 23:11 25:15 26:2 29:5 38:22 44:14 69:22 71:8,9	<hr/> <b>I</b> <hr/>	<b>impropriety</b> 22:3 41:9 52:19 62:21 79:13 98:14 109:5 124:18
<b>hearings</b> 15:23 64:12	<b>Henderson</b> 26:10	<b>hoping</b> 103:18	<b>ideal</b> 70:19 102:25	<b>improve</b> 89:9
	<b>Hey</b> 53:11	<b>horrible</b> 16:19 34:11	<b>ideals</b> 49:12	<b>improvement</b> 90:2
	<b>high</b> 32:24 40:9 113:14	<b>hospital</b> 56:15	<b>ill</b> 17:25	<b>in-person</b> 93:2
	<b>highlighting</b> 39:8	<b>hours</b> 18:7 74:4,8,10	<b>imagine</b> 68:2,12,25 69:13	<b>incarceration</b> 86:17
	<b>highly</b> 61:25 62:2		<b>impact</b> 55:18	<b>incidences</b> 27:24
	<b>hinders</b> 104:2		<b>impartial</b> 104:3 116:8	<b>include</b>
	<b>hired</b> 40:20			
	<b>hit</b> 40:7			

81:21	<b>informed</b>	<b>interest</b>	90:18 91:8,10	55:20 58:17
<b>included</b>	18:4	9:17 24:9 43:11	92:10 114:25	59:4 61:19 62:2,
46:8 58:11	<b>initially</b>	54:24 66:5	115:19 117:14	6,11,16 97:16,
66:18 82:22	83:6	81:25 101:4	118:2	25 121:22
100:24 101:18	<b>injury</b>	112:8	<b>involvement</b>	<b>Joe</b>
112:3,19	67:25	<b>interested</b>	46:12	83:10
<b>includes</b>	<b>inmate</b>	107:4	<b>involving</b>	<b>John</b>
44:18 65:25	31:10 92:25	<b>intervene</b>	84:2	107:1
86:20	<b>innocent</b>	14:12 30:25	<b>IOTA</b>	<b>Johnson</b>
<b>including</b>	20:19	47:9 60:20 76:7	115:7	78:19 125:16
14:1 30:16	<b>inquiry</b>	94:12 105:16	<b>irritated</b>	<b>join</b>
46:23 60:9 76:1	9:10 24:4 43:5	120:8	33:19	106:10
88:14 94:6	54:19 65:24	<b>intestate</b>	<b>issue</b>	<b>jokes</b>
105:10 120:2	81:20 100:23	90:23	21:3 27:17	11:22
123:9	112:2	<b>intimidated</b>	31:24 45:6,12	<b>Joseph</b>
<b>incorporated</b>	<b>instances</b>	58:16	104:4 117:9,10,	91:23
14:21 31:17	45:15	<b>introduce</b>	13	<b>journal</b>
47:18 61:4	<b>insurance</b>	53:8 99:5	<b>issues</b>	39:8 77:7
76:17 94:22	91:11	<b>introduction</b>	13:21 18:16	<b>JR</b>
106:1 120:18	<b>integrity</b>	101:11	27:5 58:21 60:5	8:4 9:4,7
<b>incredible</b>	15:18 49:6	<b>invaluable</b>	68:2 75:10	<b>judge</b>
34:20	<b>intelligent</b>	96:2	83:22,23 86:19	7:22,24 8:2,7,
<b>indicating</b>	12:19 44:21	<b>investigated</b>	88:20 93:18	10,14,16,19,23
57:20	103:1	9:9 24:3 43:4	96:3 104:21	9:8,22 10:25
<b>indicator</b>	<b>intended</b>	54:18 65:23	108:1 113:10	11:3,7,20 12:14,
48:8	56:24	81:19 100:22	119:13	18,19 13:11,13,
<b>Indigent</b>	<b>intense</b>	112:1		22 14:10,21,24
116:9	102:10	<b>investigating</b>	<b>J</b>	15:5,19,20,24
<b>indirectly</b>	<b>intent</b>	114:19		16:6,9,19,20
64:11	13:22 14:5	<b>investigation</b>	<b>James</b>	17:1,11,15,23
<b>individual</b>	30:12,19 46:19	14:20 31:9,12,	118:6	18:19,23 19:8,
121:8	47:2 60:6,13	13,17 47:17	<b>Jared</b>	15 20:1,4,13,16,
<b>individuals</b>	75:17,21 93:23	61:3 76:16	20:20	22 21:10,15,23
87:2 116:14	94:1 105:1,5	94:21 105:25	<b>Jeff</b>	22:14,19,21,22
<b>inexhaustible</b>	119:18,22	120:17	123:2	23:3,7,9,14,17
59:25	<b>intentions</b>	<b>investment</b>	<b>jewel</b>	24:1,14,16 25:5,
<b>influence</b>	37:10	91:11	24:21	19,22 26:10,13,
38:20 84:1	<b>interacting</b>	<b>invoked</b>	<b>job</b>	19 28:8 29:9
<b>Informa</b>	86:14 121:10	39:7 107:8	10:1 11:14 16:2,	30:2,4,11 31:8,
31:10	<b>interaction</b>	<b>involved</b>	4 29:16 33:1	10,11,17,20,22
<b>information</b>	121:16	28:5 68:12	34:25 38:25	32:1,9,11,16,19
77:2 124:8		83:23 88:13	49:11 51:7	33:3 34:5,8,13,

16 35:2,6,15,21, 24 36:16,20 37:14,21 38:1 39:5 40:14,15, 18,24 41:5,17, 22,24 42:1,6,10, 12,15,18 43:2, 16,20,22 44:1,3, 16,19,22,23 46:1,4,9,12,15, 18 47:21,22 48:11,19,24 49:16,18,20 50:14,18,24 51:11 52:14 53:4,9,14,20,24 54:1,4,7,16 55:4,12,16 58:1, 9,12,16 59:13, 16,20,22,24 60:1,2,4 61:7, 10,11 62:12,17 63:4,6 64:25 65:2,5,9 66:10, 25 67:19 68:10 69:3,15 70:18, 20 71:10 72:4 73:8,24 74:12, 15 77:15,24 78:6,15,25 79:6, 20,24 80:1,4,15, 18,23 81:1,4,17 82:5,19,23 83:2, 4,7,13,15,21 84:17,25 85:8 86:6 87:13,17, 19 88:3,4,5,7,21 90:13 91:1,21 92:20 93:6,8,12, 15,17,22 94:25 95:2 96:5,6,14, 23 97:12,22 98:2,8,21	101:25 102:6,25 103:11 107:10, 18,24 108:21 113:1 114:9 117:16,22 118:6,7,9,11,13, 17 123:1 125:8 <b>judge's</b> 29:15 84:7 <b>judges</b> 10:1 15:3,11 19:6 26:25 27:16 28:6 34:22 36:3 37:23 47:23 48:1,3,20 49:2,5 61:9 67:9 68:13, 16 71:11,17 85:17 86:10 89:25 95:20 107:20 113:8, 13,14 114:6 <b>judgeship</b> 16:16 <b>judgment</b> 45:22 73:13 92:2 <b>judicial</b> 7:2 9:2,5,8 12:19 13:18 15:17 23:20,23 24:2 27:2 30:9 31:24 42:21,24 43:3 44:20 46:4 49:12 54:10,13, 17 57:22 58:21 59:19 65:13,16, 19,22 70:12 71:7,25 75:5,7, 12,13 81:8,11, 14,18 82:7 84:16,20 86:20 87:21 88:22	93:7,14,18,19 100:15,18,21 104:13,22 107:12 111:20, 23,25 113:15 117:18 119:5, 14,15 <b>judiciary</b> 12:20 29:24,25 32:25 49:6 70:14 <b>July</b> 25:10 <b>June</b> 56:10 <b>jurisdictionally</b> 85:12 <b>jurist</b> 46:13 104:3 <b>jurors</b> 32:17 34:21 49:9 <b>jury</b> 68:5 84:11 <b>justice</b> 34:1 84:8,10 117:24 118:6 <b>justices</b> 108:3 <hr/> <b>K</b> <hr/> <b>Kassy</b> 121:1,4 <b>Kate</b> 99:18 100:16,19 102:22 103:2 <b>keeping</b> 51:23 68:17,18 79:4 <b>kicked</b> 20:24	<b>kidnapped</b> 56:12 <b>kidnapping</b> 57:11 <b>kids</b> 34:12,15 <b>killed</b> 121:8 <b>kind</b> 17:21 25:14 27:1 45:19 51:1, 2 69:5,19,20 70:12 73:5,19 96:3 121:22 <b>knew</b> 69:12 122:6 <b>knowing</b> 74:1 <b>knowledge</b> 74:24 108:4 113:9,22 <b>knowledgeable</b> 44:24 70:18 103:3 <b>Knox</b> 102:6 <b>Kolb</b> 20:9,10 <b>kudos</b> 40:14 <hr/> <b>L</b> <hr/> <b>lack</b> 62:15 71:5 73:6 78:20 88:9 92:3 93:3 124:5 <b>lady</b> 107:4 <b>land</b> 115:13 117:8	<b>language</b> 74:19 <b>languish</b> 59:6 <b>large</b> 20:13 106:22 <b>largest</b> 26:3,5 67:20 <b>lashings</b> 19:13 <b>lastly</b> 21:11 104:20 105:19 <b>late</b> 97:4 <b>laugh</b> 11:22 <b>Laura</b> 110:20 <b>Laurens</b> 56:8 <b>law</b> 33:16 37:22 51:9 56:17 68:17,21 70:17, 19 78:13 84:20 85:23 86:2,3 87:6,22 88:5 92:12 102:4,6, 23 103:3,10,12 108:4 114:13 116:18,19 118:1,3 122:1 124:10,11 <b>laws</b> 9:14 22:2 24:7 41:8 43:8 52:18 54:22 62:20 66:3 79:12 81:23 98:12 101:1 109:3 112:5 124:17
---	--	--	---	--

<p><b>lawsuit</b> 55:24 56:2,7 57:13,14 90:14, 16 91:2,5,7,14, 22,24 92:5,24, 25 116:21,24</p> <p><b>lawsuits</b> 31:8</p> <p><b>lawyer</b> 15:12 34:22 37:7 38:8 50:25 51:13,17 69:4 70:6 79:2 87:21 113:5 116:6,13 121:19</p> <p><b>lawyer- practicing</b> 20:6</p> <p><b>lawyers</b> 19:19 29:6 32:17 36:8 44:9 58:18 103:24 108:21 115:17</p> <p><b>lay-witness</b> 84:2</p> <p><b>leader</b> 97:8</p> <p><b>leading</b> 86:1</p> <p><b>learn</b> 33:4 39:10 72:20</p> <p><b>learned</b> 21:13 33:4 69:24 89:20 116:5 123:16</p> <p><b>learning</b> 36:11 68:15 69:22 74:18,22, 23</p> <p><b>leave</b> 124:5</p>	<p><b>leaving</b> 67:18</p> <p><b>led</b> 57:4 84:13 122:11</p> <p><b>Lee</b> 118:17</p> <p><b>left</b> 115:3,4</p> <p><b>legal</b> 66:23 83:2,6,24 85:1,11,19 88:14 89:4 101:23 112:24 113:9,23 114:1, 3,12</p> <p><b>legislator</b> 14:6 30:20 47:3 60:14 75:22 94:2 105:6 119:23</p> <p><b>Legislature</b> 10:3</p> <p><b>lesson</b> 40:3</p> <p><b>lessons</b> 39:10</p> <p><b>letter</b> 13:22 14:5 22:2 30:11,19 41:8 46:19 47:2 50:5 52:18 60:6,13 62:20 75:17,21 79:11 93:22 94:1 98:12 105:1,5 109:3 119:18,22 121:7,19 123:2, 22 124:17</p> <p><b>letters</b> 16:14 120:24 122:22 123:5</p>	<p><b>letting</b> 26:18 29:6</p> <p><b>level</b> 92:18,19</p> <p><b>levelheaded</b> 102:22</p> <p><b>levels</b> 89:23</p> <p><b>Lexington</b> 18:19 22:15</p> <p><b>license</b> 93:1</p> <p><b>lies</b> 11:20 116:15</p> <p><b>life</b> 17:6 40:3 68:7 86:17 88:1 89:5</p> <p><b>lifelong</b> 90:3</p> <p><b>light</b> 17:19 27:24</p> <p><b>lightly</b> 21:9</p> <p><b>likewise</b> 50:12 57:18</p> <p><b>limitations</b> 14:2 30:16 46:24 60:10 76:2 94:7 105:11 120:3</p> <p><b>limited</b> 65:25 104:17 114:12</p> <p><b>Lindi</b> 8:25 23:18 24:21 42:20 54:9 65:11 81:6 82:12 100:11 111:18</p> <p><b>lines</b> 26:19 51:20</p>	<p><b>list</b> 77:21 91:6</p> <p><b>listen</b> 18:4 118:19</p> <p><b>listened</b> 13:1</p> <p><b>listener</b> 70:25</p> <p><b>listening</b> 70:2 89:17</p> <p><b>literally</b> 37:14</p> <p><b>litigant</b> 72:21 73:25</p> <p><b>litigants</b> 49:8 58:18 62:9 73:20 87:25 88:2 91:13 95:10</p> <p><b>litigate</b> 88:17</p> <p><b>litigation</b> 83:16,20,22 84:3,6 85:5 114:8</p> <p><b>lives</b> 55:19</p> <p><b>load</b> 27:18</p> <p><b>loaded</b> 34:17 117:20</p> <p><b>lobby</b> 64:8 87:19</p> <p><b>located</b> 68:22</p> <p><b>long</b> 25:10 33:5,7 46:13 97:9 125:6</p> <p><b>longer</b> 45:14 56:24</p>	<p><b>longtime</b> 50:7</p> <p><b>looked</b> 23:9 34:13,16 40:3 95:3 97:14 120:23</p> <p><b>Lord</b> 20:19</p> <p><b>loses</b> 10:11</p> <p><b>lost</b> 25:8 48:17 50:23 87:10</p> <p><b>lot</b> 11:13 16:16 18:12 19:1,4,9 26:9 33:17 36:6 37:4 38:20,25 39:1 45:9 67:15 68:3,4 69:17 77:6,10,25 79:1 95:13 102:10 114:23 115:20, 21 116:4,5</p> <p><b>lots</b> 113:10</p> <p><b>loud</b> 35:8</p> <p><b>loudly</b> 37:4</p> <p><b>love</b> 44:2,3 51:8 110:19</p> <p><b>loved</b> 20:25 34:15</p> <p><b>low</b> 40:9</p> <p><b>lucky</b> 102:2 107:19</p>
--	---	---	--	---



<b>M</b>	48:21 51:12,17 52:3 55:2 58:6, 17 59:5 61:15 65:4,11 66:8 71:20 74:8 77:12 80:20 82:3 93:14 101:7 107:13 112:11 113:11 118:14,15,20 122:18	<b>Master's</b> 89:25 <b>materials</b> 9:13 24:6 43:7 54:21 66:2 81:22 100:25 101:10 112:4 <b>matter</b> 13:9 56:6 70:5 74:21 84:9 90:24 92:9 93:3 <b>matters</b> 7:20 26:1 27:4 64:1 84:14 85:1, 10,16,22 87:4 89:11 103:12 114:3 115:1,20 116:8	<b>McMahon's</b> 103:11 <b>means</b> 36:6 37:4 <b>meant</b> 44:4 <b>mediation</b> 73:13 <b>meet</b> 68:3 90:6 107:2 <b>meeting</b> 17:14 64:9 107:4 <b>meetings</b> 86:23 <b>meets</b> 66:19 82:23 101:19 112:20 <b>meld</b> 107:22 <b>member</b> 121:21 <b>members</b> 7:6,15 13:23 14:2,11 30:12, 16,24 33:9 46:20,24 47:8 60:7,10,19 63:12,21 75:18 76:2,6 93:23 94:7,11 96:10 105:2,11,15 109:24 110:8 119:19 120:3,7 122:22 125:18	<b>mentioned</b> 88:9 103:9 117:15 <b>mentors</b> 69:23 70:4 72:12 <b>Merit</b> 7:2 9:2,5,9 23:20,23 24:2 42:21,24 43:3 54:10,13,17 65:13,16,19,23 81:8,11,14,18 100:15,18,22 111:20,23 112:1 <b>mess</b> 37:21 <b>methamphetamine</b> <b>ne</b> 56:16 57:2 <b>middle</b> 38:17 <b>Midlands</b> 75:1 93:5 104:9 118:25 <b>mind</b> 23:15 45:12 107:25 114:1 <b>MINDY</b> 53:17 54:12,14 <b>minute</b> 109:18 <b>minutes</b> 106:16,20 109:18 <b>missed</b> 77:16 <b>mistake</b> 40:25 <b>mistakes</b> 51:12
<b>Madame</b> 36:16	<b>makes</b> 10:21,22 63:19 70:25	<b>Maura</b> 82:12		
<b>made</b> 12:11 20:10,14 26:23 31:18 38:4 42:14 54:3, 6 57:2 71:11 100:4 111:11 121:14	<b>making</b> 8:21 17:24 81:3 100:7 111:14 114:3	<b>Mabee</b> 28:17		
<b>magistrate</b> 67:19,21 68:20 70:12 72:14 73:8,18 74:5 77:3,5,15	<b>man</b> 34:17	<b>Mcculloch</b> 79:25 80:1,4,8, 15,18,23 81:1,4, 10,13,16,17 82:5,19,23 83:2, 10 87:20 90:13 91:21 92:20 93:6,8,13,17,22 94:25 95:2 96:6, 23 97:23 98:2,8, 21		
<b>magistrate's</b> 73:11 74:16 77:16 83:11	<b>Man's</b> 84:15	<b>Mcculloch's</b> 88:3		
<b>magistrates</b> 77:11	<b>mandatory</b> 85:9	<b>Mciver</b> 7:3		
<b>maintain</b> 17:23 37:17 38:14 89:13 113:14	<b>manner</b> 49:13 102:9	<b>MCLEOD</b> 64:18 65:15,18, 21		
<b>maintained</b> 121:13	<b>March</b> 25:9	<b>McMahon</b> 102:7		
<b>maintaining</b> 18:17 90:11 118:19	<b>Marcus</b> 91:23			
<b>maintenance</b> 89:23	<b>mark</b> 9:1 40:7 81:7 100:13 107:15 111:18			
<b>majority</b> 61:24 74:17 95:11,12 113:7 114:11	<b>marked</b> 81:7			
<b>make</b> 9:20 10:22 13:9 18:4 22:15 23:12 24:12 43:14 45:8	<b>marking</b> 23:15 65:7			
	<b>Marlboro</b> 26:6			
	<b>married</b> 93:1			

<b>mix</b> 107:7	<b>municipal</b> 67:17	<b>nervous</b> 69:20	<b>noted</b> 104:16 119:7,9	87:6 88:25 89:24,25 90:6
<b>model</b> 18:2 107:12	<b>murder</b> 27:14 67:5 118:12 124:25	<b>neutral</b> 59:1,7	<b>notified</b> 57:15,23	91:9 97:23 102:8 121:4
<b>money</b> 69:18 78:4,9 115:8 117:11	125:2	<b>neutrality</b> 118:19	<b>number</b> 86:5 95:24 122:22	123:6
<b>Monk</b> 107:1	<b>murders</b> 27:13,14	<b>news</b> 26:11	<b>numbers</b> 74:2	<b>officer</b> 121:3
<b>months</b> 103:19	<b>Murphy</b> 69:8	<b>newspaper</b> 9:15 24:7 43:9 54:22 66:3 81:23 101:2 112:6	<b>numerous</b> 28:4 83:22 108:3	<b>older</b> 89:2
<b>morning</b> 7:23 11:7,8 22:21 25:22,23 31:21 41:23,24 43:22,23 55:12, 13	<b>Murrell</b> 21:2 40:6	<b>N</b>	<b>O</b>	<b>ongoing</b> 115:12
<b>motion</b> 57:17 63:19 73:12 92:2	<b>named</b> 116:21	<b>nice</b> 40:12 48:18	<b>objection</b> 8:20,24 54:9 65:6,9,10 81:2,5 100:7,10 111:14	<b>open</b> 22:7 41:12 52:23 62:25 79:15 98:17 109:8 124:21
<b>motions</b> 45:16 103:13	<b>nary</b> 21:2	<b>niece</b> 35:16	<b>objections</b> 42:16 54:5 100:9	<b>opened</b> 68:21
<b>motivates</b> 69:20	<b>National</b> 116:23	<b>night</b> 80:19	<b>obtain</b> 108:4	<b>opening</b> 9:20 24:12 43:14 55:2 66:8 82:3 101:7 112:11
<b>mouth</b> 29:18	<b>nature</b> 56:2 90:16 91:4, 24 92:7,23 116:23	<b>Nineteen</b> 88:8	<b>occur</b> 8:18	<b>opinion</b> 44:7 113:13
<b>move</b> 58:7 60:4 77:13 102:17	<b>necessarily</b> 19:7	<b>non-compliance</b> 87:9	<b>off-the-record</b> 64:15	<b>opinions</b> 88:15
<b>moved</b> 64:7 83:7 102:12	<b>needed</b> 41:14 44:25 92:12	<b>non-probate</b> 85:1	<b>offenses</b> 67:4	<b>opportunity</b> 10:7,10,15 11:1, 12,17 15:9 41:5 51:20 52:16 62:17 66:11 79:9 89:7 98:10 109:1 124:14
<b>moves</b> 7:3,13 63:10 109:22 110:6 125:16	<b>negative</b> 32:5 36:3 40:19 45:2,20 48:11 114:11 117:23	<b>normal</b> 90:11	<b>offer</b> 12:25 27:7 71:6 88:11,24 103:6, 23 116:10	<b>opposed</b> 7:7,16 63:13,22 109:25 110:9 125:19
<b>moving</b> 57:8 59:5 99:10 122:19	<b>negotiated</b> 122:11	<b>North</b> 68:22	<b>offered</b> 107:12	<b>opposing</b> 90:20
<b>Mullins</b> 67:17	<b>negotiations</b> 125:4	<b>note</b> 13:12 14:19 30:3 31:7,16 45:25 47:16 50:3 59:12 61:2 66:17 74:25 76:14 82:20 93:5 94:19 95:24 101:16 104:9 105:23 112:18 114:12 116:3 118:24 120:15 123:1	<b>office</b> 57:22 64:5 67:12,18 83:8, 13 86:12,21	<b>opposition</b> 9:19 24:11

43:12 55:1 66:7 82:2 101:6 112:10	<b>P</b>	120:6	31:7	49:23 70:11 71:20 96:4 102:24 108:7
<b>order</b> 29:12 57:6 84:22 85:11 90:20	<b>P.M.</b> 125:23	<b>party</b> 89:16	<b>Pee</b> 13:12,15 30:3	<b>personal</b> 8:8,11 9:3 23:4, 21 42:7,22 53:21 54:11 64:22 65:14,17 67:25 71:14 80:12 81:9,12 99:22 100:16 111:4,21 115:11 116:21 117:4 118:2
<b>ordered</b> 78:3 90:22 92:12	<b>Pageland</b> 38:2 41:20	<b>passed</b> 25:8 64:8	<b>peers</b> 84:4	<b>personally</b> 15:25 49:14 55:20 70:22
<b>ordering</b> 89:14	<b>pages</b> 97:15	<b>passionate</b> 58:12	<b>Peiper</b> 118:6	<b>personnel</b> 12:8 25:25
<b>originally</b> 56:6	<b>paid</b> 69:17 78:4	<b>past</b> 25:15 67:2 68:20 103:14,17 104:7 107:7 115:24	<b>penalty</b> 114:18 115:21 125:5	<b>perspectives</b> 104:4
<b>outcome</b> 14:7 30:21 47:4 60:15 75:23 94:3 105:7 119:24	<b>painful</b> 121:14	<b>patience</b> 24:18 102:11	<b>pending</b> 14:7 30:21 31:8, 14 47:4 60:15 75:23 87:3 94:3 105:7 119:24	<b>petitions</b> 85:13
<b>outlier</b> 49:23	<b>Palmetto</b> 50:7	<b>patient</b> 26:25 125:9	<b>people</b> 9:23 10:9 13:3,7 16:17,24 17:8, 17,22 21:7 37:1, 3 38:9 40:4,9 48:10,19,20,22 49:7 58:7 61:15 68:4 69:24 72:3 73:19 78:7 83:16 84:24 89:11 95:6,13 108:2 117:10 123:19	<b>pew</b> 106:12
<b>outlook</b> 17:8 36:5	<b>pandemic</b> 25:13 90:8 116:4	<b>Patrick</b> 40:20	<b>people's</b> 55:18	<b>phase</b> 114:18 115:21
<b>outstanding</b> 12:19 38:25 58:17 60:2 70:11 97:25	<b>paper</b> 39:21,22,23	<b>Patterson</b> 90:15	<b>people-person</b> 40:8	<b>philosophy</b> 29:15,19
<b>ovation</b> 34:25	<b>parking</b> 99:9	<b>PAUL</b> 22:25 23:22,24	<b>perfect</b> 56:6 70:18 72:24	<b>physical</b> 13:15 30:6 46:6 59:15 75:2 93:10 104:12 119:2
<b>overdose</b> 56:14	<b>part</b> 8:21 16:4 65:12 67:12 68:14 71:13 80:20,22 107:13 122:20	<b>Pauperis</b> 31:10	<b>performance</b> 20:5 51:11	<b>Piedmont</b> 45:25 59:12
<b>overruled</b> 29:12	<b>parte</b> 56:9	<b>pay</b> 11:23 40:4 78:9	<b>period</b> 50:11	<b>pills</b> 56:14
<b>oversight</b> 86:21	<b>participants</b> 26:20 82:11	<b>PD</b> 123:14	<b>person</b> 16:20 21:2,18 39:24 48:16	<b>pit</b> 69:14,19
<b>overstated</b> 36:24	<b>participating</b> 21:24 79:18	<b>PDF</b> 120:23		<b>place</b> 48:17 49:1 57:4
<b>overwhelming</b> 61:24 95:11,12	<b>parties</b> 14:10 15:22 30:23 47:7 60:18 70:24 76:5 83:22 84:13 88:23 89:15 92:15 94:10 105:14 117:12 118:19	<b>PDQ</b> 66:18 82:22 90:13 92:4,20 101:18 112:19 116:20		
<b>overwhelmingly</b> 97:15		<b>peace</b> 121:17 122:18		
		<b>peanuts</b> 78:5		
		<b>PEARCE</b> 25:21 30:3,10		

58:18 64:2 90:10	76:11 94:16 105:20 120:12	<b>positiveness</b> 35:25	<b>preceded</b> 31:22	<b>prior</b> 14:7 30:21 45:7
<b>placement</b> 57:7	<b>point</b> 21:2,11 108:18	<b>positivity</b> 36:4	<b>precedes</b> 36:12	47:4 60:15 75:23 94:3
<b>places</b> 48:25 52:2	<b>pointed</b> 37:6	<b>possess</b> 71:7	<b>prefer</b> 106:13	103:15 105:7 119:24
<b>placing</b> 56:18 57:6	<b>poise</b> 79:1	<b>possesses</b> 87:20	<b>Preliminary</b> 77:1	<b>private</b> 56:11 69:7,10 74:16 83:9
<b>plaintiff</b> 91:9 116:22	<b>pokey</b> 35:13	<b>possibility</b> 28:11,16	<b>preparation</b> 82:9 84:22	<b>privilege</b> 10:2
<b>plaintiff's</b> 69:4 102:5	<b>police</b> 121:2	<b>possibly</b> 12:23	<b>prepared</b> 8:9 72:5 73:24 74:1,14 84:23 87:17 103:2	<b>pro</b> 13:7 31:9 84:13 91:13 115:18
<b>plaintiffs</b> 90:24 93:1 103:10	<b>polite</b> 59:8	<b>potentially</b> 22:4 41:10 52:20 62:22 79:13 98:14 103:18 109:5 124:19	<b>present</b> 43:13 78:18 101:6	<b>probate</b> 83:13,15,18,19, 21 84:9,12,19 85:5,6,14 87:19 88:4,6,18 93:13 95:17,20 96:3,5, 9,11,14 97:12 115:17 121:5
<b>plan</b> 56:21,25	<b>poor</b> 88:22	<b>power</b> 19:1	<b>presentation</b> 84:14	<b>problem</b> 26:10,17
<b>play</b> 116:12	<b>poorly</b> 71:12,18,24 72:9	<b>practice</b> 10:24 11:10 15:14 18:14 44:6 58:2 68:21, 22,25 69:8,11 74:17 78:13 82:25 83:9 101:21 102:12 112:22 113:21 114:12	<b>preside</b> 114:14	<b>problems</b> 25:14 28:25
<b>plea</b> 85:25 118:14 122:13	<b>population</b> 67:14	<b>practiced</b> 10:14 19:4 37:22 77:21 78:23 87:21	<b>presided</b> 58:15 68:4 83:21	<b>procedurally</b> 86:4
<b>pleadings</b> 31:11	<b>population-wise</b> 26:3	<b>practicing</b> 51:9 85:22	<b>president</b> 29:22	<b>procedure</b> 84:19 85:2,4
<b>Pleas</b> 73:12 74:11 85:15 90:15 91:3,23 92:5,22	<b>portion</b> 64:5 79:8 108:25 124:13	<b>praise</b> 32:21,22 49:1,2 61:19 95:6	<b>press</b> 27:11	<b>proceeds</b> 86:9
<b>pleasant</b> 88:6	<b>position</b> 22:10 33:25 38:6 55:18 58:15 66:20 70:5 82:24 101:20 112:21 114:2 117:5	<b>prayer</b> 20:20 21:5	<b>pressure</b> 28:25	<b>proceeding</b> 92:17
<b>pleasure</b> 17:16,20 24:23 36:21 58:19 122:19	<b>positive</b> 12:16 26:23 27:9,23 32:8 36:14 45:20 48:9 56:15 58:4 70:10 87:15 102:21 107:18 113:20 117:22 123:17	<b>preacher</b>	<b>pretty</b> 17:18 26:4 38:15 45:9 72:11,12 122:13 123:16	<b>procedures</b> 86:9
<b>pledge</b> 14:6 30:20 47:3 60:14 75:22 86:8 94:2 105:6 119:23			<b>previous</b> 9:16 24:8 43:10 47:23 54:23 66:4 74:3,6 81:24 101:3 108:12 112:7	<b>process</b> 14:13 24:19,23 26:16 30:25 32:21 36:11 47:9 60:20 68:15 76:7 79:8
<b>pledging</b> 14:16 31:4 47:13 60:24				

82:7,8,14 87:25 91:14,15 94:12 105:16 108:25 120:8 124:14	<b>prosecutor</b> 69:3 87:23 104:1	<hr/> <b>Q</b> <hr/>	76:17 94:22 106:1 120:18	<b>railroad</b> 33:13
<b>processes</b> 86:24 87:2,8	<b>prosecutors</b> 116:16	<b>qualifications</b> 9:10 13:14 22:8 24:3 30:5 41:13 43:4 46:6 52:24 54:18 59:15 63:1 65:24 75:2 79:16 81:19 93:9 98:18 100:23 104:11 109:9 112:2 119:2 124:4,22	<b>questionnaire</b> 8:8,12 9:3 23:4, 21 42:7,22 53:22 54:11 64:22 65:14,17 80:12 81:9,12 99:22 100:16 111:4,21	<b>raise</b> 7:25 21:2 22:22 42:1 53:15 64:16 80:5 97:2 99:15 110:23
<b>profession</b> 70:14 83:6	<b>protective</b> 56:19 57:5	<b>qualified</b> 13:13,16 28:5 30:4,7 46:1,5 48:15 59:14,17 61:25 62:2 66:24 75:2,3 83:3 88:3,4 93:6,8,15 101:24 104:10, 14 112:25 113:11,13,25 119:1,3,11	<b>questions</b> 11:4 14:23 16:9 17:14 21:21 24:24 25:20 31:19 34:3 39:10 40:16 43:17,18 46:17 47:20 49:18 52:12 55:7,9 61:6 62:13,16 66:12,14 76:18, 20 78:17,20 82:15,17 87:9 94:23,25 97:1 98:6 101:10,13 106:2,8 108:9, 14 112:15 116:7 120:19,21 123:24 124:5	<b>raised</b> 14:20 31:16 38:22 47:17 61:3 76:15 94:20 105:24 120:16
<b>professional</b> 13:17 27:1 30:8 44:24 46:2 58:14 59:18,23 66:24 75:4 83:3 93:10 101:24 104:12 112:25 116:9 119:4	<b>proud</b> 20:15 67:16 95:14	<b>qualities</b> 47:25 87:20	<b>quickly</b> 45:9 72:11,13 77:5 123:16	<b>RALPH</b> 8:4 9:4,6
<b>professionally</b> 82:13 87:25	<b>proudest</b> 67:11	<b>quality</b> 90:7 113:14	<b>quote</b> 27:4 70:10,15, 16,20,21 71:3	<b>ran</b> 69:10 74:3
<b>professionalism</b> 82:13 87:25	<b>provided</b> 26:21	<b>quantity</b> 90:7	<b>racking</b> 69:7	<b>range</b> 59:23 67:4 68:2, 24
<b>professionally</b> 70:22	<b>proven</b> 114:8	<b>question</b> 25:1 51:5 69:9 87:8 97:1 107:19 114:13 117:20	<hr/> <b>R</b> <hr/>	<b>Rankin</b> 16:8,9 20:17,18, 24 39:4,5 49:19, 20 106:9,14,15 108:8
<b>professionally</b> 70:22	<b>public</b> 44:3 46:14 67:2, 16 83:13 86:15 87:24 89:24 97:17 110:20	<b>questioned</b> 45:2	<b>race</b> 64:6	<b>reaching</b> 122:11
<b>professionally</b> 70:22	<b>publishing</b> 35:17	<b>questioning</b> 14:22 31:18 47:18 61:4	<b>reach</b> 122:6,11	<b>read</b> 32:16 39:7 50:22 62:5
<b>professor</b> 39:19	<b>purposes</b> 64:12 92:9			
<b>promoted</b> 68:9	<b>pursuant</b> 21:25 41:6 52:16 62:18 79:9 98:10 109:1 124:15			
<b>prompt</b> 45:6	<b>put</b> 35:8 64:4,11 85:5 96:8 110:12 122:3 123:5			
<b>pronouncing</b> 20:20	<b>Putnam</b> 24:22 82:12			
<b>proof</b> 73:14	<b>putting</b> 114:17,23 115:21			
<b>proper</b> 71:7 87:20				
<b>properly</b> 38:21				
<b>property</b> 117:7				
<b>prosecuted</b> 83:8 92:1				
<b>prosecution</b> 86:17 103:22 104:5				

85:18,20	<b>recess</b> 29:12	<b>reelected</b> 25:16	70:1	109:8 124:22
<b>readily</b> 59:3	<b>reckoned</b> 113:23	<b>reelection</b> 24:19 90:4	<b>remain</b> 22:6 41:12 52:22 62:24 79:15 98:16 109:7 124:21	<b>reported</b> 59:13 104:10 118:25
<b>reading</b> 88:14 120:23	<b>reclaim</b> 117:7	<b>reference</b> 56:4 120:24	<b>remaining</b> 16:4	<b>reporter</b> 19:18 123:10
<b>ready</b> 74:1,14 80:2 84:24	<b>recognized</b> 84:4	<b>referenced</b> 58:21 91:19	<b>remark</b> 108:17	<b>reporting</b> 74:7
<b>real</b> 40:5 68:7 83:18 87:22 88:3 90:20,22	<b>recognizing</b> 50:8 122:16	<b>references</b> 57:2	<b>remember</b> 19:15,16 34:11 35:3,6,11 37:25 38:8 48:20 50:22,24 51:5,9, 14,16 69:8 77:22	<b>represent</b> 11:14
<b>realize</b> 16:17 77:5 83:16	<b>reconnected</b> 87:11	<b>reflect</b> 59:25	<b>remind</b> 21:24 41:6 52:16 62:17 79:9 98:10 106:18 109:1 124:14	<b>representation</b> 115:3
<b>realized</b> 77:7	<b>reconsider</b> 45:16	<b>reflects</b> 46:11 71:24 72:4	<b>reminders</b> 78:13	<b>representative</b> 76:20,21,22 96:24,25 97:6 115:11 116:21 117:4 125:16
<b>reason</b> 37:12 71:1 78:6 117:14	<b>record</b> 7:2,11,12 8:21 14:20 19:23 22:6 25:15 31:16 41:12 47:16 52:22 57:1 61:2 62:24 63:17,18 64:2,4, 12 65:12 66:17, 19 76:15 79:15 80:20,22 82:21, 22 94:20 96:9 98:16 101:17,18 105:24 109:7, 20,21 110:4,6, 12,15 112:18,20 118:14,15,16 120:16 124:21 125:23	<b>refute</b> 32:4,6	<b>renders</b> 66:24 83:3 101:24 112:25	<b>reprimand</b> 12:5
<b>reasonable</b> 19:10	<b>records</b> 92:11,13,16	<b>registered</b> 35:9	<b>repeat</b> 29:23	<b>reproach</b> 34:6
<b>recalls</b> 122:12	<b>recusal</b> 84:7 90:18	<b>regularly</b> 86:14,23	<b>repercussion</b> 37:1	<b>reputation</b> 11:9 12:8 13:18 15:18 25:24 30:9 36:4,12 44:5,8,14 46:3 48:3,8 49:25 58:2,4,5 59:18 75:5 93:10 104:15,18 119:5 122:9 123:8
<b>receive</b> 32:20,21 85:19	<b>recused</b> 84:10	<b>reintroduce</b> 110:17	<b>replacement</b> 26:11	<b>require</b> 87:1
<b>received</b> 9:12 12:14 14:6 26:20 30:20 43:12 44:16 47:3 58:9 60:14 70:7 75:22 87:13 94:2 102:18 105:6 112:9 113:17 119:23	<b>recuse</b> 28:19	<b>relate</b> 40:9	<b>replete</b> 32:10	<b>required</b> 84:17 85:12
<b>recent</b> 28:3 29:22 85:20,21 88:10		<b>related</b> 86:21 92:10	<b>report</b> 22:7 41:13 52:23 57:19 62:25 75:6 79:16 91:1,21 93:4,5 98:17	
<b>recently</b> 116:3 118:13		<b>relates</b> 39:12 78:22		
		<b>relationship</b> 26:15 57:10		
		<b>relationships</b> 87:6 123:18		
		<b>relaxed</b> 44:10 51:23		
		<b>release</b> 22:7 41:13 52:23 62:25 79:16 98:17 109:8 124:22		
		<b>relying</b>		

93:2 102:10	86:18,25	<b>rising</b>	104:23 116:19	36:18,19 50:16,
<b>requirements</b>	<b>rest</b>	70:14	119:15	17 63:10 109:22
66:20 82:24	70:6 115:3	<b>Ritz</b>	<b>rules</b>	<b>sale</b>
84:16 85:10	<b>restitution</b>	97:24	68:7 73:11,16,	90:20 117:10
101:20 112:21	87:4	<b>Road</b>	23 74:20 75:15	<b>salt</b>
<b>research</b>	<b>result</b>	68:23	77:1,12 78:14	48:6
84:21	34:22 118:4	<b>robberies</b>	84:16,18 85:3,4,	<b>Sasha</b>
<b>residence</b>	121:9	67:6	6,8 88:20 93:20	92:22
66:21 82:25	<b>results</b>	<b>robe</b>	104:24 119:16	<b>sat</b>
101:21 112:22	123:17	19:2 21:8 37:8	<b>ruling</b>	96:15
<b>resolve</b>	<b>resume</b>	<b>Robert</b>	91:10,12	<b>satisfied</b>
84:7 122:10,13	90:10	92:6	<b>run</b>	10:10,18
<b>resolved</b>	<b>retained</b>	<b>robitus</b>	18:18 44:9	<b>satisfy</b>
122:23	38:10 86:5	72:10	51:21 83:13	90:20,23
<b>resolving</b>	<b>retire</b>	<b>rocks</b>	89:12 90:4,5	<b>saved</b>
88:2	25:7 35:15	95:5,6	<b>running</b>	20:11
<b>respect</b>	<b>retired</b>	<b>Roger</b>	85:25 97:12	<b>sayeth</b>
12:10 32:18	25:9 68:20	28:8	108:15,20	20:19
62:10 82:8	108:21	<b>Rogers</b>	<b>rush</b>	<b>scene</b>
87:24 95:13	<b>revealed</b>	92:6,15	45:17,21	56:17
121:11	31:9,13	<b>role</b>	<b>rushed</b>	<b>schedules</b>
<b>respected</b>	<b>review</b>	104:2 116:11,12	45:4	68:16
27:1	78:22 115:25	118:9	<b>Rutherford</b>	<b>school</b>
<b>respectful</b>	<b>reviewed</b>	<b>room</b>	76:20,21,22	28:13,15 40:2
44:11,21 51:23	14:15 31:3 43:6	34:24 106:5	96:24,25 97:6	70:17 102:4,23
<b>respond</b>	47:12 60:23	<b>room-only</b>		103:10 122:2
45:4 114:14	76:10,13 94:15	122:1	<b>S</b>	124:10
<b>responded</b>	105:19 120:11	<b>routinely</b>		<b>Schwab</b>
56:17	<b>reviews</b>	15:14	<b>S.C.</b>	39:9
<b>response</b>	48:9	<b>row</b>	120:12	<b>screened</b>
12:24 27:7,9	<b>Richland</b>	108:15	<b>Sabb</b>	106:16 108:12,
71:6 88:10,23	67:19 68:10	<b>rude</b>	15:14 20:2,3,10	13
103:6,23 116:10	77:16 79:4	12:12 13:6	34:3,4 35:5,11	<b>screening</b>
<b>responses</b>	84:11 86:14	33:14 88:22	108:18	11:4 12:1 14:3,8
58:10	110:21	<b>rudely</b>	<b>safe</b>	22:4 30:17,21
<b>responsibilities</b>	<b>rights</b>	33:20	34:19 41:19	31:8 41:11
87:4	56:1	<b>rule</b>	53:2 63:5	43:19 46:25
<b>responsibility</b>	<b>rings</b>	10:17 13:4	<b>safety</b>	47:5 52:21
55:19 87:22	37:4	18:25 29:18	56:21,24	55:23 60:11,16
<b>responsible</b>	<b>ripple</b>	49:6 75:14	<b>Safran</b>	62:22 66:15
69:18 85:25	122:17	88:15 93:19	7:13 17:14,15	75:24 76:3
			19:3,10,21	78:18,21 79:8,

14 82:17 94:4,8 98:15 101:13 105:8,12 108:25 109:6 112:15 119:25 120:4 124:14,19	<b>selection</b> 7:3 9:2,5,9 23:20,23 24:2 42:21,24 43:3 54:10,13,17 65:13,16,19,23 71:2 81:8,11,14, 18 82:7 100:15, 18,22 111:20,23 112:1	40:19 41:2,15 44:3 46:15 49:11 53:1 63:2 67:2 78:12 79:3, 19 92:3 93:3 96:1,5 97:17,25 98:20 109:12 125:11	<b>sharing</b> 64:5 <b>sheet</b> 39:23 <b>sheets</b> 85:18 <b>sheriff's</b> 35:8 89:13 <b>shift</b> 58:25 <b>shining</b> 17:19 95:16 <b>shock</b> 40:11 <b>shoes</b> 21:15,20 <b>shoplifting</b> 67:24 <b>short</b> 12:12 62:3 <b>shortly</b> 99:9 <b>shot</b> 36:25 121:3 <b>shouting</b> 52:8 <b>show</b> 17:21 99:9 118:18 <b>showed</b> 108:20 <b>showing</b> 21:6 74:9 <b>shown</b> 24:18 <b>shows</b> 25:15 114:2 <b>shut</b> 29:18 <b>siblings</b> 72:10	<b>sick</b> 34:17 <b>side</b> 27:20,22 50:4 67:25 68:5 73:23 103:11,25 104:8 118:10 121:23 <b>sides</b> 68:6 73:15 83:11 104:3 <b>sign</b> 71:18 115:10 <b>signed</b> 56:21 57:6 <b>significant</b> 46:11 <b>signify</b> 7:4,14 63:11,20 109:23 110:7 <b>silverware</b> 96:12 <b>similar</b> 12:22 91:8 <b>simplest</b> 33:13 <b>simply</b> 85:5 <b>sir</b> 8:1,2,14,16,25 11:5 12:7 14:14 16:6,8 22:23 23:7,14,19 25:23 30:14,18, 22 35:5 38:16 42:1,15,20 43:19 45:24 50:19 52:11 53:24 54:1,4,7 64:25 65:2,5,11 76:24 78:25 79:6,20 80:4,15,
<b>screenings</b> 9:16 24:8 43:10 54:24 66:4 81:24 101:3 112:7 <b>scrutinizing</b> 61:12 <b>sealed</b> 92:12 <b>search</b> 9:14 24:7 43:9 54:22 66:3 81:23 101:2 112:6 <b>seat</b> 106:22 <b>seats</b> 122:3 <b>second-seated</b> 67:5 <b>Section</b> 14:1,17 30:15 31:5 46:23 60:9 76:1 94:6,17 105:10 120:2 <b>security</b> 96:13 <b>seek</b> 117:17 <b>seemingly</b> 107:13 <b>sees</b> 48:1 71:9 <b>select</b> 113:14	<b>Senator</b> 16:8,9 20:2,3, 10,17,18,24 34:3,4 35:2,5,11 39:4,5 40:15 49:19,20 50:14 106:9,14,15 108:8 110:6 <b>senior</b> 25:4 32:25 39:12 <b>sense</b> 10:21,22 37:12 46:10 50:2 <b>sensitive</b> 87:18 <b>serpent</b> 20:18 <b>servant</b> 25:16 <b>serve</b> 10:2,3 25:11,18 68:19 84:8 88:7 95:24 113:24 <b>served</b> 15:17 31:11 55:6 57:14 83:14 87:22 114:9 121:8 <b>service</b> 16:5 22:11 32:13 33:2	<b>services</b> 56:8 57:12 87:12 <b>servicing</b> 9:23 43:24,25 55:14,15 <b>session</b> 7:4,10,13,19,20 63:10,16,20,25 109:22 110:3,7, 12,13 125:17,22 <b>Sessions</b> 86:6 <b>set</b> 21:17 26:17 32:23 38:25 <b>setting</b> 49:2 62:4 <b>settlement</b> 15:23 85:13 122:12 <b>seventy-five</b> 73:9 <b>shadow</b> 86:10 <b>shake</b> 107:3 <b>shape</b> 27:21 <b>share</b> 36:1 <b>shared</b> 12:22		



18,23 81:1,4 82:5,19 100:5 110:23 111:7,9, 12,18 112:13 123:4 125:2	17:12 20:2,9,17 21:11,19,23 22:17,21 23:3,8, 11,15,18 24:1, 15 25:19 31:20 34:2 35:19 36:18 39:4,6 40:16,18 41:1, 19,22,25 42:6, 11,13,16,19 43:2,18 47:22 49:18 50:16 52:12,14 53:7, 11,14,20,25 54:2,5,8,16 55:8 56:5 61:7 62:13, 15 63:5,7,9,13, 15,18,22,24 64:14,16,21 65:1,3,6,10,22 66:13 76:19 77:19 78:2,11, 16 79:1,7,22,24 80:2,5,11,16,21, 24 81:2,5,17 82:16 94:24 95:2 96:7,24 97:4,21 98:5,8, 22,24 99:2,4,11, 14,21 100:1,3,6, 10,13,21 101:12 106:3,8 108:9, 11,17 109:17, 21,25 110:2,5,9, 11,16,22 111:3, 8,10,13,17,25 112:14 120:20 123:24 124:1 125:6,10,15,19, 21	<b>smooth</b> 121:15 <b>snuck</b> 106:5 <b>Social</b> 56:8 57:11 <b>sold</b> 90:23 <b>solicitor</b> 35:4 67:3 69:12 85:24 86:2 92:1 123:2 <b>solicitor's</b> 67:12,18 83:7 86:21 87:6 89:24 102:8 123:6 <b>solicitors</b> 20:7 86:14,15 <b>Solid</b> 26:25 <b>solo</b> 68:22 103:20 <b>somebody's</b> 114:20 <b>son</b> 50:10 91:10 <b>sooner</b> 41:4 <b>sorely</b> 77:15 <b>sort</b> 113:9 118:6 123:11 <b>sought</b> 14:6 30:20 47:3 60:14 75:22 94:2 105:6 119:23 <b>soup</b> 96:11	<b>South</b> 9:23 14:16 16:1 22:11 29:22 30:15 31:4 33:2 41:15 47:13 50:4 60:24 67:12 75:14 76:11 82:11 84:5 93:20 94:16 98:20 104:23 105:20 109:12 113:3, 11,12 117:16 119:16 125:12 <b>sovereign</b> 13:8 <b>space</b> 121:16 <b>speak</b> 8:5 23:1 32:25 42:4 53:18 64:19 80:9 99:19 104:8 111:1 <b>speaks</b> 16:16 17:9 33:8 40:7,10 <b>specifically</b> 52:3 92:16 <b>speed</b> 119:10 <b>speeding</b> 67:24 <b>spent</b> 67:18 83:9 115:24 <b>spirit</b> 22:1 41:8 52:18 62:19 79:11 98:12 109:3 124:16	<b>spoke</b> 97:11 <b>spot</b> 95:17 99:9 <b>spread</b> 37:20 <b>squabbles</b> 118:8 <b>stability</b> 13:15 25:15 30:6 46:7 59:15 75:3 93:11 104:13 119:2 <b>stable</b> 25:16 <b>stack</b> 29:23 <b>staff</b> 12:9,10 16:18 24:17,21 25:20 32:17 35:21 49:8 55:9 62:8 66:14 76:16 86:15 89:23 90:6 94:21 95:11 97:24 105:25 120:17 <b>staffer</b> 36:13 <b>stand</b> 22:12 86:22 101:11 110:14 <b>standard</b> 49:2 <b>standing</b> 34:25 52:8 122:1 <b>star</b> 70:14 95:16 <b>start</b> 61:8 68:25 77:7 117:24
<b>sister</b> 57:8 <b>sisters</b> 56:20 <b>sit</b> 29:17 36:9 39:18 89:15 <b>sitting</b> 12:3 15:3 51:1 61:9,11 84:10 <b>situation</b> 11:16 13:4 27:9, 15 51:2 121:18 <b>situations</b> 55:22 <b>sixteen</b> 84:20 <b>slap</b> 72:12 <b>SLED</b> 38:18 91:1,21 <b>sleeping</b> 56:14 <b>slew</b> 29:4 <b>smaller</b> 26:6 <b>smallest</b> 27:12 <b>smart</b> 70:13 88:5 102:22 <b>Smith</b> 7:1,7,9,12,16, 18,25 8:7,11,15, 17,20,24 9:8 11:3 14:24 16:7	<b>Smith's</b> 21:2			

<b>started</b> 31:21 56:6 67:3 77:4,8 80:3 86:13 97:8	32:25 <b>Statute</b> 84:15 <b>statutory</b> 66:20 82:24 101:20 112:21	<b>stress</b> 69:11 <b>strikes</b> 61:17 <b>striking</b> 59:22 <b>strive</b> 17:21 44:23 89:8 108:6	75:17,21 93:22 94:1 105:1,5 119:18,22 <b>Subpart</b> 31:5 <b>Subsection</b> 94:17 105:21 <b>substance</b> 57:4 <b>substantial</b> 46:12 <b>substantively</b> 86:4 <b>substitute</b> 84:8 <b>succeed</b> 21:12 <b>success</b> 39:8 <b>successful</b> 90:10 <b>successfully</b> 86:16 <b>sued</b> 115:13 <b>suggest</b> 12:23 <b>suggested</b> 115:25 <b>suit</b> 31:14 92:7,21 <b>summary</b> 73:13 75:6 92:2 <b>summer</b> 50:11 <b>Summerall</b> 124:9 <b>super</b> 21:18 <b>super-excited</b> 35:23	<b>Superb</b> 70:12 <b>supplemental</b> 86:25 <b>support</b> 35:21 71:2 <b>supportive</b> 90:3 <b>Supreme</b> 28:18 84:9 92:18 <b>surprises</b> 20:5 <b>survey</b> 9:12 12:16 15:12 24:5 26:20,22 43:6 44:15,17 54:20 58:10 66:1 70:9 81:21 100:25 102:20 112:4 113:19 <b>surveys</b> 12:15 32:3 44:17 48:7 61:13,14 70:8 87:14 95:3,5 102:19 113:18 <b>survival</b> 85:12 <b>survived</b> 40:21,22 <b>sustained</b> 29:12 <b>sways</b> 120:24 <b>sworn</b> 8:4,12,21 9:1,6 22:25 23:4,16, 24 42:3,7,17,25 53:17,22 54:14 64:18,23 65:7,
<b>state</b> 7:19 9:14 10:3, 25 11:14 15:17, 19 16:1 18:12, 16,21 22:11 24:7 29:24 33:2 37:11,13 41:15 43:8 44:3 49:3 50:7 51:20 54:22 58:13 63:25 66:2 67:21 69:16 81:23 84:24 85:19 91:16 92:18 98:20 101:1 107:21 109:12 112:5 113:2,8 114:6,8 116:8,22 125:12	<b>stay</b> 59:5 77:13 84:25 88:13 106:10 118:7 <b>stayed</b> 85:3 <b>staying</b> 70:3 <b>step</b> 89:14 <b>stepfather</b> 34:12 <b>Stephen</b> 91:3 <b>stern</b> 44:24 <b>STIMSON</b> 11:6 13:12,20 14:19 <b>stoic</b> 72:5 <b>stomach</b> 69:14,19 <b>stones</b> 61:16 <b>stop</b> 89:15 <b>stopped</b> 77:23 89:17 <b>story</b> 122:12 <b>strategy</b> 39:14 <b>strength</b> 114:2	<b>Strom</b> 63:19 64:1,3,14 68:22 97:19,21, 22 120:21,22 121:24 123:1,21 <b>struck</b> 16:22 48:17 <b>struggled</b> 89:1 <b>studied</b> 39:17 <b>study</b> 9:13,15 24:5,8 43:7,10 54:21, 23 66:1,4 81:21, 24 95:18 100:25 101:3 112:4,7 <b>stuff</b> 77:11 117:3 121:5 <b>stupid</b> 70:3 <b>style</b> 123:11 <b>submitted</b> 8:13 23:6 42:8 53:23 64:24 80:14 99:23 101:10 111:5 <b>submitting</b> 13:22 14:5 30:11,19 46:19 47:2 60:6,13	<b>stated</b> 16:25 70:21 <b>statement</b> 8:12 9:6,21 23:5,24 24:12 42:8,25 43:14 53:22 54:14 55:3 64:23 65:20 66:9 80:13 81:15 82:3 97:2 99:22 100:19 101:7 111:4,24 112:11 122:15 <b>statements</b> 97:4 99:23 <b>states</b> 29:25 <b>statesman</b>	

20 80:8,13 81:3, 15 99:18,22 100:7,19 110:25 111:4,14,24 <b>system</b> 49:12 58:8 68:6 71:25 72:7 75:7 87:11 93:14 <b>systems</b> 67:20,21	<b>technology</b> 90:9 <b>telling</b> 10:8,24 11:18 15:2 61:9 <b>tells</b> 10:20 17:1 48:10 62:16 88:12 121:19 <b>temper</b> 72:23 <b>temperament</b> 12:20 13:19 15:4,7,11 21:3 30:9 31:24 34:6 36:7 44:20 46:4 47:24 48:4,15 58:21,22 59:19 61:10,21,22 62:1 70:12 71:5, 7,10 72:3 75:5 87:21 88:6,22, 24 93:8 95:9 96:20 103:1 104:13,17 107:12 117:18 119:6 <b>tempers</b> 11:16 <b>temporary</b> 56:20 <b>ten</b> 39:20 77:23 78:5,24 109:18 115:12 <b>ten-</b> 109:17 <b>ten-week</b> 39:14 <b>tenant</b> 64:4	<b>tenure</b> 16:5 25:5 46:13 62:3 95:18 <b>term</b> 33:13 <b>terms</b> 83:14 107:6,10 117:17 <b>terrific</b> 70:11 <b>test</b> 39:15,20 40:1 73:20 <b>testament</b> 15:13 32:12 108:22 <b>tested</b> 56:15 <b>testifies</b> 8:6 23:2 42:5 53:19 64:20 80:10 99:20 111:2 <b>testify</b> 9:20 24:12 43:14 55:2 66:8 82:2 101:7 112:11 <b>testimony</b> 8:22 9:1 23:16 42:17 54:6 55:1 65:7 66:17 79:2 81:3 82:21 84:2, 14 100:8 101:17 111:15 112:18 <b>thankful</b> 121:15 <b>theme</b> 49:24 <b>themes</b> 49:22	<b>thing</b> 10:6 11:20 12:4 15:2 18:13,22 19:2,4 29:7 31:23 32:10 33:10 37:5 40:19 50:3,20 61:17 72:2 73:5 95:8,15 114:18 <b>things</b> 11:17 15:23 16:24 36:14 37:10,22 40:13 50:22,25 88:12 89:3 96:4 104:7 122:19 123:12 <b>thinking</b> 45:13 96:16 <b>Thirteen</b> 71:4 <b>thirty</b> 25:3 29:3 38:15 <b>thirty-one</b> 83:5 <b>Thomas</b> 55:25 57:10,20 92:6,16 <b>thought</b> 45:17 73:19 <b>thoughtful</b> 45:6 <b>thoughtfulness</b> 46:10 <b>throw</b> 61:16 95:5,6 <b>ticked</b> 15:11 <b>tickets</b> 67:24 <b>Tiffany</b> 27:19	<b>time</b> 7:6,15 9:25 10:11 16:2 17:1 19:16 22:8 31:9, 14 33:5,7 35:3 37:25 41:14 44:10 49:7 50:11 51:8 52:24 56:11 57:9 59:2 61:19 63:1,12,21 64:8 65:4 74:2 78:22 79:17 82:6,9 86:2,8,11 88:3 90:5 93:2 95:20 97:3,11 98:18 100:4 102:13 108:22 109:9, 15,24 110:8 111:11 116:4 121:10 124:23 125:18 <b>times</b> 11:15 29:23 36:2 38:8 51:9, 25 89:1,12 90:4 91:13 103:15 <b>today</b> 8:22 9:20 14:22 21:24 23:16 24:10 30:21 31:18 41:16 42:1,17 47:19 49:2 52:15 53:2, 12 54:6 55:2 61:5 63:3 65:8 69:20 76:17 79:3,18 82:6 94:22 98:9,19, 25 99:8 100:8 101:5 106:1 109:11 111:15 112:9 120:18
<hr/> <b>T</b> <hr/>				
<b>takes</b> 31:23 69:15 <b>taking</b> 45:13 56:22 69:21 86:11 102:5 104:2 <b>talk</b> 33:21 122:2 <b>talked</b> 73:1 107:11 124:8 <b>talking</b> 48:11 50:3 68:13 77:14 89:15 <b>Talley</b> 110:6 <b>tarnish</b> 122:8 <b>taught</b> 39:19 69:24 86:3 <b>tax</b> 83:17 117:10 <b>teach</b> 77:9,10,11 <b>team</b> 86:1 97:8 121:12				



<b>verification</b> 9:13 24:6 43:8 54:21 66:2 81:22 101:1 112:5	7:20 64:1 110:13	109:6 124:19	<b>witnesses</b> 9:19 24:11 43:13 55:1 66:7 101:6 112:10	<b>works</b> 52:7 68:6
<b>verified</b> 124:2	<hr/> <b>W</b> <hr/>	<b>weird</b> 73:19	<b>won</b> 19:16	<b>world</b> 12:11
<b>version</b> 107:23	<b>Wade</b> 20:9,10,11	<b>well-reasoned</b> 70:25	<b>wonderful</b> 16:13,14 17:22 32:13 33:1 38:10 40:13 49:10	<b>worry</b> 20:12 118:3
<b>versus</b> 91:14	<b>waiting</b> 18:20	<b>well-rounded</b> 44:19	<b>word</b> 33:13 37:20 52:4 96:21	<b>worst</b> 18:22 71:13
<b>Vic</b> 117:25	<b>walk</b> 18:6 40:12	<b>Wendell</b> 91:17	<b>words</b> 21:1 29:10	<b>Wow</b> 96:16
<b>victim</b> 121:18	<b>wanted</b> 28:20 36:1 51:12 64:11 71:19 73:7,22 74:8 80:19 82:8 96:4,17,21 122:10	<b>Whetstone</b> 99:8,18 100:17, 19	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>write</b> 35:18 76:23 121:19
<b>victims'</b> 122:22	<b>Washington</b> 25:13	<b>whip</b> 37:14	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>writing</b> 77:4,7,9
<b>view</b> 22:2 41:9 62:20 79:12 98:13 109:4 124:17	<b>watch</b> 36:10	<b>who've</b> 16:14	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>writings</b> 85:18
<b>violations</b> 22:3 41:9 52:19 62:21 79:12 98:13 109:4 124:18	<b>water</b> 27:18	<b>wide</b> 59:23 67:4 68:2, 24 102:15 103:12 124:10	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>written</b> 12:21 16:14 21:4 27:3 71:4 76:24 88:8 103:4 114:10
<b>violence</b> 67:24	<b>wearing</b> 21:8	<b>wife</b> 28:12,21 110:19 122:2	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>wrong</b> 11:2 16:23 17:12 45:18 70:3 71:9 72:15 78:8
<b>visiting</b> 35:22 36:3	<b>Webex</b> 33:10	<b>Wilkinson</b> 66:16,22 67:1 74:25 75:11 76:14	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>wrongful</b> 85:11
<b>vital</b> 51:4	<b>Webinars</b> 116:4	<b>Williamsburg</b> 20:12 35:3	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>wrote</b> 115:3 121:7 123:2
<b>volume</b> 83:19	<b>week</b> 27:13,14 33:10 53:3	<b>win</b> 18:6	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<hr/> <b>Y</b> <hr/>
<b>volumes</b> 40:10	<b>weeks</b> 27:13,15 39:20 67:8	<b>Winona</b> 90:15	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	<b>year</b> 25:8 39:13 40:20,21 68:9 69:8,10 73:6 74:3 78:19,22 85:9 103:17 106:19 108:12,
<b>volunteer</b> 73:19	<b>weigh</b> 45:19	<b>wisdom</b> 45:2 46:10 70:23 87:25 88:1	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	
<b>volunteers</b> 82:10	<b>weight</b> 22:4 41:10 52:20 62:22 79:14 98:15	<b>Wise</b> 20:18	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	
<b>votes</b>		<b>withdraw</b> 125:4	<b>work</b> 11:1 12:8 15:13 16:3 20:15 28:23 29:17 32:23 36:15 39:17 40:5 41:3 49:15 55:22 59:10,21,25 67:15 84:24 86:16 90:5 102:11 117:17	

14 110:17 115:24 124:2,3	<b>younger</b> 33:14,20 123:14	
<b>years</b> 19:4,13,25 25:3, 9,18 26:8,14 28:1,2,18 29:3,8 33:25 37:21 38:15 40:22 43:24 55:5,14 66:21 67:19 68:18 70:24 72:14 74:3,6 77:23 78:24 79:4 82:25 83:5, 8,9,14,19 84:20 85:24 86:5 87:21,23 88:2, 25 89:10 90:1 96:2,5 97:16 101:21 102:9 103:14 104:1,7 108:4,5,15,20 112:22 113:3 115:12	<b>youngest</b> 25:4	
	<hr/> <b>Z</b> <hr/>	
	<b>zealous</b> 58:25	
	<b>Zimmerman</b> 53:9,10,13,17, 21,24 54:1,4,7, 12,15,16 55:4 58:9,12,16 59:13,16 60:1 61:8 62:12,17 63:4,6	
	<b>Zimmerman's</b> 59:20	
	<b>Zoom</b> 15:1	
<b>yesterday</b> 108:19		
<b>young</b> 28:8 36:8 110:19,20,22,25 111:7,9,12,16, 22,24,25 112:13,20,24 113:17,25 114:8 116:20 118:23, 25 119:7,9,11, 13 120:21,22 121:8,11,24 123:2,4,14,23 124:1 125:2,8, 13		
<b>Young's</b> 113:21		