

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

6 * * * * *

7 BEFORE: SEN. LARRY A. MARTIN, CHAIRMAN

8 REP. BRUCE W. BANNISTER, VICE-CHAIRMAN

9 SEN. GEORGE E. CAMPSSEN, III

10 SEN. GERALD MALLOY

11 REP. MURRELL SMITH

12 REP. J. TODD RUTHERFORD

13 KRISTIAN C. BELL

14 MICHAEL HITCHCOCK

15 SUSAN TAYLOR WALL

16 ROBERT M. WILCOX

17 ELIZABETH H. BROGDON, CHIEF COUNSEL

18 * * * * *

19 DATE: Monday, April 25, 2016

20 TIME: 9:00 A.M.

21 LOCATION: Gressette Building, Room 209

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

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25 REPORTED BY: LISA F. HUFFMAN, COURT REPORTER

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P R O C E E D I N G S

SENATOR MARTIN: Go ahead and convene this meeting of the Judicial Merit Selection Commission. This meeting is called pursuant to the Chapter 19 and Title 2, South Carolina Code of Law, requiring the review of all judicial candidates for office. The function of the Commission is not to choose between candidates, but rather declare whether or not the candidates who offer for the position on the bench, in our judgment, are qualified to fill the position they seek.

The inquiry that we undertake is a thorough one. It is centered around the Commission's nine evaluative criteria involving complete personal and professional background checks on each candidate. These public hearings are convened for the purpose of screening candidates. Today we will screen one open seat on South Carolina Supreme Court, one seat for reelection on South Carolina Supreme Court, an open seat on the South Carolina Court of Appeals, one seat for reelection on South Carolina Circuit Court and two open seats on the Family Court.

1 And I'd like to begin by introducing two
2 new members of the Commission. From the South
3 Carolina House we have Representative Murrell
4 Smith, Representative Todd Rutherford. We're
5 delighted to have y'all with us. Know you're
6 going to do a great job, working with you and
7 --

8 REPRESENTATIVE SMITH: Thank you, Mr.
9 Chairman.

10 SENATOR MARTIN: -- look forward to our
11 service together. And at this time, I'll
12 recognize Ms. Elizabeth Brogdon, our Chief
13 Counsel who is with us today, to introduce the
14 screening attorneys and staff.

15 MS. BROGDON: Thank you, Mr. Chairman.
16 Today, Emma Dean, who is Chief Counsel to the
17 House Judiciary Committee is helping to
18 screen. Also, Katherine Wells, who is the
19 staff attorney to Senate Judiciary, and Steve
20 Davidson, who is Assistant Chief Counsel to
21 House, Labor, Commerce, and Industry. All
22 will help in screening candidates today.

23 Mr. Chairman, at this time I would like
24 to request a vote on a cover page for the
25 draft report. It shows that the report will

1 be delivered on Thursday, May 5th, 2016, and
2 the 48-hour period ends at noon on Wednesday,
3 May 11th, 2016. And the election is currently
4 scheduled for noon, Wednesday, May 25th, 2016,
5 according to the published schedule.

6 SENATOR MARTIN: Okay.

7 MS. BROGDON: If you look behind Tab E,
8 you'll see the cover page for the draft report
9 that has that information on it.

10 SENATOR MARTIN: Do you have any
11 questions regarding that suggested motion?

12 REPRESENTATIVE BANNISTER: I have one.

13 SENATOR MARTIN: Representative
14 Bannister.

15 REPRESENTATIVE BANNISTER: There is a
16 chance that the House will be on furlough the
17 week of the 10th. Is it possible to look at
18 the dates? Is that the only conceivable day
19 we can do the report and get it out?

20 MS. BROGDON: Well, I've looked at
21 backing it up, like you and I had talked
22 about, but it still puts the report coming out
23 on a Thursday, which will be at the end of
24 session, which is going to end up -- that was
25 the only other option.

1 SENATOR MARTIN: Thursday, the 5th?

2 MS. BROGDON: No. It would be --

3 SENATOR MARTIN: Thursday, the 12th?

4 MS. BROGDON: It would be backing it up
5 two days, to May 3rd, Tuesday, May 3rd. And
6 then the 48-hour period would end on Thursday,
7 May 5th, but you'd still have -- you'd still
8 run into the same problem with not having
9 session --

10 REPRESENTATIVE BANNISTER: Is it possible
11 to issue the report at 10 a.m., so that first
12 day will be 10 a.m. Thursday, as opposed to 12
13 Thursday? If you moved it back to --

14 SENATOR MALLOY: That will be difficult.

15 REPRESENTATIVE BANNISTER: Well, it may
16 not -- it may not matter to anybody else. I
17 just know --

18 SENATOR MARTIN: We need to turn the
19 volume up just a little bit.

20 REPRESENTATIVE BANNISTER: Is it possible
21 to do it at 10? Or no?

22 MS. BROGDON: It is.

23 REPRESENTATIVE BANNISTER: We're going to
24 be all on furlough, so --

25 SENATOR MARTIN: How are y'all going to

1 get by?

2 REPRESENTATIVE BANNISTER: It will be --
3 be done by 12. Now, I was just asking if
4 there was a chance to have it when we're all
5 here.

6 SENATOR MARTIN: I think the issue -- we
7 can talk about it -- the issue is time. And
8 if we move it to the 5th, or the report coming
9 out on the 3rd, we can do that and you would
10 be here on the 5th.

11 SENATOR MALLOY: Why do they need to be
12 here? I mean, I think it's going to be
13 difficult to start trying to schedule around
14 when someone's going to be -- when someone's
15 going to be here, in light of this discussion
16 on when we have session and when we don't.
17 The House will go out when they want to, the
18 Senate will go out when they want to. I think
19 the staff has to end up doing the best
20 possible time and candidates have to adjust.
21 They don't need to adjust; the candidates have
22 to adjust.

23 SENATOR MARTIN: Do we have a motion to
24 adopt the cover page, as presented by staff?

25 SENATOR MALLOY: So moved.

1 SENATOR MARTIN: So moved. Second?

2 MR. HITCHCOCK: Second.

3 SENATOR MARTIN: Motion and a second.

4 Any other discussion?

5 (No response.)

6 SENATOR MARTIN: Hearing none we will
7 move the meeting into a vote. All those in
8 favor of adopting the cover page, please say
9 aye.

10 COMMISSION MEMBERS: Aye.

11 SENATOR MARTIN: Opposed, no.

12 (No response.)

13 SENATOR MARTIN: The ayes have it.

14 MS. BROGDON: Mr. Chair, may we please
15 distribute the signature page to the
16 Commission members for the draft report?

17 SENATOR MARTIN: Yes. Are there any
18 questions about that? Go ahead and do that.
19 Pass it around. We'll have that in place.

20 MS. BROGDON: Mr. Chairman, at this time
21 I'd like to now suggest that we move into
22 executive session to discuss matters related
23 to legal advice.

24 SENATOR MARTIN: Motion is, we go into
25 executive session. Is there objection?

1 (No response.)

2 SENATOR MARTIN: Hearing no objection, we
3 will proceed, and then we're going to open the
4 door when we reconvene in open session. We'll
5 consider ourselves in the executive session.

6 (Off-the-record executive session.)

7 SENATOR MARTIN: The Judicial Merit
8 Selection Commission is now back on the
9 record, and I would like to state that we've
10 been in executive session. However, no
11 decisions have been made, no votes were taken
12 during that time. Ms. Brogdon.

13 MS. BROGDON: Mr. Chairman, I'd like to
14 offer and have made exhibits to the record the
15 following reports: the report from the Pee
16 Dee Citizens Committee and the report from the
17 Upstate Citizens Committee for Spring 2016, as
18 well as the South Carolina Bar's Judicial
19 Qualifications Committee Report for Spring
20 2016.

21 SENATOR MARTIN: Any objections?

22 (No response.)

23 SENATOR MARTIN: Hearing none, I'll ask
24 at this time that the Citizens Committee
25 report for the Spring 2016 and the SC Bar

1 Report be marked as exhibits and entered into
2 the public record.

3 [MARKED FOR IDENTIFICATION AS EXHIBIT NO.
4 1.]

5 [MARKED FOR IDENTIFICATION AS EXHIBIT NO.
6 2.]

7 SENATOR MARTIN: Now we have a proposed
8 Rule that Mrs. Brogdon will explain to us.

9 MS. BROGDON: Mr. Chairman, I would like
10 to propose an amendment to Rule 6 of the
11 Judicial Merit Selection Commission Rules,
12 Policies and Procedures. Rule 6 at the time
13 specifies "Candidates must specify the race
14 and seat number in which they are interested
15 in the letter of intent required to receive
16 application materials. Once a candidate has
17 submitted a letter of intent, the candidate
18 may not withdraw and submit a letter of intent
19 for a different seat. However, a candidate
20 may withdraw at any point in the screening
21 process and the candidate will no longer be
22 considered a judicial candidate for that
23 screening."

24 And I'd like to propose we amend that
25 Rule to add the following language: "Pursuant

1 to South Carolina Code Section 2-19-20(d),
2 once a person submits his or her letter of
3 intent to the Judicial Merit Selection
4 Commission, the person is considered a
5 candidate for purposes of the applicable
6 statutes and pending rules. Candidates may
7 not contact members of the Judicial Merit
8 Selection Commission regarding their
9 candidacy."

10 SENATOR MARTIN: Any discussion?

11 (No response.)

12 SENATOR MARTIN: Hearing none, do we have
13 a motion?

14 MS. WALL: So moved.

15 MR. HITCHCOCK: Second.

16 SENATOR MARTIN: Ms. Wall, second by
17 Lawyer Hitchcock. Any other discussion?

18 (No response.)

19 SENATOR MARTIN: Hearing none, we'll move
20 the meeting into a vote. All those in favor
21 of the proposed Rule, please say aye.

22 COMMISSION MEMBERS: Aye.

23 SENATOR MARTIN: Vote no?

24 (No response.)

25 SENATOR MARTIN: The ayes have it.

1 That's all the business we now have. We'll
2 proceed to the candidate portion of our
3 screening. We'll now move to the Supreme
4 Court Chief Justice, Justice Donald Wayne
5 Beatty. Welcome. Good morning.

6 JUSTICE BEATTY: Good morning.

7 SENATOR MARTIN: I'm glad to have you
8 this morning. We're ready to go, Justice
9 Beatty. If you would, would you raise your
10 hand to take the oath.

11 (The Justice is sworn in.)

12 EXAMINATION

13 (By Senator Martin)

14 **Q. Thank you very much. Have you had an opportunity**
15 **to review your personal data questionnaire?**

16 A. Not lately, but I've seen it, yes.

17 **Q. Everything, based on your understanding, everything**
18 **correct?**

19 A. Yes.

20 **Q. Anything need to be changed?**

21 A. No.

22 **Q. Okay. Do you object to our making this summary and**
23 **any amendments, if applicable, a part of the record**
24 **of your sworn testimony?**

25 A. None whatsoever.

1 Q. It will be done at this point in the transcript.

2 [EXHIBIT 3, JUDICIAL MERIT SELECTION
3 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
4 HONORABLE DONALD WAYNE BEATTY, ADMITTED.]

5 Q. The Judicial Merit Selection Commission has
6 thoroughly investigated your qualifications for the
7 bench. Our inquiry has focused on the nine
8 evaluative criteria and has included the ballot box
9 survey, a thorough study of your application
10 materials, verification of your compliance with
11 state ethic's laws, search of newspaper articles in
12 which your name appears, study of previous
13 screenings, check for economic conflicts of
14 interest. We've received one affidavit filed in
15 opposition to your election, which the Commission
16 dismissed pursuant to JMSC Rule 13 for failure on
17 its face to state allegations relating to your
18 character, competency or ethics, as required by
19 JMSC rules. No witnesses are here to testify. Do
20 you have a brief opening statement you'd like to
21 make, Justice Beatty?

22 A. Nothing other than to thank you -- you-all for
23 allowing me to come before you. I thank you for
24 your time and your effort in this matter and the
25 service you do for the state.

1 Q. All right, sir. At this time, Ms. Brogdon has some
2 questions, and you'll please respond to counsel.

3 EXAMINATION

4 (By Ms. Brogdon)

5 Q. Good morning, Justice Beatty.

6 A. Good morning.

7 MS. BROGDON: Mr. Chairman and Members of
8 the Commission, I have a procedural matter to
9 take care of with this candidate.

10 SENATOR MARTIN: All right.

11 Q. Justice Beatty, you have before you your sworn
12 statement, where you provided detailed answers to
13 over 30 questions regarding judicial conduct,
14 statutory qualifications, office administration,
15 and temperament. Are there any amendments that you
16 would like to make at this time to that sworn
17 statement.

18 A. No. Thank you.

19 MS. BROGDON: Mr. Chairman, I'd like to
20 ask that Justice Beatty's sworn statement be
21 entered as an exhibit into the hearing record.

22 SENATOR MARTIN: Is there any objection?

23 (No response.)

24 SENATOR MARTIN: Hearing none, the sworn
25 statement will be entered into the record at

1 this time.

2 [EXHIBIT 4, JUDICIAL MERIT SELECTION
3 COMMISSION SWORN STATEMENT FOR THE HONORABLE
4 DONALD WAYNE BEATTY, ADMITTED.]

5 **Q. Justice Beatty, after serving almost nine years on**
6 **the Supreme Court, why do you now want to serve as**
7 **Chief Justice of the Supreme Court?**

8 A. Well, to be quite frank with you, I didn't think
9 I'd be around this long. But I am. And the
10 position has traditionally been offered to and held
11 by the most senior person on the court. I've been
12 there now for nine years. I am the most senior
13 person on the court. And I like what I'm doing, to
14 be quite frank with you, and I think my leadership
15 skills will complement the court and I think that
16 we'd be successful.

17 **Q. Thank you, Justice Beatty. Justice Beatty, please**
18 **explain one or two accomplishments that you have**
19 **attained during your tenure as a Supreme Court**
20 **Justice.**

21 A. Well, as you may know, our court in the past has
22 been a court where most things are done by the
23 Chief Justice, and it's -- it's a fact. However,
24 members of the court occasionally get assigned to
25 projects or commissions or committees, that we lend

1 some leadership to. Since I've been on the court,
2 I think I've worked on two. I think I did the --
3 Justice Task Force. I did the -- of course, the
4 Sentencing Reform. I think that Senator Malloy
5 chaired and Representative Smith was a part of it
6 as well. And there have been other things. Of
7 course, the latest has been the matter involving
8 the -- the docket with criminal courts, and that's
9 on hold, quite frankly.

10 **Q. Justice Beatty, pursuant to Article 5, Section 4 of**
11 **the South Carolina Constitution, the Chief Justice**
12 **of the Supreme Court is the administrative head of**
13 **the unified judicial system. Please explain what**
14 **you believe to be the proper role for the Chief**
15 **Justice to play in administering the court system.**

16 A. The administrative duties of the Chief Justice, the
17 Chief Justice is no more than another member of the
18 court, with one vote. In my opinion, the Chief
19 Justice should not be one who tries to control how
20 the court votes and where the court should go in an
21 opinion. The -- the Chief Justice is an
22 administrator, the CEO, if you will, to make
23 certain that the system is running and run
24 effectively.

25 **Q. Thank you, Justice Beatty. How do you feel your**

1 **legal and professional experience thus far will**
2 **assist you to be effective as Chief Justice of the**
3 **Supreme Court?**

4 A. Well, my life experiences are quite different, I
5 think, than others on the court. I come from a --
6 a different background. I've had a different
7 experience. My military background is very
8 helpful. I was personnel manager initially, then a
9 -- a platoon leader, then a captain, then trained
10 drill sergeants. So I've -- I've done -- I -- I
11 ran the gamut on that. I ran a law practice 15
12 years before coming to the court. I've been
13 involved in other business -- business ventures,
14 and I -- I think I'm pretty good at leading people.

15 **Q. Thank you, Justice Beatty. You addressed this in**
16 **your sworn statement, but could you please explain**
17 **to the Members of the Commission what you think is**
18 **the appropriate demeanor for a judge.**

19 A. Demeanor for a judge is someone who should be
20 respectful, is very attentive to -- to his duties,
21 to the job, to the litigants in -- in front of him.
22 Sometime that gets to be a little hard, depending
23 upon the people who -- who are in front of you.
24 But the demeanor should always be respectful.

25 **Q. Thank you. Justice Beatty, the Commission received**

1 946 ballot box surveys regarding you, with 124
2 additional comments. The ballot box survey, for
3 example, contained the following positive comments.
4 "I have appeared before Justice Beatty at the
5 Circuit Court, the Court of Appeals and the Supreme
6 Court. He has always been engaged and shown great
7 temperament. I believe he will make an exceptional
8 Chief Justice."

9 Another comment stated, "I have appeared
10 before Justice Beatty when he was a Circuit Court
11 judge and an Appellate judge. He has always been
12 well-prepared, just and fair." A third comment
13 stated, "Justice Beatty has the balance, the
14 experience and the integrity to serve well as Chief
15 Justice." And then another comment said, "Justice
16 Beatty is a distinguished legal scholar and
17 passionate judge, who will be an outstanding
18 representative of our state and leader of the
19 Judicial Department."

20 Twenty-eight of the written comments expressed
21 concerns, and I'll go over a couple of those with
22 you. One questioned your bias against corporate
23 defendants. What response would you offer to this
24 concern?

25 A. They're incorrect. Most of our cases involving

1 corporate defendants, involve actions with one
2 corporation against another. So quite naturally,
3 someone has to lose, and sometimes the -- the news
4 and corporate litigant doesn't like it, but it's
5 corporation on corporation. Now to say I'm biased
6 against corporate defendants, I -- I don't
7 understand that. Someone has to lose, so we make
8 someone unhappy every time we render a decision in
9 that area.

10 Now, if they're talking about other matters,
11 then I would like them to put one case forward as
12 evidence of my bias, and I don't think they'll find
13 any.

14 **Q. Thank you, Justice Beatty. Several other comments**
15 **indicated concern with your openly commenting on**
16 **pending legislation, as well as legislating from**
17 **the bench and not applying consistent legal**
18 **principles. What response would you offer to this**
19 **concern?**

20 A. Totally incorrect. I never speak about pending
21 legislation, because that's none of my -- that's
22 not what we do. Now if someone were to ask me
23 about pending legislation, and if I happen to have
24 read it -- and most times I do not read pending
25 legislation, I don't think it's my job and I don't

1 usually have an opinion about pending legislation.
2 But if someone were to ask me hypothetically "What
3 would this do," if I responded at all, it would be
4 -- with reference to a case that has decided
5 something in that area. But as to whether or not
6 something would do -- what I do on a piece of
7 legislation, I don't offer opinions on legislation.

8 **Q. Thank you. And Justice Beatty, your SLED report**
9 **indicated that there was a federal lawsuit filed**
10 **against you since your last screening. It was**
11 **filed in 2016 by a prisoner named Patrick L.**
12 **Booker. Although the case is still pending, the**
13 **SLED report indicates that you were not served with**
14 **a suit and that the magistrate judge, Mary Gordon**
15 **Baker, has recommended that the case be summarily**
16 **dismissed. The matter is still pending. Do you**
17 **have anything further that you want to add to that?**

18 **A. I've never been served. I'm unfamiliar with the**
19 **lawsuit. I don't recall Mr. Booker. So there's**
20 **nothing I can offer in that regard.**

21 **Q. Thank you, Justice Beatty. A few housekeeping**
22 **things. Have you sought or received the pledge of**
23 **any legislator either prior to this date or pending**
24 **the outcome of your screening?**

25 **A. No.**

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

5 A. No.

6 Q. Since submitting your letter of intent to run for
7 this seat, have you contacted any members of the
8 Commission about your candidacy?

9 A. No.

10 Q. And finally, do you understand that you're
11 prohibited from seeking a pledge or commitment
12 until 48 hours after the formal release of the
13 Commission's report? And are you aware of the
14 penalties for violation of the pledging rules?

15 A. I am.

16 MS. BROGDON: I would note that the
17 Upstate Citizens Committee reported that
18 Justice Beatty is Well Qualified in the
19 evaluative criteria of ethical fitness,
20 professional and academic ability, character,
21 reputation, experience, and judicial
22 temperament. And Qualified in the remaining
23 evaluative criteria of constitutional
24 qualifications, physical health and mental
25 stability. I would just note for the record

1 that any concerns raised during the
2 investigation regarding the candidate were
3 incorporated into the questioning of the
4 candidate today. Mr. Chairman, I have no
5 further questions.

6 SENATOR MARTIN: Thank you very much.
7 Justice Beatty, I wanted to ask you, to begin
8 with, about your presentation to the
9 Solicitor's Conference back in 2013.

10 JUSTICE BEATTY: I thought you would,
11 yeah.

12 SENATOR MARTIN: Did Ms. Brogdon give you
13 the statements that were made or written by
14 different individuals at the time of the
15 conference? I wanted to share those with you.

16 JUSTICE BEATTY: If you're speaking of
17 the summaries supposedly of my comments, yes.

18 SENATOR MARTIN: Right. Right. Let me
19 ask you a question. In specific regard to
20 that, have you had any thought since that time
21 as to what you might could have done
22 differently, maybe, for that to have been
23 received a bit differently than obviously that
24 it was?

25 JUSTICE BEATTY: Yes, I have, Senator.

1 I'm -- I'm glad you asked. Initially my
2 response, or would have been, and -- and my
3 thoughts have been, I should not have accepted
4 the invitation. And if I had to do it again,
5 I probably would not accept the invitation.

6 I -- I accepted the invitation because I
7 was asked more than once, and I was told that
8 I was the person to bring the message that
9 they wanted delivered to the young solicitors.
10 And that is that because you have the power
11 doesn't mean you have to use it, meaning
12 abuse.

13 Had I -- had I -- if -- if I had to do it
14 over, I think my approach would be a little
15 different. It was delivered in -- in a
16 fashion that I thought was expected and
17 requested, to be quite frank with you, because
18 I did not decide on the topic. The topic was
19 given to me.

20 SENATOR MARTIN: And what was the topic,
21 Justice Beatty?

22 JUSTICE BEATTY: I was told by the
23 individual who contacted me -- and I've only
24 talked to one -- that he wanted me to talk
25 about -- I believe it was called then --

1 actually he said "because you have the power,
2 doesn't mean you have to use it." And I asked
3 him what did he mean. He says "We have a
4 problem with our young solicitors. They are
5 doing things simply because they have the
6 power, things that they shouldn't do." And I
7 said "Well to me that sounds like abuse,
8 prosecutorial abuse, abuse of power." He said
9 "Well, we wouldn't want to put it in those
10 terms, but yes, that's what we're talking
11 about, and we think you're the perfect person
12 to deliver that message."

13 I declined the invitation initially. I
14 got a second call and I -- and I accepted.
15 And that's what I attempted to do. And I must
16 say that in the delivery, the -- the
17 presentation, it was strong, and it was
18 intended to be strong. I intended to deliver
19 the message I thought was being requested, and
20 that is, if you break the rules, you're going
21 to be -- there's -- there's accountability for
22 breaking the rules. And that's what I did.

23 And, of course, I -- a few of the
24 solicitors, who are not present in the room,
25 took offense in my referring to two or three

1 cases that came from their particular
2 circuits. And the cases were matters where
3 this court, my court, suspended assistant
4 solicitors for conduct. I mentioned the Ninth
5 Circuit, I believe. By calling out the Ninth
6 Circuit, hailstorm erupted. But everything I
7 said then, I stand by now. It was absolutely
8 correct, everything I said.

9 SENATOR MARTIN: Just for the record, I
10 want to read you the summary of what one of
11 the attorneys wrote. "During the entire
12 presentation, Justice Beatty exhibited an
13 extremely arrogant, confrontational,
14 condescending and disrespectful demeanor to
15 the conference, participants and guests. He
16 was very direct in his position, that the
17 power is with the Supreme Court, his three
18 votes and they will determine how business is
19 conducted in the court system. According to
20 Justice Beatty, the landscape is changing and
21 we will be changing and be held accountable."

22 One point was remarked that you were
23 there -- that you said you were there to speak
24 truth to power and you knew that they would
25 not like it, but it was the truth.

1 JUSTICE BEATTY: Well, I assume that you
2 have those statements. You have -- I believe
3 there were three.

4 SENATOR MARTIN: There were three.

5 JUSTICE BEATTY: Now all didn't say that;
6 did they? I don't recall. Although I can't
7 say they were all positive. But let me tell
8 you exactly what I did. When I went in, I
9 said "Good morning. Thank you for inviting
10 me." I thanked Solicitor Barnett for
11 introducing me.

12 I said "I've been asked to speak to you
13 about" -- I didn't say prosecutorial -- matter
14 of fact, I got a little statement here. I --
15 I -- I know I wrote it down. I say "I've been
16 asked to speak to you-all about matters
17 concerning how you conducted business." I
18 said, "The Supreme Court does not have
19 problems with most of you. In fact, we
20 appreciate what you do and we're thankful.
21 And I believe every citizen in South Carolina
22 is thankful for what you do.

23 But I've been asked by your conference
24 organizers to deliver a message, so don't
25 shoot the messenger. I was told that some of

1 you do have a problem with how you've
2 conducted business, and I've been asked to
3 speak to you about it." That's what I said.

4 Now if your summaries do not reflect
5 that, then -- then I have a problem with the
6 summaries. I've read them, to be quite frank
7 with you, and I've outlined it. And to be
8 quite frank with you they are all slanted,
9 taken out of context. And I will admit that -
10 - I will admit that my -- my approach, my
11 voice, my tone was stern. That's no doubt
12 about that, and it was intended to be so. In
13 hindsight, I probably would do it differently,
14 if I had to do again. But the message, the
15 information I presented, was absolutely
16 correct.

17 And this thing about three votes, that's
18 not true. This is what happened, the matter
19 came up about a bill I believe you sponsored,
20 Senator Martin, that had to do -- or it might
21 have been a House bill; I'm not certain --
22 that had to do with doing something about the
23 Langford decision. And I was asked about
24 that.

25 And what I -- I didn't say I got three

1 votes in my pocket, or something to that
2 effect, I believe what the summary says. I
3 said "Well, look, that was a four-to-one
4 decision. I believe three of those votes are
5 firm. So the best thing that all of us could
6 do is to sit down and see if we can come up
7 with a system that works for all of us."
8 That's what I said.

9 SENATOR MARTIN: Justice Beatty, I don't
10 want to get too far into the weeds on this,
11 but it is my recollection, and based on the
12 notes that were written at the time, nobody
13 from the audience asked you about Langford.
14 You brought Langford up.

15 JUSTICE BEATTY: Well, that's -- I don't
16 think that's correct, Senator. And I don't
17 think you have the transcript. You have
18 someone's summary --

19 SENATOR MARTIN: Right.

20 JUSTICE BEATTY: -- slanted to make me
21 look bad.

22 SENATOR MARTIN: So somebody from the
23 audience asked you about Langford and you
24 responded to it?

25 JUSTICE BEATTY: I responded to Langford.

1 Now whether or not -- I -- I don't recall how
2 we got onto Langford. I do know this, the
3 night that I got there, the night before I
4 spoke, I was accosted in the elevator by some
5 solicitors, about Langford and having a bill
6 in either the House or the Senate that was
7 going to change it. Now, that's what happened
8 the night before. And the morning before I
9 spoke, similar discussions at breakfast about
10 Langford. So now whether or not I had
11 mentioned Langford first, or it was mentioned
12 as a result of a question during the -- the --
13 the speech, I -- I don't recall, quite
14 frankly. But Langford had been discussed more
15 than once before I ever mentioned it.

16 SENATOR MARTIN: In private, but not in
17 the public session. I guess the thing that
18 struck me about all this -- and I got there
19 that afternoon. I'm on the Prosecution
20 Commission and I couldn't be there for that
21 day's meeting, and I got down to the
22 Solicitor's Conference after you had spoken.
23 And a lot of folks were still, obviously,
24 talking about it, and that's what -- it wasn't
25 the first folks that I ran into, it was a lot

1 of different people mentioned it to me, and
2 all throughout the evening it kept being
3 brought up. And that was the reason for --
4 and we talked about it -- Justice Beatty, is
5 it not correct, you and I talked about it
6 later that week.

7 JUSTICE BEATTY: Oh, and I told you then
8 that I might have said things a little
9 differently. My tone was a little harsh --

10 SENATOR MARTIN: And I'm not trying to --
11 listen, that's been almost two-and-a-half
12 years ago. I'm not trying to nail you down to
13 specifics about what was said. It was my
14 understanding, you brought it up during the
15 course of that presentation to the whole
16 assembly of folks who were there, and brought
17 it up in a way that really, you know, you
18 weren't -- and I'm not sure -- I've been to
19 meetings like that, Justice Beatty, and I'm
20 not sure we always know who we're talking to.
21 Most of the elected solicitors were not in the
22 room.

23 JUSTICE BEATTY: Absolutely. And they're
24 the ones who complained.

25 SENATOR MARTIN: Well, it was I think two

1 of the elected solicitors were actually in the
2 room.

3 JUSTICE BEATTY: And neither one of those
4 complained.

5 SENATOR MARTIN: Well, I don't know about
6 that.

7 JUSTICE BEATTY: I know who was in the
8 room, Senator.

9 SENATOR MARTIN: But I just will say that
10 what concerned me at the time was the view of
11 what was said and, more importantly, how it
12 was said. And your testimony today is -- and
13 I want to get this right -- is basically, you
14 were asked to talk about prosecutorial abuse?

15 JUSTICE BEATTY: You know, I -- I took
16 some notes right when this thing blew up, the
17 day following, the morning after. And these
18 are notes I made to myself. The topic of
19 prosecutorial misconduct was not my idea. The
20 topic was given to me by the Solicitor's
21 Conference organizers.

22 When I was contacted, I was told that the
23 topic was the power of the prosecutor, because
24 you have it doesn't mean you have to use it.
25 I initially declined the invitation to speak.

1 I explained to the solicitor that I
2 interpreted the topic to mean prosecutorial
3 misconduct and that I didn't feel that I was
4 the right one to talk to them about that.

5 I was told then, "You're perfect for the
6 job and was specifically chosen because the
7 past experience with prosecutor's conduct in
8 Spartanburg. Our young prosecutors need to
9 hear about that. They will believe you and
10 understand that this is serious." On that
11 note, I finally agreed.

12 In my opening remarks, I told them that I
13 had noticed that their conference materials
14 listed my topic as simply, "The power of
15 prosecutor -- of a prosecutor." However, that
16 was not the topic I was given when I was
17 contacted. I told them that I was told my
18 topic was "The power of a prosecutor, because
19 you have it, doesn't mean that you have to use
20 it." And that I interpreted that to mean
21 "prosecutorial misconduct." I suggested that
22 the title was changed by the convention
23 planners because prosecutorial misconduct
24 sounds a little harsh. I know your summary
25 says I changed it, but that's not true.

1 I then stated, "However, some in your
2 conference leadership apparently that there is
3 a problem with some of you. Therefore, I will
4 talk about prosecutorial misconduct, so don't
5 shoot the messenger." That came directly from
6 my speech and my presentation.

7 I then said "Before I go any further, let
8 me be clear, we do not have a problem with the
9 great majority of you. We appreciate your
10 work and the majority of you do an outstanding
11 job." This sentiment was repeated at least
12 twice during my presentation. The inference
13 that I was critical of all prosecutors is --
14 is ridiculous; that's just not true. And I
15 can go on and on and on about the notes that I
16 took.

17 SENATOR MARTIN: I think we've probably
18 covered this about all that needs to be
19 covered, but I do want to ask you one follow-
20 up question.

21 JUSTICE BEATTY: Yes, sir.

22 SENATOR MARTIN: You mentioned in your
23 response to Ms. Brogdon that you would never
24 think it appropriate to comment on pending
25 legislation.

1 JUSTICE BEATTY: That is correct.

2 SENATOR MARTIN: Did you comment on
3 pending legislation at the Solicitor's
4 Conference?

5 JUSTICE BEATTY: I commented on the
6 pending bill. I believe I have it in here.
7 H-3247. Is that -- I believe that's what it
8 was.

9 SENATOR MARTIN: Right.

10 JUSTICE BEATTY: That was done, the
11 Langford discussion, because what I had been
12 told the night before and the morning before I
13 spoke was that this bill was going to change
14 Langford. And my position was simply this,
15 and what I said was this: Langford changed
16 how the docket was controlled, solely by the
17 solicitor's, now solely by the solicitors, and
18 found that it was unconstitutional. I don't
19 see how any legislation can change a finding
20 that we said is unconstitutional.

21 SENATOR MARTIN: Did you say at the
22 conference that you had three votes?

23 JUSTICE BEATTY: No, I did not. I said
24 Langford was a four-to-one decision, and I
25 think three of those votes are affirmed.

1 SENATOR MARTIN: So you never said you
2 had --

3 JUSTICE BEATTY: Never said that. Never.

4 SENATOR MARTIN: Contrary to what these
5 statements --

6 JUSTICE BEATTY: I don't care what they
7 said, Senator. I know what I said. I said we
8 -- that there were -- that Langford was a
9 four-to-one decision and three of those votes
10 I believe are affirmed.

11 SENATOR MARTIN: Did you ever use the
12 term that you came loaded for bear?

13 JUSTICE BEATTY: I did. I said that. In
14 fact, I did. I said "When I walked in here,"
15 once they started talking about Langford, I
16 say, "You know, I came loaded for bear,"
17 meaning I expected to be attacked about
18 Langford. That's what "loaded for bear" mean.

19 SENATOR MARTIN: Well, Justice, what I
20 understand was, the context of this. You had
21 had personal discussions in the elevator about
22 --

23 JUSTICE BEATTY: Elevator and at
24 breakfast.

25 SENATOR MARTIN: But in front of this

1 conference, these are young attorneys and
2 staffs of the very solicitors from around the
3 state, many of them wouldn't know too much
4 about Langford or have too much of an opinion
5 about Langford, would you think?

6 JUSTICE BEATTY: No, I wouldn't think
7 that. In fact, there are lawyers, there are
8 prosecutors, and they control the dockets. So
9 you mean to tell me, they wouldn't have any
10 idea about Langford?

11 SENATOR MARTIN: Well, but --

12 JUSTICE BEATTY: Decision that changes
13 all of that?

14 SENATOR MARTIN: But my point is, nobody
15 in that meeting had mentioned it to you.

16 JUSTICE BEATTY: Well, that's what you
17 think. As I indicated, I had had discussion
18 at breakfast and the night before. But now,
19 if you ask me if I got a question from the
20 floor, I told you, I don't recall whether it
21 came from a question from the floor or that I
22 mentioned it myself. No, I don't recall
23 whether -- how that happened, Senator, if
24 that's what you're getting at.

25 SENATOR MARTIN: Well the question was,

1 did you bring it up, and that you came loaded
2 for bear, and that you had three buddies.

3 JUSTICE BEATTY: Well, I indicated to you
4 that I said "loaded for bear." That is
5 absolutely correct. I said that I expected to
6 be attacked; that's what the "loaded for bear"
7 means. Now, having three votes, no. What I
8 said was, Langford was a four-to-one decision
9 and I think three of those votes are affirmed.

10 SENATOR MARTIN: Did anybody in that --
11 talking about asking questions, did anybody
12 attack you in those meetings? Did anybody
13 come prepared -- did you notice anybody asking
14 questions? Did you not have to go down in the
15 audience to try to solicit a response?

16 JUSTICE BEATTY: I -- I had a question
17 and answer session, Senator. And like all
18 question and answer sessions at any
19 presentation I've ever done or attended, if
20 questions didn't come, the -- the presenter
21 asks, "Are you sure you don't have any
22 questions? What about this? What about
23 things that have come up?" I talk about doing
24 question/answer session. I talked about
25 things that the court was trying to do. I

1 even talked about a commission that we were
2 putting together to deal with the docket, that
3 was to be comprised of people from the
4 solicitor's association, as well as the public
5 defender's association, and those people will
6 not be chosen until after their individual
7 conventions. And I talked about that during
8 that question and answer session. So if I --
9 I -- maybe I'm missing your point.

10 SENATOR MARTIN: Well, my point was to
11 answer the questions about the three votes and
12 comment on pending legislation.

13 JUSTICE BEATTY: And I think I've
14 answered that three times at least.

15 SENATOR MARTIN: You said you didn't.

16 JUSTICE BEATTY: I said it.

17 SENATOR MARTIN: Any other questions?
18 Dean Wilcox.

19 MR. WILCOX: Justice Beatty, just to
20 follow up a little bit along that same line of
21 the process. How much as an associate Justice
22 do you have to become familiar with the whole
23 disciplinary process, the operation of ODC and
24 things like that? Or is that pretty much left
25 to the Chief Justice?

1 JUSTICE BEATTY: Well, as you know, each
2 term of court, we take up disciplinary
3 matters, and -- and the docket is generally
4 full, unfortunately. And we get into the
5 decision aspect of it, not much more, as to
6 the discipline, of whether or not the
7 discipline's adequate and that kind of a
8 thing, as a court. Now if you mean how does
9 the ODC operate, we don't generally deal with
10 that, as a court.

11 MR. WILCOX: Specifically, are there ever
12 any situations that you're aware of where the
13 court communicates with the Office of
14 Disciplinary Counsel about matters before they
15 reach you in the normal course of a process?

16 JUSTICE BEATTY: No. That has not
17 happened in my nine years, at least I'm not
18 aware of that having happened, where there's
19 been contact between the court and ODC about a
20 case.

21 MR. WILCOX: So the court doesn't have
22 any particular ability to initiate a
23 proceeding or anything, other than as lawyers,
24 they could initiate proceedings if they became
25 aware of something?

1 JUSTICE BEATTY: Well, you know, that's
2 an interesting question, Dean Wilcox, because
3 that has come up on -- on occasion. And what
4 has been said initially was this, we don't
5 take matters up, unless we get a complaint,
6 and then that comes from ODC. But on
7 occasion, we have referred matters to ODC.

8 MR. WILCOX: What sort of occasions might
9 that -- is it something you've read in the
10 newspaper, or something like that that causes
11 that?

12 JUSTICE BEATTY: Something that might
13 have appeared in a record that we might have
14 been reviewing, something like that, that's
15 generally the way it happens.

16 MR. WILCOX: Are you comfortable that
17 that's the way the process ought to work? Or
18 would you see anything that you would be
19 changing in the process, if you were Chief
20 Justice?

21 JUSTICE BEATTY: That -- that is a touchy
22 situation because we're trying to keep hands
23 off of the disciplinary matters until it comes
24 before us for a final decision. However, I do
25 believe there is a role for the court to play

1 in supervising the ODC. Now we -- at this
2 point in time, we are basically a hands-off
3 court. We don't deal with matters until they
4 actually come before us, and that's it. But
5 at times I'm certain that there's been
6 occasion where the Chief Justice has had some
7 dealings with ODC prior to matters coming
8 before -- the -- the extent of their contact,
9 I have no idea what it might have been.

10 MR. WILCOX: And if I can sort of change
11 the subject entirely on you here a little bit.
12 Chair if that's all right.

13 SENATOR MARTIN: Yes.

14 MR. WILCOX: There was a question asked a
15 little bit earlier about sort of the big
16 picture of becoming Chief Justice. Are there
17 particular issues that you see facing the
18 judicial system, the court system, that you
19 see as being front burner issues? If you were
20 Chief Justice, you would take on?

21 JUSTICE BEATTY: Funding has been an --
22 an issue for this court for quite some time.
23 I believe from 2000 to now, we have gone to
24 where 48 percent of our funding comes from
25 fees and fines. Over that same period of

1 time, we've experienced a close to five
2 percent decrease in collections of fees and
3 fines. But yet our book of business has
4 increased. The -- the rotation schedule still
5 goes on. And so we have a funding issue, and
6 we need a stable source of funding to operate
7 the court.

8 I -- I fear that we might get to a point
9 in time where although we are required to
10 rotate our judges, we won't have funding to do
11 so. Not only that, but we -- we need to do
12 something about our courthouses. Either we
13 put on new judges -- I'm told that we might do
14 that -- there's nowhere for them to hold
15 court. The county courthouses don't have
16 enough space. There needs to be some effort
17 made by the legislature to assist counties who
18 can't afford in funding, expansion,
19 renovation, that sort of thing, for the
20 courthouse, if we are going to keep the
21 judicial system up and running properly.

22 MR. WILCOX: One final question. You had
23 made reference that you had a little bit
24 different background than many who might, that
25 sat on the court and things. Can you

1 elaborate for me a little bit about how you
2 see your background, giving you a perspective
3 on the law that others may not have?

4 JUSTICE BEATTY: Well, my background has
5 afforded me an opportunity to see the law up
6 close and personal, and its implications,
7 application. I don't think most of the judges
8 who -- who sat on this court -- or justices, I
9 should say, with kind of experience. I think
10 that most of them read about it, not really
11 seen it. And from where I come from, I've
12 seen it, read it. So I'm -- I'm much more
13 attune, if you will, to -- to what goes on out
14 there. So yes, my -- my background's quite
15 different than the members of the court, and I
16 think that's a plus.

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

18 SENATOR MARTIN: Thank you, Dean Wilcox.
19 Senator from Darlington, then Representative
20 Smith.

21 SENATOR MALLOY: Thank you, Mr. Chairman.
22 To add on to Dean Wilcox's question, Justice
23 Beatty, I think you're the only sitting
24 Justice on the Supreme Court now that has
25 previous service in the legislature; is that

1 right?

2 JUSTICE BEATTY: That is correct,
3 Senator.

4 SENATOR MALLOY: And so I think that that
5 adds a bit of perspective too, as it relates
6 to a background. You also want to address one
7 of the questions as it relates to a corporate,
8 sort of a slant. And I remember when we were
9 over here in the General Assembly, there were
10 rave reviews that came after the Jade Street
11 decision that Justice Beatty wrote, that -- I
12 think some folks had, they were really jumping
13 up and down from the business community,
14 applauding that decision, also saying that one
15 that -- I think that was one decision, that
16 clearly spelled out when the decision about
17 the deference that was given to the General
18 Assembly, to end up formulating policy, as
19 opposed to trying to get to a necessary result
20 that the other folks wanted. And I think that
21 that -- I know that a bunch of plaintiff
22 lawyers were having a fit because the law was
23 not on their -- was not on the side. And so I
24 just point that out, just the two points, two
25 questions that were raised for a bit of

1 clarity.

2 But I think that the issue on funding,
3 I'm not sure that you know this, but we had a
4 -- in Darlington County where I'm from, we
5 have a very difficult time with our
6 courthouse, and I believe that it poses a
7 security risk. We had a driver just last week
8 or so that ran into the courthouse and burned
9 a little bit of the second floor and it was a
10 fatality. And so burned some of the first
11 floor and the second floor. It ran into the
12 car -- ran into the courthouse at a high rate
13 of speed, lost his life in the process. Very
14 sorry for he and his family.

15 But the thing is is that small counties
16 can't afford to end up building courthouses.
17 And obviously as we go forward with funding,
18 as it relates to the whole judicial system, I
19 hope that that's something that y'all will end
20 up taking a look at, to try to give us some
21 help and support and recommendations, whenever
22 asked. I'll come back with more questions
23 later.

24 SENATOR MARTIN: Representative Smith.

25 REPRESENTATIVE SMITH: Thank you, Mr.

1 Chairman. Justice Beatty --

2 JUSTICE BEATTY: Yes, sir.

3 REPRESENTATIVE SMITH: -- I don't want to
4 re-plow Langford ground with you. But it's
5 interesting to me to note this is -- I was at
6 the Public Defender's Conference speaking
7 probably about the same time you were speaking
8 at the Solicitor's Conference, and the
9 reception that night, I heard a lot about your
10 speech and about Langford. And I think one
11 thing that was noticeably absent was that you
12 were invited there to speak on the issue of
13 prosecutors. And, you know, I've attended
14 seminars. We had a seminar not too long ago
15 in Sumter where the ODC -- where the assistant
16 ODCs come and tell you what you're supposed to
17 do. And if you don't do this, there will be
18 consequences to those actions.

19 So if I understand what you're telling
20 us, is you were invited to come and speak
21 about ethical issues with prosecutors and what
22 to be on guard for with these young
23 prosecutors.

24 JUSTICE BEATTY: You are absolutely
25 right, Representative Smith. That was it. I

1 talked about cases, specific cases, where we
2 had discipline, prosecutors, government
3 attorneys for misconduct. I listed those. It
4 wasn't something I pulled out the air or
5 anything of that nature. I -- I went through
6 a list of cases and -- and situations. Now,
7 my tone might have been combative. That might
8 have been a holdover from the breakfast
9 discussion when I finally got in there to give
10 the -- the talk. But yes, I -- and you know
11 what else was interesting? Everything I said
12 about Langford, Chief Justice Toal said to the
13 public defenders. Never heard a word about
14 it. Word-for-word, never heard a word about
15 it from any who, anywhere. Senator Martin, no
16 one.

17 And it's my understanding that Chief
18 Justice Toal informed you that she gave the
19 same talk about Langford to the public
20 defenders, and you had no problem with what
21 she had to say.

22 SENATOR MARTIN: How do you know what I
23 have a problem with, Justice --

24 JUSTICE BEATTY: Well, well, let me
25 rephrase that, Senator.

1 SENATOR MARTIN: I think you might need
2 to do that.

3 JUSTICE BEATTY: I will. Let me put it
4 this way. And I probably shouldn't even
5 mention it. I got that from -- from Toal
6 herself, and I -- and I -- let me -- let me
7 withdraw every comment I've just --

8 SENATOR MARTIN: That might be advisable.

9 JUSTICE BEATTY: I will. I withdraw it.

10 REPRESENTATIVE SMITH: One thing, moving
11 on from Langford, one thing that I'm
12 interested in, you prefaced your comments with
13 the Chief Justice sort of runs the show, so to
14 speak, over there, and you're about to be
15 offering nomination for Chief Justice and
16 maybe be Chief Justice. And that's very
17 important to me, because I see the Chief
18 Justice as directing the court these days, and
19 how the practice of law is administered and
20 how the court system is run.

21 And one thing I've watched with great
22 interest over the years, as being a member of
23 the General Assembly, is what I would say, the
24 proliferation of administrative orders coming
25 from the court, that sort of cross -- I

1 wouldn't say cross a line, but blurs a line
2 with legislation. And one of those issues was
3 an order that came from the court a few years
4 ago about expungements and the administration
5 of expungements. And I took the position that
6 that was clearly provided for in the statute,
7 and obviously the court took a different
8 position, and we eventually worked that issue
9 out through a series of legislation and
10 discussions.

11 But what concerns me is what's your take
12 on administrative orders and how they sort of
13 tweak or may rewrite statutes and/or the
14 practice of law? I certainly respect the
15 judicial, the constitutional provision that
16 puts the Supreme Court over the administration
17 of the court system in South Carolina. But
18 sometimes I've watched that line gets pushed
19 with these administrative orders. I'd be
20 interested in hearing your philosophy on that.

21 JUSTICE BEATTY: Representative Smith, my
22 position on administrative orders, or even our
23 opinion for that matter, should not in any way
24 tweak, as you put it, if you will,
25 legislation, statutes. Statutes are the

1 statutes. We are free to interpret them,
2 that's our job. But to rewrite them, that is
3 not our job. And I will not do that. And
4 I'll try not to do that.

5 And if I have a problem with a particular
6 statute that yields a result that I think
7 might be problematic somewhere down the road,
8 I will put in my opinions an invitation to the
9 legislature to take a look at it. And I
10 clearly say, that is not the court's job to
11 rewrite legislation or to legislate from the
12 bench. I've done that numerous times. And
13 that would be my approach. No, the job is to
14 administrate the judiciary, the practice of
15 law. But we have to do that within certain
16 constraints, and I recognize that.

17 REPRESENTATIVE SMITH: I certainly
18 understand and respect the separation of
19 powers and opinions. It's just the concern,
20 obviously, is with administrative orders I
21 have witnessed over the years. And I think
22 just pointing out that one.

23 Lastly, one issue that you stated, kind
24 of peaked my interest also is that you're in
25 tune with what's going on with the court

1 system and all that. And I just would make an
2 observation for the court that, you know, not
3 all of us practice in Columbia and Greenville
4 and Charleston, not all of us specialize these
5 days. But I seem to see more of a push from
6 the court that the disposition of cases, the
7 moving of cases, and it creates conflicts
8 among attorneys who -- I'm sure you engaged in
9 the same type of practice that most of us in
10 small towns engaged in, where you've got to be
11 in Magistrate's Court, you got to do some
12 Family Court, you've got to do some General
13 Sessions, and you've got to do Common Pleas.
14 And I see with the court, the number of terms
15 of court, but the court, the push of attorneys
16 to dispose of cases without the application of
17 how the practicality of it.

18 And I would certainly ask the court to
19 take that into consideration, especially if
20 you are elected Chief Justice in the
21 administration of court, because I think you
22 are really pushing down on the smaller town
23 lawyers. And I hear from them often, that
24 it's a lot more difficult to make a living
25 practicing law in the Lee Counties and the

1 Clarendon Counties and the smaller counties
2 than it was ten or fifteen years ago. And I
3 think the Supreme Court in the way that the
4 terms of court are given, it probably plays a
5 large part of that.

6 One thing I would mention, every time I
7 see Chief Justice Pleicones, I mention this,
8 is, you know, this new rule in the pilot
9 project on motions hearings and having
10 memorandums going along with those, that is
11 very difficult on a lawyer who's got a number
12 of balls up in the air, to do those, and it
13 really precludes them on the motion practice.
14 So I would ask you, if you do become an
15 administration court, you probably practiced
16 law more in line with -- or did practice law
17 not as long as some of the others who have
18 been on there.

19 So -- but you know, I would ask that you
20 take that in consideration, because I'm real
21 concerned of where this -- where the practice
22 of law is going. I'm concerned that the
23 Monday after New Year's on this year, when New
24 Year's Day was on Saturday and people spending
25 time with their family, there's terms of court

1 beginning. You know, as quality of life of
2 attorneys that needs to be remembered. And I
3 know you're not as far removed as some from
4 the practice of law, but I think that those --
5 I guess it's difficult sometimes to remember
6 what it's like to have to earn a living as an
7 attorney.

8 JUSTICE BEATTY: Your comments are well-
9 taken, Representative Smith, and I do share
10 your concern. You know, we're only required
11 to hold, I believe, nine terms of court a
12 year. But we hold somewhere between 18 to 20
13 terms of court a year, and that puts a lot of
14 pressure on -- on practicing lawyers and put a
15 lot of pressure on the court system in
16 general. But we -- we have such a volume of
17 business, our book of business is pretty big.
18 And in trying to deal with that requires that
19 sometime.

20 We have recently started to rethink that
21 approach, having to have court every other
22 week, because it's difficult for us as well to
23 do that. And we know it's difficult for the -
24 - the attorneys out in the field. But what
25 happens in the Circuit Court, if you will, and

1 the reason for the request for the memo, so
2 that we can handle some of these motions
3 without hearings, because we couldn't schedule
4 enough hearings to take care of all the
5 motions we had in some of the cases. And then
6 a practicing attorney like yourself, getting
7 those memos together, those memorandums
8 together, for a -- a judge on any particular
9 issue, it takes time and it takes a lot out of
10 your schedule and you're trying to do other
11 things as well.

12 But when you're a circuit judge, you walk
13 into a courtroom -- and our circuit judge is
14 unlike a circuit judges in most places -- you
15 walk into the courtroom cold, with the case
16 placed -- placed before you and you have no
17 idea what it's about. So if you've not gotten
18 a memorandum of -- of some sort about it
19 beforehand, you -- you say, "Well, I'll take
20 that under advisement." Then you go from
21 there. You have, what, 80 cases on your
22 docket. Then next day you got another, then
23 you go to another circuit and you have that
24 just mounting up.

25 So we have all these matters that are not

1 finally taken care of by the circuit judge,
2 and then we start to get complaints. This
3 judge has been holding my motion for a year,
4 six month, and has not ruled on it. And --
5 and that's the reason why we try to them
6 without a hearing and hopefully get -- allow
7 us to get more of it done. But that is
8 something that we might need to rethink,
9 maybe. It just started, by the way, so we
10 really don't know how it's going to work out.

11 REPRESENTATIVE SMITH: And unfortunately,
12 you placed it in the third -- y'all placed it
13 in the Third Circuit, which is where I
14 practice. And so that tends to lead to the
15 complaints that I hear. But I certainly
16 understand, listen and hear the judges. But
17 also by the same token, I don't want to get in
18 a long discussion of this is, you know, most
19 terms of court break down quickly. And, you
20 know, and so that is another issue. But, you
21 know, I just bring that to your attention.
22 And I think I'll probably withhold questions.

23 SENATOR MARTIN: Mr. Hitchcock and then
24 Representative Rutherford.

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

1 Good morning, Justice Beatty.

2 JUSTICE BEATTY: Good morning, sir.

3 MR. HITCHCOCK: I just wanted to take a
4 moment. I know that we've talked about a
5 couple of cases -- or a couple cases have come
6 up in particular, and I don't want to re-plow
7 that ground. And in hearing some of your
8 thoughts on, you know, separation of powers
9 and, you know, who gets to set public policy
10 and those types of things. But if I could,
11 I'd like to maybe take you up to about --
12 we're 5-, 10,000 feet, so we're above, you
13 know, individual or particular cases and just
14 really get your thoughts -- you know, I think
15 sometimes -- and I'm probably as much a victim
16 of this, given my current position as anyone
17 else, we forget that we do have three branches
18 of government. And just somewhat get your
19 thoughts on -- or your philosophy on the --
20 you know, when it comes to separation of
21 powers, the interaction of the three branches
22 of government, and your approach because, you
23 know, I know as well as anybody, you know, the
24 Supreme Court's not called on to answer the
25 easy questions. Where the -- really, where

1 the -- where the powers are distinct, really
2 more of the close-calls. And really your
3 thoughts on how the powers interact and, you
4 know, what is or what is not a, you know, non-
5 justiciable political question. If you could
6 just give us more of kind of your general
7 view, your general approach on that, I'd like
8 to hear it.

9 JUSTICE BEATTY: Yes, sir. Let me first
10 say that there is no one on that court that
11 respects the separation of powers more than I
12 do. And I think there's a lane that, yes, we
13 have a three-legged stool government, if you
14 will. And if there is something wrong with
15 one of those legs, that stool is going to
16 fall. I think there's a lane for each branch
17 of the government and we should stay in our
18 lane. Setting public policy is the job of the
19 legislature, not the judiciary. And I firmly
20 believe that and I try to exercise that.

21 And if by chance there are comes an
22 occasion where someone thinks that we may have
23 overstepped our bounds, or I in particular,
24 stepped out of my lane, well then, bring it to
25 our attention and -- and let's take another

1 look at it. I have no problem with saying I
2 was wrong. I grew up that way. If I'm wrong,
3 I'm wrong. But if I'm right, I'm right and
4 the chips fall where they may. And I will
5 never intentionally try to offend the
6 legislature in a decision that I render. I
7 would never intentionally try to step out of
8 my lane and set public policy, no. I am one
9 of those who have set, not in this chamber,
10 but in the one across the way there. I
11 understand the difference in the branches of
12 government. I understand civics quite well.
13 And I wished we taught it in schools now. And
14 I don't think most people, including some
15 legislators, quite frankly, do not understand
16 separation of power, do not understand that
17 there are three branches of government. But
18 no, sir, I will not knowingly ever step out of
19 my lane.

20 SENATOR MARTIN: Representative
21 Rutherford.

22 REPRESENTATIVE RUTHERFORD: Justice
23 Beatty, taking you back to the comments made
24 at the solicitor's office, has anyone ever
25 pointed out to you that anything you said in

1 those comments was incorrect?

2 JUSTICE BEATTY: Actually, no. In fact,
3 I've gotten comments from across the nation,
4 even one from Canada, believe it or not, from
5 federal judges, state judges, people in the
6 community, letters stacked this high (witness
7 demonstrates), supporting everything that I
8 said at that solicitor's convention. Only
9 people I've heard complain about it was a few
10 solicitors. And to be quite frank with you,
11 couple of them have called me since that time
12 and say they were wrong. One even called me
13 about two months ago and said that he had --
14 he now knows that was I was saying was
15 correct. He's having problems with four
16 complaints filed against his young solicitors
17 already.

18 So again, I will say my attitude, my
19 approach, my tone could have been much better.
20 The combative approach that I took,
21 apparently, needed to be re-thought, if you
22 will. And if I had to do it again, I'd change
23 that.

24 REPRESENTATIVE RUTHERFORD: If I could
25 refresh your memory a little bit, and I don't

1 know whether this came up with the time frame.
2 But you may or may not remember, but the bill
3 regarding Langford was a House bill. And I
4 know I was a co-sponsor because I disagreed
5 with the course of decision with Langford.
6 And I can't remember who the primary sponsor
7 was. But the Chief Justice Toal actually came
8 to give comments on that bill. Were you aware
9 of that?

10 JUSTICE BEATTY: Yes, sir. In fact, she
11 told me that in her discussions with me of
12 having talked to Senator Martin. And again,
13 let me apologize to Senator Martin for my
14 combativeness. I mean, that's -- every time
15 this thing come up with the solicitors thing,
16 it kind of rubs me the wrong way, because it's
17 been taken way out of context and people don't
18 fully understand what really happened there.
19 And I've never been able to give my side of
20 the story.

21 REPRESENTATIVE RUTHERFORD: In addition,
22 the side of the court or the story of the
23 court was solicited, and that's why Chief
24 Justice Toal came to speak on it. But also,
25 following that, I believe a study was done,

1 and I don't know whether it was done by you or
2 someone else, that showed that in cases before
3 the court, you had agreed with solicitors 95
4 percent of the time, or you found with them 95
5 percent of the time.

6 JUSTICE BEATTY: The numbers are actually
7 -- during that time, the court had agreed with
8 the solicitors 83 percent of the time. My
9 personal numbers are 84 percent of the time.
10 And that's not including those criminal cases
11 where there was an attempt to appeal and we
12 decided, no, we're not taking that appeal. If
13 we include those numbers, the court and I will
14 be above 95 percent, I would think, in support
15 of the solicitor.

16 REPRESENTATIVE RUTHERFORD: Going back to
17 something that Representative Smith said,
18 there was an administrative order given by
19 Chief Justice Toal several years ago regarding
20 DUIs. After that order was given, hundreds of
21 DUIs, I know in Richland County, were
22 dismissed, because all the old cases were to
23 be brought new and judges were to now push
24 moving cases and moving cases and moving
25 cases.

1 And so as a follow-up again to
2 Representative Smith, my concern is as a
3 practicing lawyer, that that memorandum or
4 that administrative order has been taken to
5 mean that when I file a continuance on a case
6 for the very first time in some of these
7 smaller counties, I'm getting calls from the
8 magistrate, from the police officer going,
9 "Hey, why did you continue this case? Can we
10 move it? Can we move it?"

11 And the question becomes, to what end are
12 we going with always putting this emphasis on
13 moving, moving, moving and no quality of life
14 for the lawyers that are having to deal with,
15 when -- because it used to be, if I requested
16 a continuance, if the court had a problem with
17 it, they'd call and say "Hey, can you send us
18 a notice from that other court?"

19 Now we put three or four notices in,
20 where different appearances have to be in, and
21 still are told by the magistrate, "No, I'm not
22 going to continue the case." Circuit Court
23 judge is saying "You're going to be here and
24 try this case on Monday. I don't care what
25 the posturing is." Y'all are going to be here

1 and try this case." Scheduled in court the
2 day after New Year's. Scheduled in court the
3 week before Christmas, to what end.

4 Is there a point at which the court is
5 going to say, "Okay, we've gone far enough
6 down that path of putting this on lawyers to
7 be there, be there, be there," and provide
8 some deal of quality of life, some ability to
9 live, just because you're a lawyer, and not
10 have to worry about every single day -- and I
11 know you and I talked when I first started and
12 you talked about going in on Sundays and going
13 on Saturdays, and now that becomes the order
14 of all of our business. But to what end?

15 You know, what point is the court going
16 to step back and say -- and I'm not trying to
17 get you to legislate -- but at what point do
18 we reach a conclusion and say, okay, this is
19 probably what we can do. We've maxed out our
20 numbers. Now let's look at how to make sure
21 that we're doing this the right way. Because
22 it just appears to me -- I've had to hire
23 someone to cover my cases while I'm up here,
24 and it still doesn't end. I'm still getting
25 calls on "Well, you need to move this case."

1 The case is 30 days old.

2 You know, at what point then will the
3 court issue another order and say have some
4 common sense about this. It doesn't always
5 have to be that we're moving cases in a month,
6 in two months. It doesn't always have to be
7 that lawyers are getting calls from circuit
8 court judges and say "You'd better be here on
9 Monday to try the case, even though there are
10 ten other cases that want to be tried, you'd
11 better be here." At what point do we reach
12 some conclusion?

13 JUSTICE BEATTY: You know, we have to be
14 practical. And if that is happening, then I
15 don't think we're being practical. If there
16 is something else that is ready to go, your
17 case is not, but we won't do anything because
18 your case is not ready to go.

19 The problem is, our judiciary, our
20 circuit and trial benches handle more cases
21 per judge than anywhere else in this country,
22 and that is very difficult. We have -- our
23 filings have increased. Our book of business
24 is unbelievable. And when those matters stack
25 up -- the court has traditionally, at least

1 the time that I've been there, been concerned
2 with optics, if you will, how things look, and
3 especially to you as legislator.

4 If we have this extremely long list of
5 cases that have not been disposed of that are
6 two or three, four, five years old, we've had
7 them up to ten years old, that have not been
8 disposed of, then the way we see it and way we
9 saw it then was, it makes us look bad,
10 especially to you, when we are coming to you,
11 asking you for things. And you say "Well
12 look, you're not doing anything. You're not
13 working." We have all these cases that are
14 backed up.

15 So we made an effort to do something
16 about our backlog. And that's why we have all
17 these terms full. Believe me, not only is it
18 hard on the lawyers, it's hard on the judges.
19 And even on -- on my level, it's hard. We
20 work hard. We work all the time. And to try
21 to do cases every other week -- and these are
22 not easy cases that we see now. It is not
23 your -- your run-of-the-mill cases. Takes
24 time and effort. So it's a -- there's a lot
25 of pressure on the system totally. But your

1 point is, should we take a step back from
2 looking at the numbers? Quite frankly, I
3 think you're right.

4 REPRESENTATIVE RUTHERFORD: Last question
5 is, how do we -- if it is clear that this is a
6 three-legged stool and that the judiciary is
7 one leg of that stool, if the judiciary is
8 constantly underfunded and the salaries are
9 clearly not high enough, we need courthouses,
10 we need money, how is it that the judiciary --
11 and is there a step the judiciary can take --
12 and I don't want to ask you again to legislate
13 from sitting over there, and you can decline
14 to answer; it wouldn't offend me -- but how is
15 it that if we're not paying judges enough, if
16 we're not providing enough money, if
17 courthouses need security, Richland County's
18 courthouse is too small, we couldn't even fit
19 a new judge in if we wanted to, how is it that
20 the court can be a leg of the stool if the
21 legislature constantly under funds it and you-
22 all have no voice, besides, I guess, the
23 speech that the Chief Justice comes and gives
24 every year, that nobody goes to. How is it
25 the judiciary is supposed to be this equal leg

1 if this branch of government treats them like
2 their red-headed stepchild?

3 JUSTICE BEATTY: Interesting point,
4 Representative Rutherford. It can't go on.
5 And this situation has to be remedied at some
6 point in time, as it's going to crumble. It -
7 - it really is. When you go from one percent
8 of your budget being taken care of by -- by
9 fines and fees to 48 percent of your budget
10 being taken care of by fines and fees,
11 something is wrong. And -- and what you have
12 is people fining people -- and, of course, the
13 federal government is not saying we're fining
14 too much and we're going to have to stop it
15 and start bringing claims and due process
16 violations.

17 So now, if that should happen, we're
18 already receiving five percent less than we've
19 received four or five years over the last
20 three years anyway, what are we -- what are we
21 to do? If the legislature does not do
22 something about funding for the court, we're
23 not going to have any court system.

24 Our Chief Justice now makes less than the
25 lowest paid federal judge. The magistrates

1 makes \$30,000 more than the Chief Justice do -
2 - does, I should say. But, you know, you look
3 at that kind of situation. We have lawyers
4 that are hired and paid for by the state, make
5 more than the Chief Justice. Something is
6 wrong with that picture.

7 SENATOR MARTIN: Representative
8 Bannister.

9 REPRESENTATIVE BANNISTER: Thank you.
10 Justice Beatty, you mentioned fines and fees.

11 JUSTICE BEATTY: Yes, sir.

12 REPRESENTATIVE BANNISTER: I want to ask
13 you two questions, and don't let me forget the
14 second one. There was some discussion a
15 couple years ago about doing more collections
16 on the fines and fees, and there was a fairly
17 large outstanding balance. In other words, a
18 defendant comes through, you know, a hundred
19 dollar fine or ten days in jail, you got 30
20 days to pay, then it was kind of a -- but you
21 don't have to do either one. And then no
22 follow up to see if he could pay the hundred
23 dollars.

24 I don't know if you were part of those
25 discussions previously -- said we're not

1 collecting any money from any individuals who
2 are fined by the court and didn't pay. It's
3 just not worth the time. Have you looked at,
4 are you aware of the outstanding balance
5 that's sort of carried by the court system for
6 unpaid fees and fines?

7 JUSTICE BEATTY: I'm aware that there is
8 an outstanding balance and I understand that
9 balance to be considered significant. But the
10 problem is, the people who owe it can't pay
11 it. And I wouldn't say all of them can't, but
12 quite a few of them couldn't pay, or else they
13 would be paid. Number one, then that goes
14 back to the federal government, the justice
15 department, in their efforts, that started
16 about a month ago, complaining about those
17 same fines and fees. So now, if they're going
18 to come in and stop us from collecting it,
19 claiming that it's a due process violation,
20 then assessing them means nothing.

21 REPRESENTATIVE BANNISTER: Well, that was
22 kind of my point. When you're Chief Justice,
23 do you think looking at how we assess fines
24 and how we collect fines would be appropriate?
25 Because if we're -- if we're -- as I

1 understand it, if you get a hundred dollar
2 ticket, you've got all the assessments, it
3 ends up being about \$300. I think
4 Representative Rutherford could say exactly
5 what it is.

6 But if we're assessing a hundred dollar
7 fine that we know they can't pay and the
8 Department of Justice says it would be a
9 violation of their due process to collect it,
10 you think that's worth looking at? Is that
11 something you'd do as Chief Justice, kind of
12 look into how we handle the fees and fines and
13 whether or not we're --

14 JUSTICE BEATTY: I think I would have to.
15 I -- I -- I think the court would be forced
16 to, considering the fees and fines are 48
17 percent of our budget, and we're going to have
18 to see if we can't collect it, or what if we
19 can collect it, I should say, and take a look
20 at that whole process. I don't think we have
21 a choice but to do that.

22 REPRESENTATIVE BANNISTER: So the second
23 question I got is on the getting input from
24 the court system. I understand there was an
25 unspoken rule that the judges who run across

1 issues from a legislative standpoint, that
2 they might see who could be approved.

3 JUSTICE BEATTY: I'm sorry?

4 REPRESENTATIVE BANNISTER: Maybe some
5 previous administrations in the Supreme Court
6 had suggested that the trial judges should not
7 contact their legislators about things that
8 they might want legislatively. For instance,
9 in Family Court, when there's a complicated
10 statute that's sort of ambiguous from a public
11 policy standpoint, the Family Court judges, as
12 I understand it, were encouraged not to talk
13 to their legislators about policy things like
14 legislative changes.

15 Number one, I don't know if you -- I
16 don't even know if it's true. But do you
17 think it's appropriate, when you're Chief
18 Justice, are you going to encourage the trial
19 judges who are on the front lines, dealing
20 with the legislation and the trial courts, to
21 talk to their legislators and bring up issues
22 they seek? Or do you think all those
23 communications ought to come through you, as
24 the Chief Justice?

25 JUSTICE BEATTY: Let me say, the practice

1 has been --

2 REPRESENTATIVE BANNISTER: Or have you
3 thought about it?

4 JUSTICE BEATTY: The practice has been
5 that Chief Justice for -- for the judiciary,
6 and only the Chief Justice for the judiciary,
7 from having practiced law, been a judge for
8 quite some time, 20 years, I -- I believe, and
9 a legislator, I know that it's beneficial from
10 time to time to have other people other than
11 myself, if I were the Chief Justice, to talk
12 to legislators. And to forbid that, I think
13 is detrimental to -- to the system, to the
14 process.

15 I think if someone has a relationship
16 with a legislator and has a concern about a
17 piece of legislation or a situation -- not the
18 legislation itself, but a situation, and they
19 might talk to their legislator about it. But
20 I do think the Chief Justice ought to be
21 apprised, because you don't want to get caught
22 cold when the -- when the legislator calling
23 you and ask you about it, and you have not had
24 an occasion to look at the situation and --
25 and can't respond intelligently. No, it -- it

1 should happen.

2 And in fact, I think they're exchanging
3 now. I do believe our current Chief Justice
4 has made a point of asking members of the
5 judiciary, all levels, to talk to legislators
6 about certain issues.

7 REPRESENTATIVE BANNISTER: And last
8 question. I just thought of this while we
9 were going. When you were talking at the
10 Solicitor's Conference, obviously whatever
11 that was is fine. At the time, there were
12 several pending complaints against solicitors.
13 One of them was -- if I got the facts right,
14 one of them was texting a juror during breaks
15 or had his cousin texting the jurors. Another
16 one didn't produce exculpatory evidence an
17 eyewitness that would have supported the
18 alibi. If it's something like that, where it
19 was just -- if you read the rule, you would
20 know you can't contact the jurors and you
21 can't not tell about witnesses.

22 And I got four kids, and when I come
23 home, my wife tells me "Go talk to your oldest
24 son and you put him in his place." And I got
25 no idea what's going on, except I know I got

1 to go fuss at him about something. Have you
2 noticed that the -- if you know, have the
3 number of complaints against the solicitors
4 sort of getting out of line like that, have
5 they decreased? I mean, was that a successful
6 meeting? It certainly, it certainly raised
7 awareness of that issue.

8 JUSTICE BEATTY: Honestly, I do not know.
9 As I indicated earlier to Dean Wilcox, we
10 don't necessarily have that kind of a -- a
11 discussion, if you will, with ODC. However,
12 if we were to call, I'm sure they would be
13 able to give us numbers, although they can't
14 tell us about -- we ask them not to tell us
15 about the -- the case itself. We can get
16 those numbers, certainly, if -- if they were
17 needed.

18 But I -- I will say this, I've gotten an
19 unsolicited call from one of the solicitors
20 who signed the letter against me, indicating
21 that now he sees what I'm talking about, and
22 that he's had to respond to four complaints
23 against his youngest solicitor. So I assume -
24 - hopefully it does do some good. In the case
25 you're talking about is a solicitor texting

1 his cousin in a murder case on this jury 32
2 times, 32 times, texting a juror during a
3 murder trial.

4 REPRESENTATIVE BANNISTER: I'm not sure
5 if that's specifically addressed in a rule,
6 but something like that.

7 JUSTICE BEATTY: And another, crossing
8 the Cooper River Bridge, does not like the way
9 a motorist is driving, pulls his badge and his
10 gun and points it at the motorist because
11 they're driving too slow. Now, I -- I
12 mentioned those two cases. Unfortunately,
13 they came out of Charleston and it created a
14 problem.

15 REPRESENTATIVE BANNISTER: Thank you,
16 Justice.

17 SENATOR MARTIN: Ms. Wall.

18 MS. WALL: Thank you, Mr. Chairman.
19 Justice Beatty.

20 JUSTICE BEATTY: Yes, ma'am.

21 MS. WALL: Just very quickly to follow up
22 on that. Has there been any consideration,
23 having additional training -- I do Bridge the
24 Gap and have for 20 years and we are now --
25 we've gone from three days, I think way back

1 when it was five and went to three and now
2 we're one -- one day. Something --

3 JUSTICE BEATTY: And there's talk about
4 getting rid of it, unfortunately.

5 MS. WALL: Okay. Well, but has there
6 been -- has the court given any consideration
7 to additional mandatory training for
8 solicitors to -- because it's sounding as if
9 they don't even know what the rules are.

10 JUSTICE BEATTY: That's why I was told, I
11 was asked to deliver that speech.

12 MS. WALL: I understand.

13 JUSTICE BEATTY: And to be stern.

14 MS. WALL: I understand that. But maybe
15 rather than putting you on the spot to have to
16 do it, to actually have several days before a
17 solicitor, even though he or she has passed
18 the bar, but something in addition to simply
19 Bridge the Gap. It's just a thought there.

20 JUSTICE BEATTY: It is a thought and it's
21 something that I would think the solicitors in
22 their association need to take up. And be
23 quite frank with you, I think they have
24 considered it. That was the purpose, I do
25 believe, of -- of my appearing. But yes,

1 there is a problem, there is a problem.

2 And no matter what anyone would say,
3 solicitors were off-limits. You didn't touch
4 them. You just didn't, unless there was
5 something seriously, seriously, seriously bad.
6 And -- and -- and what -- I -- I gather the
7 whole point of the discussion was, they're
8 going to be treated like every other lawyer in
9 this state and have to abide by the same
10 rules.

11 SENATOR MARTIN: Any other questions?

12 (No response.)

13 SENATOR MARTIN: You're done. Thank you
14 very much, Justice Beatty. This will conclude
15 this portion of the screening process. As you
16 know, the record will remain open until the
17 report is published. And you may be called
18 back at such time, if the need would arise.
19 Thank you for offering and for being here
20 today and your cooperation with our staff.

21 JUSTICE BEATTY: Thank you very much for
22 allowing me to come. I -- I would like to say
23 one thing. I would have to apologize for my
24 combative nature when it comes to the
25 solicitor thing. I mean, it's just been a

1 matter that has just really bothered me since
2 it occurred. So if I've offended any of you
3 with my tone or any comment that I might have
4 made, please forgive me for that. Let's --
5 let's look over it. And I'm -- I'm trying to
6 get past this, that little rough edge. And
7 I'm no shrinking violet, and when attacked, I
8 do respond.

9 SENATOR MARTIN: Only thing I would say
10 to that is you've had three years almost, two-
11 and-a-half years to deal with it, and you had
12 the opportunity to come in here today and deal
13 with it.

14 JUSTICE BEATTY: Well, thank you. It's
15 been festering that long.

16 (Justice Beatty exits the room.)

17 SENATOR MARTIN: Welcome. Come on in,
18 Justice Few.

19 JUSTICE FEW: Good morning.

20 SENATOR MARTIN: Good morning. Good to
21 see you. If you would, raise your right hand
22 to take the oath.

23 (The judge is sworn in.)

24 EXAMINATION

25 (By Senator Martin)

1 Q. Thank you very much. Justice Few, we're going to
2 expedite this as quickly as we can because you've
3 already been screened before, in the last, what,
4 year, I guess, plus. Yeah, it doesn't seem long.
5 Seemed like yesterday.

6 A. Twice actually, in the last year.

7 Q. Have you had an opportunity to review your PDQ and
8 all that? Any changes need to be made?

9 A. I actually did not review it, but I do not have any
10 changes to make.

11 Q. Any objection to us making it part of the record?

12 A. No objection.

13 Q. We'll do that at this point in the transcript.

14 [EXHIBIT 5, JUDICIAL MERIT SELECTION

15 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE

16 HONORABLE JOHN CANNON FEW, ADMITTED.]

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

1 We received one affidavit filed in opposition
2 to your election, which the Commission dismissed
3 pursuant to JMSC Rule 13 for failure on its face to
4 state allegations relating to your character,
5 competency or ethics, as required by the JMSC
6 rules. No witnesses are here to testify. Do you
7 have a brief opening statement you'd like to make
8 at this time?

9 A. No, sir.

10 Q. Well, with that, would you kindly answer the
11 questions of our counsel.

12 MS. DEAN: Thank you, Mr. Chairman and
13 the Members of the Commission. I have a
14 procedural matter to take care of with this
15 candidate, to begin with.

16 EXAMINATION

17 (By Ms. Dean)

18 Q. Justice Few, you have before you the sworn
19 statement you provided with detailed answers to
20 over 30 questions regarding judicial conduct,
21 statutory qualifications, office administration and
22 temperament. Are there any amendments you would
23 like to make to this sworn statement.

24 A. No.

25 MS. DEAN: At this time, Mr. Chairman, I

1 would like to ask that Justice Few's sworn
2 statement be entered as an exhibit into the
3 hearing record.

4 SENATOR MARTIN: Is there any objection?
5 (No response.)

6 SENATOR MARTIN: Hearing none, it will be
7 entered into the record at this time.

8 MS. DEAN: Thank you.

9 [EXHIBIT 6, JUDICIAL MERIT SELECTION
10 COMMISSION SWORN STATEMENT FOR THE HONORABLE
11 JOHN CANNON FEW, ADMITTED.]

12 **Q. Justice Few, please explain one or two goals that**
13 **you would like to accomplish if re-elected to the**
14 **Supreme Court.**

15 A. Well, I would -- I would like to -- I -- I have
16 laid out in -- in great detail over a long period
17 of time what my philosophy of -- of judging is.
18 And I would like to dedicate myself to holding true
19 to those philosophies, to work hard, to try to make
20 the South Carolina Supreme Court the best servant
21 that it can be to the people of South Carolina.

22 **Q. Thank you, Judge. Justice Few, although you**
23 **addressed this is your sworn affidavit, could you**
24 **please further explain to the members of the**
25 **Commission what you think is the appropriate**

1 **demeanor for a Supreme Court justice.**

2 A. Well, the appropriate demeanor includes respect,
3 allowing lawyers who appear before the court to
4 have the freedom to argue the points that they
5 would like to argue. But at the same time,
6 engaging with -- with those lawyers in a discussion
7 that is calculated to get the court, and sometimes
8 get the lawyers, but certainly get the justices
9 deeper into the analysis of what's going on before
10 the court, so they can fully understand the issues,
11 which in turn helps the -- the court get to the --
12 the best way to resolve the issues, according to
13 law.

14 **Q. Thank you, Judge. Justice Few, the Commission**
15 **received 1,064 ballot box surveys regarding you,**
16 **with 92 additional comments. The ballot box**
17 **survey, for example, contained many very positive**
18 **statements, including "strongly qualified in all**
19 **fields, best judge in the state, honest, fair, and**
20 **thoughtful judge."**

21 Twenty-five of the written comments express at
22 least some level of concern. And some of these
23 regarded judicial temperament during oral argument.
24 Although you already kind of touched on that, would
25 you like to respond to these ballot box concerns?

1 A. I don't have anything to say in response to that.

2 Q. Thank you. I now have some housekeeping questions.
3 Have you sought or received the pledge of any
4 legislator either prior to this date or pending the
5 outcome of your screening?

6 A. I have not.

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

11 A. No.

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

15 A. Not about my candidacy.

16 Q. Do you understand that you are prohibited from
17 seeking a pledge or commitment until 48 hours after
18 the formal release of the Commission's report? And
19 are you aware of the penalties for violating the
20 pledging rules?

21 A. I do understand and I am aware of the penalties.

22 MS. DEAN: I would note that the Upstate
23 Citizens Committee reported that Justice Few
24 is Qualified in the categories of
25 constitutional qualifications, physical health

1 and mental stability. Committee found him
2 Well Qualified in the remaining criteria.

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

8 SENATOR MARTIN: Any questions by members
9 of the Commission? Dean Wilcox.

10 MR. WILCOX: I don't have a question of
11 the candidate, Mr. Chair. I just would like
12 to on the record, as I have before, that
13 Justice Few has, in the past, taught at the
14 University of South Carolina School of Law,
15 and I believe will continue to teach there
16 next spring. And I hope we've worked that out
17 with you. I have considered that in the past,
18 and believe it has no impact on my ability to
19 consider fairly.

20 SENATOR MARTIN: Justice Few, we
21 appreciate your cooperation with our staff and
22 just wish you all the best, as you continue to
23 serve on the court. I'm sure it's been quite
24 an experience thus far and hope all goes well.

25 SENATOR MALLOY: Mr. Chairman.

1 SENATOR MARTIN: Yes.

2 SENATOR MALLOY: I'd like to just
3 congratulate Justice Few on his shortest
4 screening ever.

5 JUSTICE FEW: I'm glad somebody noticed.

6 SENATOR MALLOY: He's a year or two
7 younger than me, and so it could be a while
8 before he will end up coming back. But just
9 also want to put down about a long history of
10 familiarity with each other and contact, going
11 back to college.

12 SENATOR MARTIN: Thank you very much.
13 This will conclude this portion of the
14 process. As you know, the record will remain
15 open until it's published. You may be called
16 back at such time, if the need arises. I
17 thank you again for offering and for your
18 service to our state.

19 JUSTICE FEW: Thank you.

20 (Justice Few exits the room.)

21 SENATOR MARTIN: Have a seat. Judge it
22 is good to see you.

23 JUDGE LOCKEMY: Good morning.

24 SENATOR MARTIN: We are here on James
25 Edward Lockemy, seeking Court of Appeals,

1 Chief Judge, Seat 5. Will you raise your
2 hand, take the oath.

3 (The judge is sworn in.)

4 EXAMINATION

5 (By Senator Martin)

6 **Q. Thank you very much. Have you had an opportunity**
7 **to review your PDQ?**

8 A. I have before. I didn't do today, but I'm -- I'm
9 sure it's fine.

10 **Q. Very good. Do you object to us making it part of**
11 **your sworn testimony?**

12 A. No, I do not.

13 **Q. It will be done at this point in the transcript.**

14 [EXHIBIT 7, JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
16 HONORABLE JAMES EDWARD LOCKEMY, ADMITTED.]

17 **Q. We've received no affidavits in opposition to your**
18 **election, no witnesses are present to testify. I**
19 **got blank seating behind you. Do you have a brief**
20 **opening statement you'd like to make?**

21 A. Only that I guess I'm unique in the candidates,
22 that I have appeared before this Commission, made
23 up by many, many different people every decade of
24 my judicial career, when I first went on in late
25 '89, then twice in the '90s and first decade of

1 this century, and now here. So I'm very, very,
2 very fortunate in my life to have been allowed to
3 serve by the people of this state through their
4 elected representatives on the bench. And I've
5 done my best to make sure I have carried out
6 justice, carried out the mandate of the law in this
7 state now for 27 years. And I look forward to an
8 opportunity with the approval of the elected
9 representatives of this state to -- to become a --
10 a -- the pinnacle of my career, which would be the
11 chief judge of the Court of Appeals.

12 **Q. All right, sir. Would you answer the questions of**
13 **our able staff counsel?**

14 A. Yes, sir.

15 SENATOR MARTIN: Senator from Darlington.

16 SENATOR MALLOY: Before you start, I will
17 say that Judge Lockemy, even though he was an
18 At-Large judge, was the judge largely in my
19 circuit during his early career, in my early
20 career. Think I had one of his first major
21 cases and probably his last major case too on
22 the trial bench, and frequent encounters and
23 contact.

24 JUDGE LOCKEMY: One reversed, one not.

25 SENATOR MALLOY: That's exactly right.

1 like to ask that Judge Lockemy's sworn
2 statement be entered as an exhibit into the
3 hearing record.

4 SENATOR MARTIN: Any objections?

5 (No response.)

6 SENATOR MARTIN: Hearing none, it will be
7 ordered.

8 [EXHIBIT 8, JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT FOR THE HONORABLE
10 JAMES EDWARD LOCKEMY, ADMITTED.]

11 **Q. Judge Lockemy, after serving seven years on the**
12 **Court of Appeals, why do you now want to serve as**
13 **chief judge?**

14 A. As I mentioned earlier, I had served on the bench
15 for 27 years and I have now been on the Court of
16 Appeals for -- for eight years, and -- or elected
17 eight years ago. And I have seen our court
18 operate. I am much in awe of the hard work of all
19 the judges there. I feel that as a chief judge of
20 our court, I can promote collegiality among these
21 hard-working, well-qualified judges. I can serve,
22 as I said, the interest of justice.

23 I feel that I also, because of my background
24 as being the chief executive of many organizations,
25 including several within the military -- I was the

1 chief legal advisor, in charge of a staff of over
2 40 people in a hostile territory of Kosovo for over
3 a year. I was executive -- chief executive of the
4 National Guard Association, of thousands of people
5 and over the board. And I've been the -- honored
6 to be the chief -- or the president of the Circuit
7 Judges' Association of our state.

8 So I've had varied experiences as being the
9 manager, as being the chief, as being in charge,
10 and I feel like it would benefit our court, work
11 hard on our court and continue the legacy of so
12 many of the ones in the past who have done a great
13 job as chief.

14 **Q. Thank you, Judge. And, Judge, you're kind of going**
15 **in the direction. And could you please explain**
16 **several goals that you would like to accomplish as**
17 **chief judge?**

18 A. Well, one is, I would like to make sure that our
19 court operates collegiately and that the rules of
20 our court are such that all the judges are involved
21 in deciding those procedural rules. And if at some
22 point in time we have a difference of opinion about
23 how we should handle a motion or how we should
24 handle assignment of cases, or this or that, and --
25 and we'd have a vote, I would feel that the

1 majority of the court should control. And that
2 even if I'm on the losing side, I would then
3 support the choice of the court. And I feel that
4 we need a person to lead us who the judges know
5 will lead us, but also be with us, and I will be
6 that way.

7 And I think that I also would have a great
8 rapport with the legislature. Many of you I know,
9 many of you I see when I'm not running for anything
10 because I -- I feel that this is three branches --
11 there are three branches of government, that we
12 should be having check and balances and separate
13 branches, but as human beings, all serving one
14 purpose, and that is the interest of the people of
15 our state, that we should be together and know each
16 other and have cordial relations. And I think that
17 I would be a good spokesperson for our court in
18 that regard, as well as be a great representative
19 to our Supreme Court, as 14-8-80, as well as the
20 other sections of the chapter dealing with the
21 responsibility of the chief judge.

22 I think that working with the Chief Justice,
23 that I would make sure that our court operates
24 efficiently and that we would get cases out, as one
25 of the requirements of all of us as judges is to

1 make reports and to decide things fairly, but also
2 within a reasonable period of time, and that would
3 be done.

4 **Q. Thank you, Judge. Although you addressed this in**
5 **your sworn affidavit, could you please explain what**
6 **you believe is the appropriate demeanor of a judge.**

7 A. Well, I think -- and for those of you who have been
8 in court with me before, I think the demeanor of a
9 judge should be one of -- of amicable control,
10 meaning that you have in our system of justice in
11 England and in America an advocacy system. And
12 therefore you have at least two people, and
13 sometimes more, who are opposing each other.

14 The role of the judge is to make sure that he
15 or she is in control of the situation, so that each
16 side has a fair opportunity to present their case
17 to the judge or to a jury. And I think the judge
18 is one that makes sure you have an ordered process,
19 but a fair process, and one that doesn't prevent
20 people, as lawyers and advocates, to present a full
21 case within the Rules of Evidence, within the Rules
22 of Procedure, for the fact-finder, for the
23 decision-maker.

24 **Q. Thank you, Judge. Judge Lockemy, the Commission**
25 **received 690 ballot box surveys regarding you, with**

1 73 additional comments. The ballot box survey
2 contained comments stating "brilliant jurist and
3 has a great temperament, treating everyone with
4 respect and" --

5 A. Didn't know my sister was a lawyer.

6 Q. And the comments also highlighted your leadership
7 skills. Eight of the written comments expressed
8 some concerns, and some of those dealt with
9 perceived favoritism. Just want to give you the
10 opportunity to respond to any concerns about that.

11 A. No. And you had mentioned before when we
12 interviewed, and I -- I cannot imagine that,
13 because -- and I'm not sure how to respond to it.
14 I -- I've done my best over my years on the bench,
15 and not only on the bench, but as membership and
16 leadership in other organizations to be as fair as
17 I can.

18 I think human nature is, we all know human
19 nature, that sometimes when you lose or when you're
20 not successful or when things don't come out the
21 way you feel they should, I can only think that
22 maybe some people feel that it must be because
23 there was some favoritism. That's all I can
24 imagine. Other than that, that's all I can respond
25 to. I -- I -- I wish I had a video of every one of

1 my trials and -- and y'all could judge from that.

2 **Q. Thank you, Judge. And now I just have some**
3 **housekeeping questions. Have you sought or**
4 **received the pledge of any legislator either prior**
5 **to this date or pending the outcome of your**
6 **screening?**

7 A. No. But in two weeks I hope to, or two-and-a-half,
8 whenever it is.

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

13 A. No, I'm not.

14 **Q. Since submitting your letter of intent to run for**
15 **this seat, have you contacted any members of this**
16 **Commission about your candidacy?**

17 A. No. I did -- I have said "hello" to many of you,
18 as you know. And I did also stop by to Greenville,
19 not to see Representative Bannister, but left a
20 card saying "hello." But I didn't talk with him.

21 JUDGE LOCKEMY: Did you get card?

22 REPRESENTATIVE BANNISTER: I did.

23 JUDGE LOCKEMY: Just said "hello."

24 **Q. Do you understand that you're prohibited from**
25 **seeking a pledge or commitment until 48 hours after**

1 **the formal release of the Commission's report? And**
2 **are you aware of the penalties for violating the**
3 **pledging rules?**

4 A. Yes.

5 MS. DEAN: I would note that the Pee Dee
6 Citizens Committee reported that Judge Lockemy
7 is Qualified for the criteria of
8 constitutional qualifications, physical health
9 and mental stability. Committee found him to
10 be Well Qualified in the criteria of
11 ethical fitness, professional and academic
12 ability, character, reputation, experience,
13 and judicial temperament.

14 I would just note for the record that any
15 concerns raised during the investigation
16 regarding Judge Lockemy were incorporated in
17 the questioning today. Mr. Chairman, I have
18 no further questions.

19 SENATOR MARTIN: Any questions by members
20 of the Commission? Dean Wilcox.

21 MR. WILCOX: Just a couple of quick
22 questions. You are seeking your Ph.D. now in
23 history; is that correct?

24 JUDGE LOCKEMY: Yes. I was admitted. I
25 was very fortunate. I off the cuff had to

1 take the GRE exam, they told me, and I didn't
2 know that. So I had to go do it, and I was
3 accepted in the fall in the Ph.D. program in
4 history at Carolina.

5 MR. WILCOX: Do you foresee that
6 requiring time of you in a way that could
7 interfere at all with your duties as chief
8 judge?

9 MR. WILCOX: No, Dean. What I plan to do
10 is take one course a semester at night. Right
11 now I'm taking a course on Monday night. And
12 so I would only have one course a night at
13 night. Now as you know, the writing papers is
14 more than that, but I do not think that it
15 will. Plus, if it did -- and I've considered
16 this -- I plan to look at this, if I am
17 fortunate enough to be selected to be chief
18 judge, and if it does, I will stop. But I
19 never take more than one course.

20 MR. WILCOX: Thank you. One other
21 question, and this is more just to get my
22 insight to the role of various things, and
23 your judicial philosophy a little bit. But
24 you have studied history a lot. I mean,
25 obviously that's a passion of yours. How does

1 your knowledge and your work as a historian
2 affect your work as a judge in terms of, when
3 you look at cases and things, are the two
4 completely separate ideas? Or would you know
5 as a historian have a role in some manner and
6 if so describe how it fits into your --

7 JUDGE LOCKEMY: Amazingly, I -- I -- I
8 feel they're not. I mean, our -- our nation,
9 we -- when we first began as a nation with the
10 Declaration of Independence, we began with the
11 law, because we felt we had to have a legal
12 reason as to why we separated from Great
13 Britain. And so I'll repeat Jefferson's words
14 of we all have "certain unalienable rights,
15 among these are" -- but we forget about the
16 rest of it, talks about why we are leaving
17 Great Britain and about the consent of the
18 government and the legal reasons and the basis
19 of why we should be a separate nation.

20 So as we began as a nation, we began with
21 the issue of law. The problems that our
22 national, whenever we've had major problems,
23 is when the rule of law breaks down, and --
24 and -- and that's also the problems of other
25 nations, where we go and many of our citizens

1 die trying to incorporate the rule of law.

2 When I was in Kosovo, I used my -- my
3 knowledge of history of how we argued against
4 various things that help the Muslims and --
5 and the Slavic people try to join together to
6 say, especially the lawyers that were there,
7 the importance of the rule of law in history,
8 how it brought man, and man being the general
9 sense of everybody, out of the wilderness into
10 a society. And as a result of that, when I
11 left Kosovo, I had a Muslim Albanian judge and
12 a Slavic judge with their hands on each other
13 -- each other's hand, and mine with it, saying
14 we need to have a rule of law in Kosovo, and
15 started the Kosovo Juris Society.

16 So I think the history of our -- of
17 mankind is so important in the rule of law,
18 plus in our state. Do you know that after the
19 Revolutionary War and as we got through the
20 Articles of Confederation, as the Constitution
21 was adopted, almost every state, except for
22 two or three, elected judges by the
23 legislature, because they felt the legislative
24 body was the closest one to the people. And
25 when the legislative body voted, all the

1 people were involved in voting.

2 Some states then, especially as the
3 western states got admitted, went to the
4 general election format, where they thought
5 judges should also be going in popular
6 election. I don't think that's worked well.
7 South Carolina -- and I feel this all over the
8 nation as I speak with the ABA and other
9 places -- we have adhered to the original
10 principles as our country was founded, where
11 when we -- when y'all vote that day when I'm
12 there, if I lose or win, 90-some percent of
13 the people are going to be involved in the
14 election of this judge through their elected
15 representatives. So I do blend history and
16 the law together.

17 MR. WILCOX: One final question, and that
18 is --

19 JUDGE LOCKEMY: Without comment about
20 common law, but we'll do that another time.

21 MR. WILCOX: One of the things that
22 lawyers talk about all the time is the need
23 for judges not to forget what it's like to be
24 a lawyer and to understand as you're deciding
25 cases and rules and things, as to what the

1 realities of law practice are. You've been a
2 judge for 27 years now. How do you keep
3 yourself reminded of what it is that the
4 lawyer is having to do in dealing with the
5 client, and those kind of things?

6 JUDGE LOCKEMY: The lawyers, and you too,
7 Dean, you never forget some of those things
8 with the clients, especially when they try to
9 take over and manage the case and you're doing
10 your best to present a fair case. And I -- I
11 will never forget some of the experiences I
12 had as a -- as a lawyer. And also the judges
13 who were understanding who had also practiced
14 law and who knew what it was like to be in
15 that -- that well, in the arena.

16 And plus, I also remember, though, that
17 I'm probably the only judge who almost had a
18 handcuff on me once by a judge because we were
19 about to try a case and the solicitor decided
20 to postpone it and I didn't want it postponed,
21 had my witnesses ready, and they told me to
22 have them all ready. And I asked the judge
23 not to let them postpone it. The judge said
24 the solicitor calls the case, Mr. Lockemy.
25 And I said "But, Judge, got all the witnesses

1 over there." He said "Sit down, Mr. Lockemy."
2 "But Judge, it's not fair." "Mr. Lockemy,
3 life is not fair. Sit down." And I said,
4 "But Judge, life is not fair, but the court
5 should be." And all of sudden, the jury
6 started applauding and oh, -- because they had
7 been waiting all week for a trial and hadn't
8 had the trial all week. And so he said
9 "Sheriff." And so the Sheriff got the
10 handcuffs and I said "Look, Judge, you've been
11 very fair." And so that was it. But I
12 remember those days, so I don't forget those.

13 MR. WILCOX: Thank you. Mr. Chair.

14 SENATOR MARTIN: Judge, let me add, you
15 noticed that senator from Charleston, Senator
16 Campsen is not with us today. He had to work.
17 And if he were here, with your love of history
18 and your response to Dean Wilcox about the
19 founding and all that, he would ask you about
20 the Federalist Papers. I've got his proxy, so
21 I'm going to have to ask you about the
22 Federalist Papers.

23 JUDGE LOCKEMY: Which one, 10?

24 SENATOR MARTIN: 58.

25

1 JUDGE LOCKEMY: There was no -- on 58.

2 SENATOR MARTIN: That's good. You won
3 the prize. But I had to do that, just in
4 jest, because the senator from Charleston,
5 Senator Campsen, as the senator of Darlington
6 will attest, he can cite the numbers of the
7 Federalist cases. And your love of history,
8 you might want to bone up on that, just before
9 --

10 JUDGE LOCKEMY: I'm ready to discuss it
11 with him mainly by Madison and by Hamilton and
12 one or two by Jay, but mainly Hamilton and
13 Madison.

14 SENATOR MARTIN: That's right. That will
15 be good. He will be impressed.
16 Representative Smith.

17 REPRESENTATIVE SMITH: I will be more
18 impressed if we could discuss the Anti-
19 Federalist Papers, Judge Lockemy.

20 JUDGE LOCKEMY: Okay. We can do that
21 too, and Randolph and -- but they weren't
22 Randolph Federalist Papers, that's one of the
23 problems. They themselves went around and
24 tried to generate popular support.

25 REPRESENTATIVE SMITH: Yes, sir. Let me

1 just say, I didn't realize in all the years in
2 -- in times we've run across each other, your
3 love of history. And I also was a history
4 major and a government major and share that.
5 I wish I had the time that you have been
6 spending learning history and getting your
7 Ph.D. I tell you, one thing the law has done
8 to us is co-opted a lot of our time and family
9 and --

10 JUDGE LOCKEMY: Well, Representative
11 Smith, my desire is to get the Ph.D.
12 certificate before I get the death
13 certificate. I'm not sure I'm going to make
14 it, but --

15 REPRESENTATIVE SMITH: My faith is in
16 you, Judge Lockemy.

17 JUDGE LOCKEMY: Thank you.

18 SENATOR MARTIN: Any other questions?

19 (No response.)

20 SENATOR MARTIN: Hearing none, Judge
21 Lockemy, thank you so much. Appreciate your
22 cooperation with our staff and your response
23 to our questions. As you know, the
24 record will remain open until the report is
25 published.

1 JUDGE LOCKEMY: Senator Martin, you
2 didn't ask me this, but I did want to make
3 sure you are aware of this, because I've had
4 that question asked of me by so many members
5 of the legislature, are you using this as a
6 stepping stone because it has been the last
7 two have gone to the Supreme Court. And --
8 and I'm letting you know now point blank, no.
9 I want to be chief judge of the Court of
10 Appeals, that is my life's desire and that
11 will be the desire, that if I'm successful,
12 that will be the -- the culmination of my
13 career.

14 SENATOR MARTIN: All right. Well, I
15 appreciate you sharing that with us. Thank
16 you again for offering and for your
17 willingness to continue to serve the people of
18 South Carolina.

19 JUDGE LOCKEMY: Thank you, sir. Thank
20 y'all.

21 (Judge Lockemy exits the room.)

22 SENATOR MARTIN: Judge Thomas, it's good
23 to see you.

24 JUDGE THOMAS: Nice to be here.

25 SENATOR MARTIN: We're here for Judge

1 Paula H. Thomas, Court of Appeals, Chief
2 Judge, Seat 5. Would you raise your hand and
3 take the oath.

4 (The judge is sworn in.)

5 EXAMINATION

6 (By Senator Martin)

7 **Q. Have you had the opportunity to review your**
8 **personal data questionnaire?**

9 A. I have.

10 **Q. Everything in order?**

11 A. Everything's in order. There is only one item I
12 wanted to -- to give you, because I realized that I
13 had not submitted to Elizabeth Brogdon the
14 paperwork for cards for \$41.99, Vistaprint. I just
15 printed up cards that I'm leaving with little
16 notes. So I wanted to go ahead and supplement at
17 this time. And I apologize for not having
18 supplemented earlier.

19 **Q. No problem. Just give it to staff and add that to**
20 **the record.**

21 [EXHIBITS 9 and 9(A), JUDICIAL MERIT
22 SELECTION COMMISSION PERSONAL DATA
23 QUESTIONNAIRE FOR THE HONORABLE PAULA H.
24 THOMAS, ADMITTED.]

25 **Q. The Judicial Merit Selection Commission has**

1 thoroughly investigated your qualifications for the
2 bench. Our inquiry has focused on the nine
3 evaluative criteria and received no affidavits
4 filed in response to your election, which the
5 Commission -- we received one. Let me go
6 back. We received one affidavit filed in
7 opposition to your election, which the
8 Commission dismissed, pursuant to JMSC Rule 13
9 for failure on its face to state allegations
10 sufficient, as required by JMSC rules. No
11 witnesses are here to testify. Do you have a
12 brief opening statement you'd like to make?

13 A. Just having served on this Committee in -- in the
14 past, I thank you for your time and -- and
15 dedication. I know it takes a lot of time. So
16 thank you.

17 Q. Thank you. Would you answer staff counsel's
18 questions? Ms. Brogdon.

19 MS. BROGDON: Good morning, Judge Thomas.
20 Mr. Chairman and Members of the Commission, I
21 have a few procedural matters to take care of
22 with this candidate.

23 EXAMINATION

24 (By Ms. Brogdon)

25 Q Judge Thomas, you have before you the sworn

1 **statement you provided with detailed answers to**
2 **over 30 questions regarding judicial conduct,**
3 **statutory qualifications, office administration,**
4 **and temperament. Are there any amendments you**
5 **would like to make at this time to your sworn**
6 **statement.**

7 A. No.

8 MS. BROGDON: Mr. Chairman, I'd like to
9 ask that Judge Thomas' sworn statement be
10 entered as an exhibit into the hearing record.

11 SENATOR MARTIN: Any objections?

12 (No response.)

13 SENATOR MARTIN: Hearing none, it will be
14 done at this time.

15 [EXHIBIT 10, JUDICIAL MERIT SELECTION
16 COMMISSION SWORN STATEMENT FOR THE HONORABLE
17 PAULA H. THOMAS, ADMITTED.]

18 **Q. Judge Thomas, after serving nine years on the Court**
19 **of Appeals, why do you now want to serve as chief**
20 **judge on the Court of Appeals?**

21 A. Well, I'm -- I -- I love this court and I really
22 have no aspirations to go to the Supreme Court.
23 And -- and I feel like the last two chiefs that we
24 have, while I'm flattered that you-all look to the
25 Court of Appeals to -- to -- to rise up to the

1 Supreme Court level, for a period of time that
2 they're leading the court, they also have their eye
3 on another court. And I think the stability of a
4 chief judge who wants to be a chief judge and no
5 desires to go any further is timely now. I don't
6 think it always has to be that way, but -- but the
7 timing, because of the changes in our court, I
8 could provide that and -- and would be delighted to
9 do so.

10 **Q. Thank you, Judge Thomas. How do you feel your**
11 **legal and professional experience thus far will**
12 **assist you to be effective as chief judge of the**
13 **Court of Appeals?**

14 A. And we're going all the way back to practice, where
15 I was a small firm or an individual lawyer
16 practicing. So I called myself almost like a GP.
17 I did everything that came in the door. From
18 there, I've gone to the Circuit Court bench, which
19 generally has a broad -- broad civil and criminal
20 background. So I've -- I've had experience in the
21 area of Family Court, workers' comp. And then I've
22 had experience in the area of all of criminal and
23 civil.

24 There are some areas, such as administrative
25 law court, that are newer to me, and -- and those

1 are areas that -- well, I prepare for all cases and
2 -- and -- and read all cases and read the briefs,
3 but just take a little extra preparation to get
4 ready for those.

5 **Q. Thank you, Judge. Judge Thomas, please explain**
6 **several goals that you would like to accomplish if**
7 **elected chief judge of the Court of Appeals.**

8 A. Well, one of the things that I would like to do is
9 to add another courtroom. We have nine judges and
10 -- and -- and they serve on three judge panels, but
11 we only have two courtrooms. And if we could
12 arrange another courtroom, preferably in the
13 Calhoun Building, what it would basically mean is
14 that there would be times when we are all there
15 holding court, and we can overlap. And that allows
16 for us to consider en banc and to actually sit en
17 banc without having to bring more judges in on a --
18 on a separate day.

19 It also allows for congeniality, because we --
20 I mean, we are going to be able to get along and --
21 and -- and have time together over lunches and
22 things like that, so we have more social settings,
23 that we're not making a special trip to be there.
24 So I think that would be a great addition to the
25 court.

1 We -- as far as -- as how we're moving cases,
2 that type of thing, what it -- what we are doing
3 now has maintained, and I would just continue in
4 the process that -- that we're using at this time,
5 because we have no backlog. We are actually
6 bringing in pretty much the amount of cases that --
7 that are coming out. Just want to make sure it
8 doesn't bottleneck anywhere along the line.

9 **Q. Thank you, Judge. Judge Thomas, you addressed this**
10 **in your sworn affidavit, but could you please**
11 **explain to the members of the Commission what you**
12 **think is the appropriate demeanor for a judge.**

13 **A.** Well, I think a judge should be courteous and
14 professional at all times, should avoid the
15 appearance of impropriety or -- or -- that -- that
16 they -- that they could not be impartial. And I
17 think that's not only while on the bench, but also
18 off the bench. We're just held to a higher
19 standard.

20 **Q. Judge Thomas, the Commission received 484 ballot**
21 **box surveys regarding you, with 41 additional**
22 **comments. The ballot box survey, for example,**
23 **contained the following positive comments. "Judge**
24 **Thomas has an excellent temperament on the**
25 **Appellate Bench and is fair to all parties."**

1 Another provided, "Judge Thomas has the experience,
2 intelligence and work ethic required for this
3 position. She is consistently courteous and fair
4 to all parties." A third said, "Judge Thomas is
5 the epitome of an Appellate Court judge. She
6 always displays an even judicial temperament, no
7 matter what the case or her personal opinions. She
8 is always thoroughly prepared for each argument and
9 participates in the discussion. She gives both
10 sides the ability to explain their arguments and
11 does not interrupt or act condescending. She
12 generally rules based on the law in front of her
13 and not based on her personal opinions."

14 Four of the written comments expressed
15 concern. One comment questioned your leadership
16 ability. What response would you offer to this
17 concern?

- 18 A. That individual clearly does not know me, but I'll
19 go back in time. I was the president of my senior
20 class. I was on the legislative council when I was
21 in law school. I have served in the House, House
22 Seat 108. I have received awards for leadership.
23 I have started the March of Dimes Walk in
24 Georgetown. I was on the administrative board at
25 my church. I guess I could go on and on. I was

1 awarded the Order of the Palmetto; mine says for
2 Service and Leadership. Do you want anymore?

3 **Q. Thank you, Judge Thomas. Another comment**
4 **questioned your demeanor and whether you are fair**
5 **and impartial. You've addressed that that is a**
6 **goal of yours. Do you have anything else to add?**

7 A. Nothing more to add.

8 **Q. And finally, a comment mentioned that you look for**
9 **procedural bars to avoid addressing appeals on the**
10 **merits. Do you want to comment on that?**

11 A. I would always prefer to rule on the merits. But
12 we do have rules about procedure. In -- in other
13 words, it has to have been -- it has to be
14 preserved. So in order to be preserved, it has to
15 have been raised and ruled on by the lower court.
16 If not, then we really cannot consider it.

17 **Q. Thank you, Judge Thomas. A couple of housekeeping**
18 **questions. Have you sought or received the pledge**
19 **of any legislator either prior to this date or**
20 **pending the outcome of your screening?**

21 A. No.

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

1 A. No, ma'am.

2 **Q. Since submitting your letter of intent to run for**
3 **this seat, have you contacted any members of the**
4 **Commission regarding your candidacy?**

5 A. No, I haven't.

6 **Q. And finally, do you understand that you are**
7 **prohibited from seeking a pledge or commitment**
8 **until 48 hours after the formal release of the**
9 **Commission's report? And are you aware of the**
10 **penalties for violating the pledging rules?**

11 A. Yes. Yes, I am.

12 MS. BROGDON: I would note that the Pee
13 Dee Citizens Committee reported that Judge
14 Thomas is Well Qualified in the evaluative
15 criteria of ethical fitness, professional and
16 academic ability, character, reputation,
17 experience, and judicial temperament. And
18 Qualified in the remaining evaluative criteria
19 of constitutional qualifications, physical
20 health and mental stability.

21 I would also note that any concerns
22 raised during the investigation regarding
23 Judge Thomas were incorporated into the
24 questioning today. Mr. Chairman, I have no
25 further questions.

1 SENATOR MARTIN: Any questions by members
2 of the Commission? Dean Thomas.

3 MR. WILCOX: Judge Thomas, just two
4 things. One is, I think we ought to allow
5 Judge Thomas to correct Questions 12 of her
6 sworn statement which says -- I think Spell
7 Check got you -- "The Judicial Branch applies
8 and interrupts the law."

9 JUDGE THOMAS: Oh, interrupts?

10 MR. WILCOX: I'm pretty sure she meant
11 interprets --

12 JUDGE THOMAS: Oh, my heavens. Yes.

13 MR. WILCOX: -- and get rid of that. So
14 those involved in judicial activism, and maybe
15 read by others, so I'd suggest that
16 correction.

17 JUDGE THOMAS: Thank you very much. And
18 -- and -- and yes, I would request that
19 correction, please, and my apology.

20 MR. WILCOX: A more substantive question:
21 You mentioned in your statement that you agree
22 with textual originalism in terms of doing
23 that. Obviously, as an intermediate Appellate
24 Court, you're going to have rulings where the
25 Supreme Court of the United States has

1 interpreted a federal constitutional issue
2 that may come before you, or the Supreme Court
3 has interpreted. And I assume that those
4 questions, you follow the precedent that's
5 been set.

6 JUDGE THOMAS: We're required to follow
7 the precedent that's been set, absolutely,
8 yes, sir.

9 MR. WILCOX: But in a situation where you
10 don't have a clear interpretation by a higher
11 court, how do you go about determining what
12 the textual, original meaning of the text was
13 when you're faced with an issue like this?

14 JUDGE THOMAS: Well with -- the words are
15 of paramount importance, and -- and the words
16 in their context really lend the meaning to --
17 to whatever it is that I'm reading, whether
18 it's the constitution or whether it's a
19 statute.

20 And -- but what I believe textualism is,
21 is that we would look at the definition of
22 that word contemplated at the time that it was
23 written. Now that doesn't mean that -- in
24 other words, that word doesn't evolve into
25 something else over time. It means what it

1 meant at the time it was written.

2 Now, if that then conveys a right, that
3 right might end up affecting something that
4 wasn't contemplated at the time. But the
5 words and that meaning is what was
6 contemplated at the time it was written. I
7 hope I've made myself clear.

8 MR. WILCOX: Well, I guess, how do you
9 decide what that was? I mean, I understand
10 the idea that if we can make that
11 determination, then we apply it. But
12 obviously, you can't go back to 1895 and be at
13 the convention, that kind of thing, for the
14 state constitution. So how do you get to that
15 point, where you feel comfortable that you are
16 doing that?

17 JUDGE THOMAS: Well, because you can see
18 in dictionaries and -- and things like that
19 how words have evolved over time. So I -- I --
20 - I would go as close in time as I possibly
21 could to the meaning of the word at that time.

22 But it doesn't always -- I mean, we say
23 our cardinal rule of statutory interpretation
24 is that -- that we were going to ascertain and
25 effectuate the meaning of a statute or the

1 meaning of -- of -- of a clause in a document.
2 I really don't think that should be our
3 cardinal rule. I think our cardinal rule is
4 that we apply a plain meaning, and that's what
5 I mean by textualism. That is our next step.

6 MR. WILCOX: Appreciate it. Thank you.

7 SENATOR MARTIN: Any other questions?

8 (No response.)

9 SENATOR MARTIN: Hearing none, Judge
10 Thomas, thank you very much. This concludes
11 this portion of our screening process. As you
12 know, the record will remain open until the
13 report is published. And you may, could be
14 called back at such a time if the need arises.
15 I thank you for offering and for your service
16 to the people of the state.

17 JUDGE THOMAS: Thank you so much.

18 (Judge Thomas exits the room.)

19 SENATOR MARTIN: With that, we are going
20 to before lunch -- we'll just stop here, if it
21 suits everybody, and go into executive session
22 and discuss how we want to proceed with the
23 Appeals Court and the Supreme Court and legal
24 issues related thereto. Any objection going
25 into executive session?

1 (No response.)

2 SENATOR MARTIN: Hearing none, so
3 ordered. We will shut the doors, letting
4 everybody out that doesn't need to be in here.

5 (Off-the-record executive session.)

6 SENATOR MARTIN: I want to go back on the
7 record. First will be the Commission's
8 position on Justice Beatty.

9 SENATOR MALLOY: Mr. Chair, I move that
10 we find Justice Beatty qualified and nominated
11 for Chief Justice.

12 MS. WALL: Second.

13 SENATOR MARTIN: All those in favor,
14 please say aye.

15 COMMISSION MEMBERS: Aye.

16 SENATOR MARTIN: Opposed, no.

17 (No response.)

18 SENATOR MARTIN: The ayes have it. Next
19 will be The Honorable John Cannon Few for
20 Supreme Court, Seat 2.

21 SENATOR MALLOY: Mr. Chair, I move that
22 we find Justice Few to be qualified and
23 nominated for a full term for the Supreme
24 Court.

25 MS. WALL: Second

1 SENATOR MARTIN: Have a motion and a
2 second. Any discussion?

3 (No response.)

4 SENATOR MARTIN: All those in favor,
5 please say aye.

6 COMMISSION MEMBERS: Aye.

7 SENATOR MARTIN: All those opposed.

8 (No response.)

9 SENATOR MARTIN: Ayes have it. Next will
10 be The Honorable James Edward Lockemy.

11 SENATOR MALLOY: Mr. Chair, I move that
12 we find Judge James Lockemy qualified and
13 nominated as chief judge, South Carolina Court
14 of Appeals, Seat 5.

15 MR. HITCHCOCK: Second

16 SENATOR MARTIN: Have a motion and a
17 second. Any further discussion?

18 (No response.)

19 SENATOR MARTIN: Seat 5, chief judge.
20 Hearing none, moving the meeting into a vote.
21 All those in favor, please say aye.

22 COMMISSION MEMBERS: Aye.

23 SENATOR MARTIN: Opposed, no.

24 (No response.)

25 SENATOR MARTIN: Ayes have it. Next, The

1 Honorable Paula H. Thomas, Chief Judge, Seat
2 5, Court of Appeals.

3 SENATOR MALLOY: Mr. Chairman, move that
4 we find Judge Paula Thomas qualified and
5 nominated as a candidate for chief judge.

6 SENATOR MARTIN: Have a second?

7 MR. WILCOX: Second.

8 SENATOR MARTIN: Have a motion and a
9 second. All those in favor, please say aye.

10 COMMISSION MEMBERS: Aye.

11 SENATOR MARTIN: All opposed.

12 (No response.)

13 SENATOR MARTIN: Ayes have it. Thank you
14 very much. We'll stand in recess while we eat
15 lunch.

16 (Off the record.)

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CERTIFICATE OF REPORTER

I, LISA F. HUFFMAN, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE SAID PROCEEDINGS, ON THE 25TH DAY OF APRIL, 2016, THAT THE CANDIDATES WERE FIRST DULY SWORN AND THAT THE FOREGOING 123 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID PROCEEDINGS TO THE BEST OF MY SKILL AND ABILITY.

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

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO, JUDICIAL MERIT SELECTION COMMISSION, 1101 PENDLETON STREET, COLUMBIA, SOUTH CAROLINA 29201, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 29TH DAY OF 2016.

LISA F. HUFFMAN, COURT REPORTER
MY COMMISSION EXPIRES JULY 25, 2025

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

3

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JUDICIAL MERIT SELECTION COMMISSION

6

TRANSCRIPT OF PUBLIC HEARINGS

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BEFORE: SEN. LARRY A. MARTIN, CHAIRMAN

9

REP. BRUCE W. BANNISTER, VICE-CHAIRMAN

10

SEN. GEORGE E. CAMPSSEN, III

11

SEN. GERALD MALLOY

12

REP. MURRELL SMITH

13

REP. J. TODD RUTHERFORD

14

KRISTIAN C. BELL

15

MICHAEL HITCHCOCK

16

SUSAN TAYLOR WALL

17

ROBERT M. WILCOX

18

ELIZABETH H. BROGDON, CHIEF COUNSEL

19

* * * * *

20

DATE: April 25th, 2016

21

TIME: 2:09 p.m.

22

LOCATION: Gressette Building, Room 209

23

1101 Pendleton Street

24

Columbia, South Carolina 29201

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REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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18 Court Reporter's Legend:

19 dashes [--] Intentional or purposeful interruption

20 ... Indicates trailing off

21 [ph] Denotes phonetically written

22 [sic] Written as said

23

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25

1 SENATOR MARTIN: We're back on the record.
2 And we'll welcome Ms. Wanda L. Adams, Family Court 13th
3 Judicial, Seat No. 3. Will you raise your hand and take
4 the oath, Ms. Adams?

5 MS. ADAMS: I will.

6 WHEREUPON:

7 WANDA L. ADAMS, being duly sworn and
8 cautioned to speak the truth, the whole truth and nothing
9 but the truth, testifies as follows:

10 SENATOR MARTIN: You've had the opportunity
11 to review your personal data questionnaire?

12 MS. ADAMS: I have.

13 SENATOR MARTIN: And anything need to be
14 amended or corrected? Everything in order?

15 MS. ADAMS: Everything's in order.

16 SENATOR MARTIN: All right. Do you object
17 to us making the summary of and any -- any amendments,
18 thereto, part of the record of your sworn testimony?

19 MS. ADAMS: No problem.

20 SENATOR MARTIN: All right. It will be done
21 at this point in the transcript.

22 (EXHIBIT NO. 11 - JUDICIAL MERIT SELECTION
23 COMMISSION PERSONAL DATA QUESTIONNAIRE OF WANDA
24 L. ADAMS DATED MARCH 7, 2016)

25 SENATOR MARTIN: The Judicial Merit

1 Selection Commission has thoroughly investigated your
2 criteria -- or qualifications for the bench. Our inquiry
3 has focused on the nine evaluative criteria. And we won't
4 go through those. We received no affidavit in opposition
5 to your election, no witnesses are here to testify. Do you
6 have a brief opening statement you'd like to make at this
7 time?

8 MS. ADAMS: Yeah. I'd just like to thank
9 you for this opportunity to come before all of you. And I
10 take this process, and I certainly view this position, very
11 seriously. For this -- as you can see from the information
12 you have before you, I have over thirty years of
13 experience. I was just a baby when I started. But I think
14 that I have a unique blend of experience that I -- that
15 would be an asset to the Family Court bench.

16 SENATOR MARTIN: All right. If you would
17 answer our counsel's questions.

18 MR. DAVIDSON: Thank you. Good afternoon,
19 Ms. Adams.

20 MS. ADAMS: Good afternoon.

21 MR. DAVIDSON: You have before you the sworn
22 statement you provided, with detailed answers to over
23 thirty questions regarding judicial conduct, statutory
24 qualifications, office administration, and temperament.
25 Are there any amendments that you would like to make at

1 this time?

2 MS. ADAMS: No. Well, there was -- there
3 was a --

4 MR. DAVIDSON: Any additional amendments?

5 MS. ADAMS: Yeah, a minor amendment to the
6 financial statement. I added a credit card. And I do have
7 that --

8 MR. DAVIDSON: Correct. And we have that,
9 thank you.

10 At this time, Mr. Chairman, I'd ask that Ms.
11 Adams sworn statement be entered as an exhibit.

12 SENATOR MARTIN: All right. Without
13 objection, it will be ordered.

14 (EXHIBIT NO. 12 - JUDICIAL MERIT SELECTION
15 COMMISSION SWORN STATEMENT OF WANDA L. ADAMS
16 DATED MARCH 7, 2015)

17 MR. DAVIDSON: Could you please state for
18 the record, the city and circuit in which you reside?

19 MS. ADAMS: It's Greenville County, in the
20 State of South Carolina.

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

1 EXAMINATION BY MR. DAVIDSON:

2 Q. Ms. Adams, will you please explain to the
3 Commission why you would like to serve as a Family Court
4 judge, and how you feel your legal and professional
5 experience, thus far, would assist you to be an effective
6 judge.

7 A. Well, as I indicated earlier, my experience goes
8 back over thirty years when I started as a social worker
9 with the Greenville County Department of Social Services.
10 So I have a heart for families and children. And -- and I
11 saw some things, while working as a social worker, that led
12 me to want to further my education, and hopefully, be able
13 to contribute more to the -- to the lives of families and
14 children in our community. Which is why I chose to go to
15 law school after working as a social worker for about eight
16 years.

17 And I came back to my community, Greenville,
18 opened my practice there, where I continue to practice,
19 primarily in Family Court. And I must say, I've probably
20 handled every kind of case that can be handled in that
21 court. Even an adult adoption, which we weren't sure that
22 could be done. But we did it. And -- and so -- again, I -
23 - my passion is there. And I think that -- again, with my
24 many years of experience, I think I would bring to the
25 bench, the ability to see things that maybe somebody else

1 wouldn't see, again, because of the social work experience
2 as well as the many years of Family Court practice.

3 Right now I'm employed by the 13th Circuit
4 Solicitor's Office. And I've been there a little over ten
5 years, now. I started that position as a juvenile
6 prosecutor, and I found myself to be very effective in --
7 in that position as well. Because sometimes, you know,
8 with -- with juveniles, we can't -- we can't deal with them
9 the way we deal with adults, even when criminal offences
10 are involved. So, again, I -- and I -- I think that I also
11 bring a great deal of compassion. I'm soft, but I get the
12 job done. And -- and I -- again, I think that all of these
13 traits would be an asset to -- to the Family Court.

14 **Q. Thank you. Are there any areas of the law that**
15 **you would need to additionally prepare for in order to**
16 **service as a judge, and if so, how would you handle that**
17 **additional preparation?**

18 A. Well, because I'm -- with the past ten years of
19 being with the solicitor's office, I would certainly need
20 to brush up on the area of a divorce -- you know, areas
21 like that. But it certainly would not take me long to do
22 that.

23 **Q. Thank you. Could you please explain what you**
24 **think is the appropriate demeanor for a judge?**

25 A. I believe the appropriate demeanor is one of

1 fairness. The Family Court is a peoples' court. A lot of
2 these people come into this court, and they're not
3 represented. And so you -- you know, you have to be
4 careful that you maintain control and a great deal of
5 decorum in the court. But also, people need to feel that
6 their voices are being heard. And in order to do that,
7 again, you must be fair to -- to all parties that appear in
8 that court.

9 **Q. Thank you. What suggestions would you offer for**
10 **improving the backlog of cases on the Family Court docket?**

11 A. Well, I -- now, in -- when I was in private
12 practice, I used what I call the "Tickler System" to make
13 sure I stayed on top of what needed to be done. And I've
14 found that to be very effective in moving cases along as
15 quickly as possible. And I -- I think that, right now,
16 we're -- with the backlog, I think a lot of it is just
17 because of maybe poor communication. Lawyers have to -- to
18 get together and talk. And I think that greatly
19 facilitates settlement before contested hearings have to
20 even be scheduled. And I -- and I think that anything we
21 can do to improve that process will greatly decrease the
22 backlog.

23 **Q. Could you please briefly describe your experience**
24 **in handling complex contested Family Court matters? And,**
25 **specifically, discuss your experience with the financial**

1 **aspects of Family Court work.**

2 A. Well, again, when I -- when I was in private
3 practice, I handled very complex -- a number of very
4 complex cases, particularly in divorce. One case that
5 comes to mind, immediately, is one where there was a
6 marriage of 25-plus years, three children. There was a
7 great disparity of -- in income to these two parties, so it
8 required almost three days of litigation. But, you know,
9 we -- we were able to -- to resolve this; although, it was
10 very contentious, in a way that both parties walked away
11 and at least felt that things were fair. And I --

12 **Q. You would --**

13 A. I'm sorry.

14 **Q. No, please continue.**

15 A. And I -- and I've also handled some very complex
16 adoption cases. As I mentioned the adult adoption, and
17 that one involved an elderly lady who came to me and she
18 had relief -- relinquished a child at birth. Well, she
19 later -- she and this adoptive -- adopted child were
20 reunited, and -- and it was her wish that she not die
21 before they were legally united. And that was some -- of
22 course, some issues involved, but we were able to get that
23 done for her.

24 **Q. Thank you for those responses. Ms. Adams, the**
25 **Commission received 95 ballot box surveys regarding your**

1 candidacy, with 14 additional comments. The surveys, for
2 example, contained the following positive comments:

3 "She is an excellent attorney who has great
4 temperament and good judgement. She would make a very good
5 Family Court judge."

6 Two of the written comments expressed concerns.
7 One comment stated that your only limitation is a lack of
8 domestic relations experience. What response would you
9 offer to this concern?

10 A. Well, of course, not knowing who wrote that, my
11 response would be that -- that this was probably from
12 someone who has -- who did not know me before, maybe,
13 coming to the solicitor's office. So would not --
14 certainly would not be aware of -- of my experience in the
15 Family Court. But other than that, that's --

16 Q. Thank you.

17 A. -- about all I can...

18 Q. At this time, I'm going to run through a number
19 of quick questions. Have you sought or received the pledge
20 of any legislator, either prior to this date or pending the
21 outcome of your screening?

22 A. I have not.

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. No.

3 Q. Since submitting your letter of intent to run for
4 this seat, have you contacted any members of the Commission
5 about your candidacy?

6 A. No, I have not.

7 Q. Do you understand that you are prohibited from
8 seeking a pledge or a commitment until 48 hours after the
9 formal release of the Commission's report, and are you
10 aware of the penalties for violating the pledging rules?

11 A. I am.

12 Q. Thank you.

13 MR. DAVIDSON: I would note that the Upstate
14 Citizens Committee found Ms. Adams to be Qualified as to
15 constitutional qualifications, physical health, and mental
16 stability. She was found Well Qualified as to ethical
17 fitness, professional and academic ability, character,
18 reputation, experience, and judicial temperament. I note
19 that any concerns raised during the investigation regarding
20 the candidate were incorporate into my -- incorporated into
21 my questioning today.

22 Mr. Chairman, I have no further questions.

23 SENATOR MARTIN: All right. Thank you very
24 much. Any questions by members of the Commission?

25 (No response.)

1 SENATOR MARTIN: Hearing none. Ms. Adams,
2 thank you so much.

3 MS. ADAMS: Thank you.

4 SENATOR MARTIN: This concludes this portion
5 of the screening process. As you know, the record will
6 remain open as --

7 SENATOR MALLOY: Mr. Chairman. I'm sorry, I
8 -- I would like to -- to go down the line that Dean Wilcox
9 did, the last time we had the conference, if he doesn't
10 mind. He's sort of quiet since he -- but we asked
11 questions about whether positions, as it relates to
12 children that came before the court, whether they should be
13 in handcuffs. Maybe the Dean would -- would oblige us, and
14 go down that -- that same line of questioning.

15 MR. WILCOX: You're asking me to remember I
16 asked --

17 SENATOR MARTIN: He can't remember what he
18 had for dinner, last.

19 SENATOR MALLOY: He remembers.

20 EXAMINATION BY MR. WILCOX:

21 **Q. There were other questions raised, and I know**
22 **there's been legislation efforts and things, but regarding**
23 **the appearance of juveniles in court. And as a solicitor,**
24 **you have been on that side. And there was a lot of concern**
25 **of the -- bringing juveniles into court in shackles and**

1 things. And I just -- real quick, your personal sense of
2 what the appropriate lines there are between safety and --
3 and understanding that these are juveniles that you're
4 presenting, and not wanting to put juveniles into a
5 position that we may put adults in, in the court system.

6 A. Personally, it has always been very -- very
7 disturbing to see these young people handcuffed, shackled.
8 But I had to come to recognize that, for safety reasons,
9 sometimes it's necessary. Now, I want to also be mindful,
10 that there is a very small fraction of these juvenile
11 offenders who we had to handle in that way. The majority
12 of them come in from the street, so that -- that's not a
13 concern.

14 But what we're seeing now is -- and these are
15 some things that I never thought that we would see -- but,
16 you know, we're dealing now with some gang activity. But
17 we're also dealing with some mental health issues that some
18 of these young people are -- they don't even yet know how
19 to deal with. And so sometimes, you know, these -- these
20 are the measures we have to take, just for the protection
21 of everyone. I wish it could be done better. But,
22 unfortunately, that's just where we are right now.

23 Q. Well, I can follow-up. When it comes to whether
24 it's sentencing, or some alternative form of punishment,
25 what is your perspective on determining the appropriate

1 punishment for a -- particularly when you're dealing with,
2 say, a 14-, 15-year-old who may not be quite in the same
3 age as a seven -- 16, 17. But, you know, sending them to
4 DJJ may be quite a different experience from sending them
5 to a Marine camp, or something, those kind of things, where
6 it can be alternative punishment. So give me -- can you
7 give me a little bit of your thoughts, as to what a judge
8 can do, particularly in that regard?

9 A. I certainly can. As I indicated earlier, I am of
10 the belief that you cannot deal with juveniles the way you
11 deal with adult offenders. And -- and that's largely
12 because of their maturity, or lack of maturity. Also with
13 young people, you can't deal with them in a isolated
14 situation; families have to be brought in. So, therefore,
15 you -- you have to be creative in some of the sentencing
16 that you come up with, 'cause you -- your focus should be
17 rehabilitation versus punitive.

18 And I'll give you an example. There was a young
19 man that we were dealing with, his mother was his -- always
20 been a very strong advocate for him. But he continued to
21 act out. And finally, she came to court one day, and she
22 said I -- you know, "I'm done with him. There's nothing
23 else I can do with him. You take him." Meaning, the court
24 system. And I was a little bit taken aback because of my
25 previous experience with her. Like I say, she had always

1 fought for him, while at the same time holding him
2 accountable.

3 Well, what I was able to determine is that the
4 family was -- was going through some things, financially,
5 he was acting out as a result of it. The mother felt that
6 placing him in the custody of the State, or the court
7 system, would ensure that he would have a roof over his
8 head. So that was certainly not the situation where
9 punishment was appropriate there, even though he had been
10 acting out at school and given the community a fit. Well,
11 we were able to tailor a plan for this family, where
12 everybody's needs were met. And we never saw him again.

13 So -- you know, so those are the kinds of things
14 that, you know, we -- we have to look at, in dealing with -
15 - with some of these young people. You just have to go
16 deeper.

17 SENATOR MALLOY: Mr. Chairman, one last
18 question.

19 SENATOR MARTIN: The senator from
20 Darlington.

21 EXAMINATION BY SENATOR MALLOY:

22 Q. And so as we move forward, I've been involved
23 with sentencing reform for a period of time. And you don't
24 have any objections to alternative sentencing, as it
25 relates to young -- to young people?

1 A. Not at all.

2 Q. And I'm particularly interested in raising the
3 age from 17 up -- like 41 other states have -- have done.
4 Do you have experience that you -- in the court where --
5 where you would see -- I guess, in certain situations, in
6 the Family Court, that waive these folks -- waive children
7 up to the adult court? And you -- do you have a viewpoint
8 on -- on how we're handling that now, and how -- how you
9 would like to see that?

10 A. Well, Senator Malloy, I've seen it from both
11 ends, from being at the solicitor's office, and, of course,
12 from the Family Court.

13 Q. And I'm not asking you to speak on the --

14 A. Oh, no.

15 Q. -- legislation. I'm just asking you --

16 A. Right.

17 Q. -- to speak on -- on how -- how you handled it in
18 court, in your role from being a solicitor, and now going
19 on to the Family Court.

20 A. Well, again, my -- my personal philosophy is --
21 is, you know, each case needs to be looked at,
22 individually. You've got to, again, look at, you know,
23 this -- this -- this young person's history.

24 Q. Keep going.

25 A. History with the court, or lack of history;

1 severity of the crime they've been charged with, and -- and
2 you -- and the -- personally, I also look at the support
3 system. And I've been able to tailor plans that I think
4 work from both sides. I have no problem remanding from the
5 -- from the solicitor's office, down to Family Court, when
6 I feel it's appropriate. And I think that most solicitors
7 would agree with me, that a charge has to be pretty serious
8 to waive it up.

9 **Q. And the last thing: You've got your sister is the**
10 **one visiting with you?**

11 A. Oh, I'm sure she'd appreciate that. This is my
12 mother, Julia Adams, my rock. Thank you for acknowledging
13 her.

14 SENATOR MARTIN: Thank you for doing that,
15 senator from Darlington. I was going to ask. And I failed
16 to do that earlier. Everybody good? Anyone have any
17 questions?

18 (No response.)

19 SENATOR MARTIN: Well, thank you very much
20 for your cooperation with our staff --

21 MS. ADAMS: Thank you.

22 SENATOR MARTIN: -- and for being as
23 forthcoming in your response to the Commission today. Know
24 that you could be called back -- I doubt there'd be a need
25 for it -- until the report is issued. I'll remind you of

1 the 48-hour rule. Thank you for offering. And I thank you
2 for your willingness to serve.

3 MS. ADAMS: Thank you so much.

4 SENATOR MARTIN: Best wishes.

5 MS. ADAMS: Thank you.

6 (Candidate excused.)

7 SENATOR MARTIN: We have with us, today, Mr.
8 Thomas Tredway Hodges, in the Family Court, 13th Judicial
9 Circuit, Seat 3. Welcome. Do you have someone you'd like
10 to introduce to us?

11 MR. HODGES: Yes, sir. This is my wife
12 Erroll Anne Hodges.

13 SENATOR MARTIN: Welcome. Glad to have you
14 with us.

15 MR. HODGES: We celebrated our 28th
16 anniversary this past Saturday.

17 SENATOR MARTIN: Well, congratulations.

18 MR. HODGES: Thank you.

19 SENATOR MARTIN: Congratulations. Would you
20 please raise your hand and take the oath.

21 WHEREUPON:

22 THOMAS TREDWAY HODGES, being duly sworn and
23 cautioned to speak the truth, the whole truth and nothing
24 but the truth, testifies as follows:

25 SENATOR MARTIN: You've had the opportunity

1 to review your personal data questionnaire?

2 MR. HODGES: Yes, sir.

3 SENATOR MARTIN: Everything in order?

4 MR. HODGES: Yes. The only amendment, I
5 would think is, when I filled this out I hadn't spent any
6 money on the campaign. I still haven't spent much, maybe
7 about fifty dollars. But other than that...

8 SENATOR MARTIN: All right. That's good
9 enough. Do you object to our making this summary part of
10 the written testimony --

11 MR. HODGES: No, sir.

12 SENATOR MARTIN: -- the testimony in your
13 record? It will be done at this point in the transcript.

14 (EXHIBIT NO. 13 - JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THOMAS
16 TREDWAY HODGES DATED MARCH 2, 2016)

17 SENATOR MARTIN: The Judicial Merit
18 Selection Commission has thoroughly evaluated -- or
19 investigated your qualifications for the bench. Our
20 inquiry has focused on nine evaluative criteria. We've
21 received no affidavits filed in opposition to your
22 election, no witnesses here to testify. Do you have a
23 brief opening statement you'd like to make?

24 MR. HODGES: Very briefly. Just thank y'all
25 for the opportunity to be here. I know it's been a long

1 day, so far, and will probably continue to be a long day.

2 SENATOR MARTIN: Thank you very much. Would
3 you kindly answer Mr. Davidson's questions.

4 MR. DAVIDSON: Good afternoon, Mr. Hodges.
5 You should have before you, the sworn statement you
6 provided, with detailed answers to over thirty questions
7 regarding judicial conduct, statutory qualifications,
8 office administration, and temperament. Are there any
9 amendments that you'd like to make at this time?

10 MR. HODGES: No.

11 MR. DAVIDSON: I'd ask that Mr. Hodges sworn
12 statement be entered as an exhibit into the hearing record
13 at this time, Mr. Chairman.

14 SENATOR MARTIN: Any objections?

15 (No response.)

16 SENATOR MARTIN: Hearing none, it will be
17 entered into the record at this time.

18 (EXHIBIT NO. 14 - JUDICIAL MERIT SELECTION
19 COMMISSION SWORN TESTIMONY OF THOMAS TREDWAY
20 HODGES DATED MARCH 2, 2016)

21 SENATOR MARTIN: Thank you.

22 MR. DAVIDSON: Mr. Hodges, please state for
23 the record, the city and circuit in which you reside.

24 MR. HODGES: I live in Greenville. And
25 that's the 13th Circuit.

1 MR. DAVIDSON: I note for the record that,
2 based on the testimony contained in the candidate's PDQ
3 which has been included in the record, with the candidate's
4 consent, Mr. Hodges meets the statutory requirements for
5 this position regarding age, residence, and years of
6 practice.

7 EXAMINATION BY MR. DAVIDSON:

8 Q. Mr. Hodges, would you please explain to the
9 Commission why you would like to serve as a Family Court
10 judge, and how do you feel your legal and professional
11 experience, thus far, will assist you to be an effective
12 judge.

13 A. Sure. I believe the Family Court judge is
14 probably the hardest position in the judiciary; people are
15 coming before the court at their most vulnerable times,
16 and, possibly, the most stressful times of their lives.
17 And the judge is making a decision that's going to impact
18 them, potentially, for the rest of their lives, and impact
19 what may be the most important thing to them; and that's
20 their family.

21 And at the risk of sounding immodest, I think I
22 would be a good judge, and be able to make those decisions
23 for the people. I believe that I have the education, the
24 experience, and demeanor to be a good judge. And from a
25 selfish standpoint, if -- I believe if you're good at

1 something, you enjoy doing it. And -- and so there would
2 be that motivation as well.

3 But my experience -- I've practiced in family
4 law, exclusively, for the last 13 years. Before that, I
5 was a labor lawyer; both areas of law, you practice in,
6 with people who are in very stressful situations. I
7 believe I've developed -- maybe not developed, and maybe
8 it's innate -- but an ability to calm people down, to allow
9 them to listen to me, to take my advice, to work them
10 through these situations that are stressful. And I believe
11 I can exemplify that same ability from the court -- from
12 the bench.

13 **Q. Thank you. Are there any areas of the law that**
14 **you would need to additionally prepare for in order to**
15 **serve? And how would you handle that additional**
16 **preparation, if so?**

17 A. Two areas that I -- I don't practice in, and it's
18 been a conscious decision, one is juvenile justice. And
19 that, I believe, is a criminal matter. I don't feel like
20 you should dabble in areas where you don't have expertise.
21 And criminal matters, I believe, are separate than Family
22 Court matters, in the sense of there's different procedural
23 issues, different rights. That, I believe, should be left
24 to a criminal lawyer.

25 The other area is adoptions. And that, I

1 believe, is a sub-specialty of Family Court/family law.
2 The people who do adoptions in my neck of the woods, that's
3 what they specialize in. I've had some limited experience
4 in witnessing statements where they release their parental
5 rights. But I don't have people come to me, generally, and
6 asking, you know, "We'd like to adopt a baby."

7 There are situations where I've had adoptions;
8 I've referred them to one of these professionals that's,
9 you know, specialized in that area. And part of the reason
10 is, again, I don't think I should dabble in something that
11 I'm not that familiar with.

12 As far as becoming experienced in it, I think in
13 the short period of time before I took the bench, I could
14 associate with somebody, to get an understanding of how
15 that process works, from beginning to end, and then observe
16 court proceedings, or even associate with the lawyer doing
17 that.

18 **Q. Could you please explain what you think is the**
19 **appropriate demeanor for a judge?**

20 A. Well, I think a judge needs to be firm and fair,
21 open-minded. A judge has to be able to listen and get his
22 attention -- polite -- and a judge has to be decisive.
23 Those situations where people come into court -- as I said,
24 they're under stressful circumstances. The litigants, in
25 my belief and experience, want to know that the judge took

1 the time to listen to them, and they weren't -- or the
2 judge wasn't distracted by, you know, papers on his desk,
3 or, you know, e-mails or whatever, but they looked the
4 person in the eye and they listened to what they had to
5 say. That person may not like the judge's decision, but
6 they're going to walk out of the courtroom knowing that
7 "this person gave attention to my case, to my situation,
8 you know, considered everything I had to say, and made a
9 fair decision."

10 **Q. What suggestions would you offer for improving**
11 **the backlog of cases on the Family Court docket?**

12 A. In Greenville, we've done a pretty good job of
13 taking care of a lot of that backlog. Specifically, I
14 think mediations has helped. And Greenville was one of the
15 first counties -- you know, pilot counties to do
16 mediations. And I understand they're statewide now.

17 I think in Greenville -- and this isn't to point
18 fingers at anybody -- but we start court at 9:30. You
19 know, it could start earlier, start at 8:30 or nine. And
20 then on Fridays, I know that they typically end court at
21 twelve. But there's always an on-duty judge. And I -- you
22 could have a court reporter there, at least on Friday
23 afternoons, you could take care of a lot of at least
24 uncontested cases, you know, where people could call up,
25 and say, "Hey, can you get me in?" And they could take

1 care of the case right there.

2 It used to be the practice that, on Fridays, in
3 docket, they would have a list where you could just sign up
4 for a time. I don't know why they stopped doing that. But
5 that was very convenient for litigants and the lawyers,
6 and, I think, for the court too. You know, you might file
7 a case on Monday, that's an uncontested case, and could
8 complete it by Friday. So it's -- it's really just more of
9 an efficiency approach than anything else.

10 **Q. Lastly, could you please briefly describe your**
11 **experience in handling complex contested Family Court**
12 **matters? And, specifically, discuss your experience with**
13 **the financial aspects of Family Court work.**

14 A. I've handled cases where people have had millions
15 of dollars, to where they've had virtually nothing. It's
16 been my experience that the more somebody has, the more
17 they seem to want to protect what they have. And a lot of
18 times, those high-dollar cases are the ones that you do the
19 last amount of work on, because the parties know what they
20 want to do.

21 And complex cases, in terms of financial
22 situations, like I say, I've had cases where they've had
23 millions of dollars. I've had cases where someone's
24 inherited millions of dollars. So that's not on the table,
25 but it impacts how you divide the property that is on the

1 table.

2 I've tried numerous custody cases. One lasted
3 four or five days, that was, you know, very complex,
4 involving DSS allegations and allegations of sexual abuse
5 and -- you know, some really emotional, bad things. You
6 know, I -- I've handled -- you know, I've had a 15-minute
7 trial to, like I said, a four- or five-day trial.

8 Q. Thank you for those responses. The Commission
9 received 106 ballot box surveys regarding your candidacy,
10 with 14 additional comments. The surveys, for example,
11 contained the following positive comments:

12 "A highly intelligent individual with an
13 extraordinary ability to quickly grasp, analyze, and
14 decipher legal issues, no matter how complex. He's an
15 experienced practitioner, and has local ties. Is extremely
16 bright and hardworking."

17 One of the comments -- one of the written
18 comments expressed concerns. The negative comment
19 questioned your work ethic, stating:

20 "As a lawyer, he does good work, but never seems
21 to want to expend the effort to do great work."

22 What offer -- what response would you offer to
23 the Commission?

24 A. Well, I don't know what standard this person is
25 holding me to. I don't know that they know that I'm a solo

1 practitioner, and I do more than practice law. I do my own
2 billing. I do my own administrative work -- you know,
3 anything involving the non-legal aspect of it. I don't
4 know, you know, the specifics of what -- what situation
5 they're talking about. It could very well be that someone
6 thought, maybe, I should take a deposition and I decided
7 not to. But if that's the situation, I have to be mindful
8 of my client's resources, you know. And -- and I don't
9 necessarily churn a case and work it, just to work it. You
10 know, I work the case to the benefit of my client, and to
11 get them the best result.

12 But I can say this: If there's any concern about
13 my work ethic, I'll be the hardest-working Family Court
14 judge you've ever seen.

15 **Q. Thank you. At this time, I'm going to ask a**
16 **series of quick questions. Have you sought or received a**
17 **pledge of any legislator, either prior to this date or**
18 **pending the outcome of your screening?**

19 A. No.

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

24 A. No.

25 **Q. Since submitted your letter of intent to run for**

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

3 A. No.

4 Q. Do you understand you're prohibited from seeking
5 a pledge or commitment until 48 hours after the formal
6 release of the Commission's report, and are you aware of
7 the penalties for violating the pledging rules?

8 A. I do. And I am.

9 Q. Thank you.

10 MR. DAVIDSON: I would note that the Upstate
11 Citizens Committee found Mr. Hodges to be Well Qualified
12 for each of the following evaluative criteria; that is,
13 ethical fitness, professional and academic ability,
14 character, reputation, experience, and judicial
15 temperament, and Qualified as to constitutional
16 qualifications, physical health, and mental stability.

17 Mr. Chairman, I would note that any concerns
18 raised during the investigation were incorporated into my
19 questioning today. No further questions.

20 SENATOR MARTIN: All right. Any questions
21 by members of the Commission? Senator from Darlington.

22 SENATOR MALLOY: Thank you, sir.

23 EXAMINATION BY SENATOR MALLOY:

24 Q. I just wanted -- I'm always interested in family
25 -- perspective Family Court judges' positioning on

1 alternative sentencing as it relates to juveniles. It
2 seems as though that we've addressed sentencing reform here
3 in our state, and I'm always concerned about juvenile
4 justice, and what happens when you have -- which I think is
5 the hardest part of being a Family Court judge is having
6 children. And what's your thoughts on alternative
7 sentencing, and that kind of thing, for -- for children
8 that have been -- that are being sent to DJJ?

9 A. Well, I think any program that would keep someone
10 out of -- out of jail, or -- or some other -- you know,
11 place or -- or something to that effect, is worthwhile and
12 worth pursuing. You know, kids make mistakes. And I don't
13 know all of the -- all the statistics, but I'm aware that
14 there's some scientific basis to support the fact that
15 maybe males don't develop, emotionally, and maturely until
16 about their mid-twenties.

17 So there's -- you know, it would -- it would be a
18 huge disservice, I think, to put a kid in jail, and it's
19 going to affect him the rest of his life, unless it was
20 deserved. You know, the specific facts, I guess, would --
21 would determine whether or not that's the case.

22 But, you know, my political feelings on that, I
23 think -- you know, I'm -- I'm to follow the law. Y'all
24 tell me what the law is. You know, if it's one chance, two
25 chance, three chances that y'all tell the judges that's

1 what you're supposed to do, then that's what we'll give
2 them. And at some point in time, I guess, those chances
3 run out.

4 SENATOR MALLOY: Thank you.

5 SENATOR MARTIN: All right. Any other
6 questions?

7 (No response.)

8 SENATOR MARTIN: Hearing none, Mr. Hodges,
9 we thank you. This concludes this portion of our screening
10 process. As you know, the record will remain open until
11 the report is published. And you could be called back if -
12 - if there's a question, or the need arose.

13 Thank you for offering, and for your
14 willingness to serve.

15 MR. HODGES: Thank you.

16 SENATOR MARTIN: Thank you.

17 MR. HODGES: Y'all have a great day.

18 SENATOR MARTIN: You too.

19 (Candidate excused.)

20 SENATOR MARTIN: Welcome.

21 MS. HOWARD: Hey, good morning -- or good
22 afternoon.

23 SENATOR MARTIN: We have Kimberly Boan
24 Howard with us, Family Court, 13th Judicial Circuit, Seat
25 3. It's good to have you with us. Do you have someone

1 you'd like to introduce to us?

2 MS. HOWARD: Yes, Mr. Chairman. In the back
3 is my husband, Billy Howard. He came up from Greenville --
4 or came down from Greenville with me today.

5 SENATOR MARTIN: Well, we're glad you're
6 here. Welcome.

7 Would you raise your hand and take the oath.

8 WHEREUPON:

9 KIMBERLY BOAN HOWARD, being duly sworn and
10 cautioned to speak the truth, the whole truth and nothing
11 but the truth, testifies as follows:

12 SENATOR MARTIN: Have you had the
13 opportunity to review your personal data questionnaire?

14 MS. HOWARD: Yes, sir. I have.

15 SENATOR MARTIN: Everything in order?
16 Anything need to be amended?

17 MS. HOWARD: No, sir. I have submitted one
18 amendment. But other than that, no, sir, everything has --
19 has already been submitted to the Commission.

20 SENATOR MARTIN: Do you object to our making
21 this summary, and any amendments, part of the record of
22 your sworn testimony?

23 MS. HOWARD: I do not.

24 (EXHIBIT NO. 15 - JUDICIAL MERIT SELECTION
25 COMMISSION PERSONAL DATA QUESTIONNAIRE OF

1 KIMBERLY BOAN HOWARD DATED MARCH 7, 2016)
2 (EXHIBIT NO. 16 - AMENDMENT TO PERSONAL DATA
3 QUESTIONNAIRE DATED APRIL 19, 2016)

4 SENATOR MARTIN: Okay. The Judicial Merit
5 Selection Commission has thoroughly investigated your
6 qualifications for the bench. Our inquiry has focused on
7 the nine evaluative criteria, that you are familiar with.
8 We've had no affidavits filed in opposition to your
9 election, no witnesses are present to testify. Do you have
10 a brief opening statement you'd like to make?

11 MS. HOWARD: Yes, your -- yes, Your Honor.
12 Mr. Chairman.

13 SENATOR MARTIN: All right.

14 MS. HOWARD: I just want to thank y'all for
15 having me here today. It's a pleasure to be before the
16 Commission. I went to law school with the intentions,
17 knowing that I wanted to go into public service, and went
18 in as a prosecutor -- ended up being a prosecutor, and have
19 been for my career. And when I started in my practice, in
20 Family Court, I started practicing there, it was almost the
21 same, immediate knowing that, that's what I wanted to do,
22 one day, would be to pursue a position on the Family Court
23 bench. So I'm thrilled to be here today, and happy for the
24 opportunity. Thank you, Mr. Chairman.

25 SENATOR MARTIN: If you would answer

1 questions by Mr. Davidson, our staff counsel.

2 MS. HOWARD: Thank you.

3 MR. DAVIDSON: Good afternoon. You should
4 have before you, the sworn statement you provided, with
5 detailed answers to over thirty questions regarding
6 judicial conduct, statutory qualifications, office
7 administration, and temperament. Are there any amendments
8 you would like to make at this time?

9 MS. HOWARD: No, sir.

10 MR. DAVIDSON: Mr. Chairman, I would ask
11 that Mrs. Howard's sworn statement be entered as an
12 exhibit into the record.

13 SENATOR MARTIN: Any object?

14 (No response.)

15 SENATOR MARTIN: Hearing none, the sworn
16 statement will be entered into the record at this time.

17 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION
18 COMMISSION SWORN STATEMENT OF KIMBERLY BOAN
19 HOWARD DATED MARCH 6, 2016)

20 MR. DAVIDSON: Mrs. Howard, please state for
21 the record, the city and circuit in which you reside.

22 MS. HOWARD: I live in Greenville, South
23 Carolina. And it's the 13th Circuit.

24 MR. DAVIDSON: Thank you. I note for the
25 record that, based on the testimony contained in the

1 candidate's PDQ, which has been included in the record,
2 with the candidate's consent, Mrs. Howard meets the
3 statutory requirements for this position, regarding age,
4 residence, and years of practice.

5 EXAMINATION BY MR. DAVIDSON:

6 **Q. Mrs. Howard, could you please explain to the**
7 **Commission why you would like to serve as a Family Court**
8 **judge, and how do you feel your legal and professional**
9 **experience, thus far, will assist you in being an effective**
10 **judge?**

11 A. Yes, sir. I think -- and as in my sworn
12 statement, that of all the courts -- all of our courts of
13 law are important. But to me, Family Court is one of the
14 most important. You have your average, everyday person
15 that comes into that court, fighting for, most times, one
16 of the most important things facing them in their life:
17 Either their children, their liberty, or their finances.
18 And for most of us, and for me and everybody else in the
19 room, those are three of the most important things to us.

20 And upon starting practice in Family Court, I
21 realized right away that you needed -- that there needed to
22 be a judge that had compassion -- the compassion, but also
23 the energy and the -- I guess, the ability to be able to
24 handle the stressful -- the emotionally stress -- straining
25 things that come before the court. And I felt like, and

1 feel like, I have those characteristics, that it's
2 something I would be able to handle.

3 And it is -- like I said in my opening statement,
4 I have -- I always felt a calling to serve the community
5 and in doing my capacity as a prosecutor. And I know that
6 being elected to the judicial bench is also a high honor,
7 but it's also a continuation of service to the community,
8 to the state, and, specifically, for this seat to
9 Greenville County. And I feel like it's -- you know, just
10 an intangible thing to say is, that I -- I feel like it's a
11 -- the fit for me. And I knew it, immediately, upon
12 practicing down there. And knew that I would pursue it,
13 one day, when I was, you know, qualified constitutionally
14 and everything.

15 **Q. Thank you. Are there any areas of the law that**
16 **you would need to additionally prepare for in order to**
17 **serve as a judge, and if so, how would you handle that**
18 **additional preparation?**

19 A. Yes, sir. I have spent my time -- my career as a
20 prosecutor. And in that capacity, I also ran our juvenile
21 justice unit, and did that for several years. I've also
22 worked on DSS -- worked on abuse and neglect cases, as well
23 as domestic violence cases. Now, that has been in the
24 capacity as a prosecutor. So most of the private stuff
25 that is handled down in -- that's handled in Family Court

1 are areas that I would need -- I feel like I would need
2 additional training and continuing education.

3 I have -- upon thinking that this was the right
4 timing, and putting my name in and preparing to run for
5 this judicial spot, I have started to do some of that. I
6 have met with our local DSS attorneys, making sure that I
7 am up-to-date on their time lines and their procedures and
8 -- and how they do business, as well as, I've attended
9 several CLEs.

10 I've done the mandatory six-hour training for the
11 guardian ad litem training, as well as started talking with
12 some of the local judges on our bench, about shadowing them
13 or -- and going in and observing the temporary hearings and
14 the different hearings that I have not handled in my time
15 as a -- you know, as a prosecutor and as a lawyer.

16 So I would continue to do that. I think
17 continued legal education is important for everyone, and
18 that is something that I would continue to do. And just --
19 you know, I -- I don't feel like your training is ever
20 done, no matter what your background is. So I plan to
21 continue in that.

22 **Q. Could you please explain what you think is the**
23 **appropriate demeanor for a judge?**

24 A. I think a judge should be compassionate and kind;
25 however, know the time and the place when it's time to be

1 firm, and when it's time to stand strong in their decision
2 and their ruling. I think fairness a lot of times trumps
3 everything, other than, obviously, staying legally sound.

4 I think a judge needs to have knowledge of the
5 law, and know -- and be prepared for every case coming
6 before him, or her, that day in the courtroom. I also feel
7 like a judge should be approachable, and should make
8 everyone in the courtroom feel comfortable -- everybody is
9 in there, and it's their day, it's their -- it's their time
10 in court -- and have the patience to hear out -- hear
11 everyone out, hear all the parties, listen to the
12 litigants. But also at the same time, balancing that with
13 able -- with being able to do it efficiently and
14 diligently.

15 **Q. What suggestions would you offer for improving**
16 **the backlog of cases on the Family Court docket?**

17 A. Well, this is something I, on a much smaller
18 scale, have a little bit of experience with. When I went
19 to Family Court, my former -- the former solicitor that was
20 my boss at the time, Solicitor Ariail, asked me to go and
21 run our juvenile justice unit. And it was a little
22 backlogged at the time, a little inefficient, and the
23 organization and the communication with some -- with the
24 other agencies -- DJJ, the clerk's office, DSS -- did not
25 run as smoothly as he wanted it to. So I -- I have some --

1 I have some familiarity with going down and making --
2 taking a docket and the process in a -- and the way that
3 things run within a certain section of the court system,
4 helping it run smoothly, and finding more ways to make it
5 more efficient.

6 I think that one of the things that has helped so
7 far has been mandatory mediation as well as the 365 Rule.
8 I'm not saying that there's not backlog in Family Court,
9 because there is backlog, probably, across the board; but
10 those things have helped relieve some of the tension that
11 comes with all of the cases coming through there. I know
12 our local DSS, they have policies in place that are -- the
13 timelines are a little more constrained than that -- that
14 are statutorily defined. And they do that to give them
15 some breathing room, in the hopes that it could move the
16 cases along.

17 But first and foremost, one of the things I think
18 that has to happen, and has to stay ongoing and evolving,
19 is the communication and the cooperation amongst all the
20 parties down there -- or in Family Court. The judicial
21 bench, the private lawyers, the Solicitor's Office, DJJ,
22 DSS -- everyone involved down there has to have an open
23 line of communication, because everybody's vying for court
24 time. And I think one of the most important things to do
25 is occasionally sit those parties down, and sit the

1 representative -- representatives of those agencies down,
2 and brainstorm.

3 And as for the -- as for the private docket, I
4 know in Berkeley -- and I believe Charleston is one of the
5 other jurisdictions -- that they do more of a block
6 scheduling. And I'm not suggesting that, that is
7 necessarily the answer for Greenville's scheduling, but
8 it's something that we could sit down with the lawyers and
9 discuss, to see if there's a way to keep that docket
10 rolling so that it might open up more time for DSS, or
11 orders of protection, or some of the other things that get
12 backlogged more frequently.

13 **Q. Thank you. Lastly, please briefly describe your**
14 **experience in handling complex contested Family Court**
15 **matters. And specifically, discuss your experience with**
16 **the financial aspects of Family Court work.**

17 A. I have not handled any -- anything that was --
18 that's financial in nature in the Family Court. With
19 complex matters, I would say with the juvenile justice
20 system, the most complicated thing you handle, other than
21 the volume of cases that come through, would be the waiving
22 -- the times it comes up, where you're attempting to waive
23 a judicial up to General Sessions court. I have handled
24 two of those, and am actually in the process of handling
25 another one right now.

1 Q. Thank you. The Commission received 140 ballot
2 box surveys regarding your candidacy, with 34 additional
3 comments. The ballot box surveys, for example, contained
4 the following positive comments:

5 "A superb lawyer who would discharge the demands
6 of a Family Court with great skill, humility, and class.
7 She is an ideal candidate for this position. She has
8 extensive experience in the Family Court, as a prosecutor.
9 And her career as an assistant solicitor has proven that
10 she has the intellect, work ethic, and demeanor to be a
11 wonderful judge."

12 Thirteen of the written comments expressed
13 concerns. Eight of those comments indicated concerns about
14 a lack of experience in Family Court. What response would
15 you offer to those concerns?

16 A. Yes, sir. I -- I know there is the -- since I
17 have not handled the private side, I anticipated those
18 comments coming in to the Commission. And one thing I
19 would say is, while that is a good portion of things that
20 are handled in Family Court, you can't discount how much
21 and how important the other cases on the, I guess, public
22 or institutional docket are coming -- that are coming
23 through there.

24 In eleven years as a prosecutor, every day that I
25 go to court -- that I go to my office, I've seen -- have

1 thousands of files come across my desk. And every day, I
2 go in there, and I pick a case, and you're evaluating the
3 file. And you're not evaluating it from one side; you have
4 to look at not necessarily what's best for the victim, not
5 necessarily what's best for law enforcement, not
6 necessarily what's best for the state, or even the
7 defendant or what the defense attorney wants. And you have
8 to evaluate that from the front end.

9 And as a prosecutor, I'm not the final decision-
10 maker; that is obviously the judge. But ethically, I'm
11 responsible for vetting my case and making sure that --
12 that there's enough legal basis for it to go forward, and
13 that it's the fair and right thing to do, and make a fair
14 and right decision.

15 And while, you know, there is several legal
16 matters I have not handled, that are handled in Family
17 Court, I believe that the skill learned over the past
18 eleven years of -- of case evaluation and evaluating a case
19 from each side, and from all -- you know, all angles, in
20 trying to come up with a fair and just resolution, is not a
21 skill that can be learned overnight. You know, I -- I
22 think -- I was told I did -- I think I did very well on the
23 test. I think I have the ability to learn the material
24 that comes to Family Court, that I have not handled before.
25 And I, you know, would give it my all in learning that, and

1 making sure that -- that I am ready every time that
2 something comes before me in the courtroom.

3 But as for the ability to evaluate and look at a
4 case from all sides and -- you know, sometimes what is
5 right is not what always feels good. And I've learned that
6 over the course of, you know, eleven -- close to eleven
7 years.

8 **Q. Thank you. Two comments questioned your**
9 **timeliness in addressing matters. Briefly, how would you**
10 **respond to that -- those concerns?**

11 A. First, I would say that I am always accessible.
12 I give out to the defense bar and -- and anyone in the
13 court, everybody always has my cell phone and my e-mail. I
14 try to be accessible at all times. But it -- you know,
15 like, as of recently, about six months ago, I was carrying
16 a docket of 800 warrants. We are under a docketing system
17 that was in place before Langford and some of the other
18 court rulings, and things that come out, and it keeps us
19 within a certain time frame. I try my best to be timely,
20 to respond to matters, to be professional and diligent.
21 Occasionally, there might be something that is out my
22 control.

23 When it comes to witness availability, or a co-
24 defendant availability, or someone's on bench warrant
25 status, a lot of those. But for the -- for the most part,

1 and in all matters, I try to be diligent and timely in
2 handling those.

3 **Q. Thank you.**

4 MR. DAVIDSON: Mr. Chairman, at this time,
5 I'd like to request that we go into executive session.

6 SENATOR MARTIN: All right. Without
7 objection?

8 (No response.)

9 SENATOR MARTIN: You need to ask everybody
10 except the candidate. And, of course, Mr. Howard can stay.

11 (Off-the-record executive session.)

12 SENATOR MARTIN: All right. We'll be back
13 on the record. Mr. Davidson?

14 RE-EXAMINATION BY MR. DAVIDSON:

15 **Q. At this time, I'm going to ask a series of quick**
16 **questions. Have you sought or received a pledge of any**
17 **legislator, either prior to this date or pending the**
18 **outcome of your screening?**

19 A. No, sir.

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

24 A. No, sir.

25 **Q. Since submitting your letter of intent to run for**

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

3 A. No, sir. I have not.

4 Q. Do you understand that you are prohibited from
5 seeking a pledge or a commitment until 48 hours after the
6 formal release of the Commission's report, and are you
7 aware of the penalties for violating the pledging rules?

8 A. I am aware.

9 Q. Thank you.

10 MR. DAVIDSON: I would note that the Upstate
11 Citizens Committee found Mrs. Howard to be Well Qualified
12 as to ethical fitness, professional and academic ability,
13 character, reputation, and judicial temperament. She was
14 found Qualified as to experience, constitutional
15 qualifications, physical health, and mental stability.

16 In summary, the Committee stated, "This
17 candidate has not had experience participating in divorce
18 cases in Family Court. This is the only reason the
19 Committee did not find her Well Qualified."

20 I note that any concerns raised during the
21 investigation regarding this candidate were incorporated
22 into my questioning today.

23 Mr. Chairman, I have no further questions.

24 SENATOR MARTIN: All right. Any question by
25 members of the Commission? The senator from Darlington.

1 SENATOR MARTIN: Well, thank you very much,
2 Ms. Howard. This concludes this portion of our screening
3 process. As you know, the record will remain open until
4 the report is published. You could be called back, but we
5 doubt that will occur. We want to thank you for offering.
6 And thank you for your willingness to serve.

7 MS. HOWARD: Thank you. I appreciate it.
8 Thanks for having me.

9 (Candidate excused.)

10 SENATOR MARTIN: Welcome. We have Kimaka
11 Nichols-Graham, Family Court, 13th Judicial Circuit, Seat
12 3. Do you have anyone with you?

13 MS. NICHOLS-GRAHAM: No, sir.

14 SENATOR MARTIN: You're by yourself.

15 MS. NICHOLS-GRAHAM: Just me.

16 SENATOR MARTIN: All right. Would you raise
17 your hand and take the oath.

18 WHEREUPON:

19 KIMAKA NICHOLS-GRAHAM, being duly sworn and
20 cautioned to speak the truth, the whole truth and nothing
21 but the truth, testifies as follows:

22 SENATOR MARTIN: You had the opportunity to
23 review your personal data questionnaire?

24 MS. NICHOLS-GRAHAM: Yes, sir.

25 SENATOR MARTIN: Everything appear to be in

1 order? No changes needed?

2 MS. NICHOLS-GRAHAM: No, sir.

3 SENATOR MARTIN: Do you object to us making
4 it part of your -- this summary, and any amendments part of
5 the record of your sworn testimony?

6 MS. NICHOLS-GRAHAM: No objection.

7 SENATOR MARTIN: It will be done at this
8 point in the transcript.

9 (EXHIBIT NO. 18 - JUDICIAL MERIT SELECTION
10 COMMISSION PERSONAL DATA QUESTIONNAIRE OF KIMAKA
11 NICHOLS-GRAHAM DATED MARCH 3, 2016)

12 SENATOR MARTIN: The Judicial Merit
13 Selection Commission has thoroughly investigated your
14 qualifications for the bench. Our inquiry has focused on
15 nine evaluative criteria. We received no affidavits in
16 opposition to your election, no witnesses are here to
17 testify.

18 Do you have a brief opening statement you'd
19 like to make?

20 MS. NICHOLS-GRAHAM: No, sir. Well, I will
21 make a brief statement. I have been interested in the
22 administration of justice for quite a while. In addition
23 to the comments that I have shared with you, I think it's
24 quite clear that, to this point, my career has been
25 dedicated to making sure that people who are unrepresented

1 have access to legal services. I believe that I am
2 prepared for this particular appointment. And I would look
3 forward to continuing to serve the citizens of this state.

4 SENATOR MARTIN: Okay. Would you please
5 answer Mr. Davidson's --

6 MS. WELLS: Not Davidson's.

7 SENATOR MARTIN: Oh, it's not "mister."
8 It's Ms. Katherine Wells, our staff counsel, will have some
9 questions for you.

10 MS. WELLS: Thank you, Mr. Chairman. Ms.
11 Nichols-Graham, you have before you, the sworn statement
12 you provided, with detailed answers to over thirty
13 questions regarding judicial conduct, statutory
14 qualifications, office administration, and temperament.
15 Are there any amendments you would like to make at this
16 time?

17 MS. NICHOLS-GRAHAM: No, there aren't.

18 MS. WELLS: At this time, Mr. Chairman, I
19 would ask that Mrs. Nichols-Graham's sworn statement be
20 entered as an exhibit into the hearing record.

21 SENATOR MARTIN: Is there any objection?

22 (No response.)

23 SENATOR MARTIN: Hearing none, it will be
24 entered into the record at this time.

25 (EXHIBIT NO. 19 - JUDICIAL MERIT SELECTION

1 COMMISSION SWORN STATEMENT OF KIMAKA NICHOLS-
2 GRAHAM DATED MARCH 2, 2016)

3 MS. WELLS: Thank you, Ms. Nichols-Graham.
4 For the record, please state the city and the circuit in
5 which you reside.

6 MS. NICHOLS-GRAHAM: I live in Greenville,
7 South Carolina, the 13th Judicial Circuit.

8 MS. WELLS: Thank you. And one final
9 procedural matter, I note for the record that based on the
10 testimony contained in Ms. Nichols-Graham's PDQ which has
11 been included in the record, with the candidate's consent,
12 Ms. Nichols-Graham meets the statutory requirements for
13 this position regarding age, residence, and years of
14 practice.

15 EXAMINATION BY MS. WELLS:

16 **Q. Would you please tell the Commission why you now**
17 **want to serve as a Family Court judge, and how you feel**
18 **your legal and professional experience, thus far, will**
19 **assist you to be an effective judge?**

20 A. I believe I am fair. I believe that I am
21 respectful to all. I believe that I am well Qualified to
22 serve as a Family Court judge. I have practiced in Family
23 Court for over 17 years. I have had the privilege of
24 representing many people in Family Court, in many matters -
25 - divorce, custody, adoption, abuse and neglect. I have

1 had some appearances on the juvenile justice docket. I'm
2 not as direct -- directly representing anyone, but as
3 providing information, because I represented some students
4 on the education side of the case.

5 I can't think of an area in Family Court that I
6 do not have experience in. I have -- I have been in Family
7 Court for quite some time. In my role as the managing
8 attorney of the Greenville Office of South Carolina Legal
9 Services, I have dealt with the public. I am comfortable
10 communicating with the public. I've had to deal and help
11 people through some of the worst times in their lives. And
12 I believe that has given me another level of experience for
13 this position. Because there are still a lot of people who
14 are unrepresented in Family Court, and we still have some
15 access-to-justice issues in that area of the judiciary.

16 **Q. Thank you. You spoke to this, briefly, but are**
17 **there any other areas of the law that you would need to**
18 **additionally prepare for in order to serve as a judge, and**
19 **how would you handle that additional preparation?**

20 A. I would say I could -- I could -- actually, I
21 could -- I believe that juvenile justice may be my weakest
22 area. But I do have some experience, not as direct --
23 directly providing legal representation, but I do have some
24 experience in that arena. And I have represented students
25 in a lot of administrative matters, and a lot of times the

1 facts are the same that the school district is addressing
2 that their -- the Family Court judge is addressing at the
3 same time. I would seek additional training, if needed.
4 But I believe that I have a broad range of experience for
5 Family Court.

6 **Q. Thank you. Would you explain to the members of**
7 **the Commission what you think is the appropriate demeanor**
8 **of a judge?**

9 A. I think a judge should be calm and not biased. A
10 judge should not allow any type of display of emotion.
11 They should give every litigant the opportunity to be
12 heard. The judge should not entertain any non-verbal
13 communications -- that would be the public, or any member
14 of the proceeding -- to believe that the judge has already
15 rendered a decision. The judge should give everyone an
16 opportunity to be heard, and be fair.

17 **Q. Do you have any suggestions for improving the**
18 **backlog of cases on the Family Court docket?**

19 A. I understand that the Justice Department has been
20 looking at the Family Court docket for several years now.
21 If I'm not mistaken, it's been about three years. The
22 Justice Department has a committee for Family Court
23 docketing. And some changes have been made within the last
24 few years, to assist with the Family Court dockets.

25 Practicing in Greenville, we were aware of some

1 of those changes before they became statewide. And I
2 believe that continuing to implement those changes
3 throughout the state has helped shorten the amount of time
4 that litigants have to wait before they get a temporary
5 hearing. And I believe just continuing to monitor the
6 dockets of the Department of Social Services, some of the
7 institutional dockets, to make sure that they don't take
8 over the docket, or that there's still enough time for the
9 private matters, should assist with making sure that the
10 docket runs smoothly.

11 I believe that the attorneys are prepared, and
12 they're moving their cases as efficiently as possible, with
13 implementing the additional rules regarding the 365-Day
14 Rule. As an attorney, I have seen an increase in
15 efficiency in Family Court. But I would be willing to
16 serve -- as a legal services attorney, our salaries are
17 somewhat low. And we have a good amount of paid legal
18 leave -- of paid leave for annual leave. I usually don't
19 use my annual leave. So I am quite dedicated to the
20 administration of justice, and I would continue to be
21 dedicated to the administration of justice, if I were
22 allowed to serve on the bench.

23 **Q. Thank you. Would you briefly describe your**
24 **experience in handling complex, contested Family Court**
25 **matters? And, specifically, discuss any experience you've**

1 **had with the financial aspects of Family Court practice.**

2 A. I have had contested Family Court cases in the
3 area of divorce. The ones that I remember most are the
4 ones -- are the cases that involved termination of parental
5 rights and those matters. There has not been a shortage,
6 in my experience, when it comes to representing people who
7 are, you know, involved in contested matters.

8 Although, I am a Legal Services attorney, I do
9 believe that I would be able to divide large property --
10 large property divisions. I am not a financial advisor. I
11 do not profess to be a financial advisor. I do believe
12 that if the information is provided to me, I would be able
13 to actually assess the value of the property that is before
14 me, and fairly divide it according to South Carolina law.

15 In South Carolina, the average salary in 2014,
16 for households in South Carolina, was about \$45,000 a year
17 per household in South Carolina. If you look at it per
18 capita, it was about \$24,000 per household, not per
19 individual. So in the cases where we were -- where I would
20 see families that have a lot of income, I would -- I
21 believe that I would have the opportunity to observe some
22 of those cases before hearing them, and actually have time
23 to spend with more experienced Family Court judges. But I
24 believe the average income of households in the state
25 indicates that, that would not be a common occurrence in

1 Family Court.

2 Q. Thank you. Ms. Nichols-Graham, the Commission
3 received 118 ballot box surveys regarding you, with 13
4 additional comments.

5 MS. WELLS: Members of the Commission, all
6 the comments were positive, several stating that Ms.
7 Nichols-Graham would be an asset to the South Carolina
8 judiciary, and that she has the temperament and knowledge,
9 ethical background, and experience to serve as a Family
10 Court judge.

11 BY MS. WELLS:

12 Q. Do you have any response?

13 A. I thank everyone who participated in the judicial
14 survey. That's a great thing to hear.

15 Q. Thank you. Just a few issues -- or quick
16 questions. Have you sought or received the pledge of any
17 legislator, either prior to this date or pending the
18 outcome of your screening?

19 A. No.

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

24 A. No.

25 Q. Since submitting your letter of intent to run for

1 this commission -- excuse me -- to run for this seat, have
2 you contacted any members of the Commission about your
3 candidacy?

4 A. No, I have not.

5 Q. Do you understand that you're prohibited from
6 seeking a pledge or commitment until 48 hours after the
7 formal release of the Commission's report, and are you
8 aware of the penalties for violating the pledging rules?

9 A. Yes.

10 MS. WELLS: Members of the Commission, I
11 would note that the Upstate Citizens Committee found Ms.
12 Nichols-Graham Qualified as to constitutional
13 qualifications, physical health, and mental stability. She
14 was found Well Qualified as to ethical fitness,
15 professional, and academic ability, character, reputation,
16 experience, and judicial temperament. And I would note for
17 the record, that any concerns raised during the
18 investigation regarding Ms. Nichols-Graham were
19 incorporated into my questioning of her today.

20 And, Mr. Chairman, I have no further
21 questions.

22 SENATOR MARTIN: Thank you. Any question by
23 members of the Commission?

24 REPRESENTATIVE BANNISTER: Just one quick
25 one.

1 SENATOR MARTIN: Representative Bannister.

2 EXAMINATION BY REPRESENTATIVE BANNISTER:

3 Q. Thanks for being here. On your -- your sworn
4 statement, number 6 asks you about your philosophy on
5 recusal -- or for former associates, law partners,
6 lawyer/legislators, and you wrote, "If the matter cannot be
7 handled without showing fear or favor, then a recusal is
8 necessary."

9 So if you don't mind, I'd like a little more --
10 be a little more pointed. So if somebody from Legal
11 Services, who you worked with -- how many lawyers y'all
12 got?

13 A. We have around fifty across the state.

14 Q. How about the -- working in your office, directly
15 under your supervision?

16 A. Eight.

17 Q. Eight. So if one of those eight shows up, and
18 the other side says, "Hey, I think you have a conflict
19 'cause you worked with that person," what's your philosophy
20 on recusing yourself if that's the case?

21 A. I believe, in the beginning, there will be a
22 period of time where I wouldn't hear cases that involved
23 Legal Services. I think that is customary when new judges
24 are acclimated to the bench, as we have had judges, before,
25 that have worked at the Department of Social Services. And

1 then after those cases have resolved, if I am able to
2 fairly hear -- hear the matters and render a fair decision,
3 without bias, I believe that would be allowed.

4 **Q. And you would have law partners. How about**
5 **lawyer/legislators? If a litigant's lawyer says, "Well,**
6 **this person appearing in front of you is a**
7 **lawyer/legislator, and I think you'll have a conflict**
8 **hearing this case," what would be your position if that was**
9 **the only reason on recusing yourself?**

10 A. I believe that I would be able to hear the case.
11 I believe you are a lawyer/legislator, and I would be able
12 to hear cases that you present; I would not be biased
13 towards you. I -- I have always had the ability to be an
14 independent thinker. I have not partaken in any kind of
15 favoritism. And I don't anticipate anything about that
16 professional quality changing.

17 **Q. Thank you. That answers my question.**

18 SENATOR MARTIN: Any other question or
19 comment?

20 (No response.)

21 SENATOR MARTIN: Hearing none, Ms. Nichols-
22 Graham, we thank you so much for your being here today.
23 This concludes this portion of the screening process. As
24 you know, the record will remain open until such time as
25 the report is published. You could be called back. Until

1 that time, I don't anticipate that being the case. I want
2 to thank you for offering, and for your willingness to
3 serve the people in this very important position.

4 MS. NICHOLS-GRAHAM: Thank you, Chairman.

5 SENATOR MARTIN: Thank you.

6 (Candidate excused.)

7 SENATOR MARTIN: We have Katherine Hall
8 Tiffany, Family Court, 13th Judicial Circuit, Seat 3. Ms.
9 Tiffany, do you have someone with you, you'd like to
10 introduce?

11 MS. TIFFANY: I do. I have my husband of
12 twenty years, Peter Tiffany, with me today.

13 SENATOR MARTIN: Glad to have you with us.
14 Would you raise your hand and take the oath.

15 WHEREUPON:

16 KATHERINE HALL TIFFANY, being duly sworn and
17 cautioned to speak the truth, the whole truth and nothing
18 but the truth, testifies as follows:

19 SENATOR MARTIN: Have you had the
20 opportunity to review your personal data questionnaire?

21 MS. TIFFANY: I did.

22 SENATOR MARTIN: Everything in order?

23 MS. TIFFANY: Yes. A couple of type-o's,
24 here and there, that I apologize for.

25 SENATOR MARTIN: That's fine. That's fine.

1 Do you object to our making this part of your sworn
2 testimony here today?

3 MS. TIFFANY: Not at all.

4 SENATOR MARTIN: It will be done at this
5 point in the transcript.

6 (EXHIBIT NO. 22 - JUDICIAL MERIT SELECTION
7 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR
8 KATHERINE HALL TIFFANY DATED FEBRUARY 29, 2016)

9 (EXHIBIT NO. 23 - JUDICIAL MERIT SELECTION
10 COMMISSION SWORN STATEMENT OF KATHERINE HALL
11 TIFFANY DATED FEBRUARY 29, 2016)

12 SENATOR MARTIN: The Judicial Merit
13 Selection Commission has thoroughly investigated your
14 qualifications for the bench. Our inquiry has focused on
15 nine evaluative criteria. We received no affidavits filed
16 in opposition to your election, no witnesses here to
17 testify. Do you have a brief opening statement you'd like
18 to make?

19 MS. TIFFANY: It's four years ago, I started
20 on this quest. And I'm thrilled to be here again. So
21 thank you for having me.

22 SENATOR MARTIN: If you'd please answer --
23 would you please answer Mrs. Brogdon's questions for you.

24 MS. TIFFANY: Certainly.

25 MS. BROGDON: Good afternoon, Ms. Tiffany.

1 Would you please state for the record, the city and circuit
2 in which you reside.

3 MS. TIFFANY: I live in Greenville, South
4 Carolina. And it's the 13th Judicial Circuit.

5 MS. BROGDON: One final procedural matter.
6 I note for the record that, based on the testimony
7 contained in the candidate's PDQ which has been included in
8 the record, with the candidate's consent, Katherine Tiffany
9 meets the statutory requirements for this position
10 regarding age, residence, and years of practice.

11 EXAMINATION BY MS. BROGDON:

12 **Q. Ms. Tiffany, why do you now want to serve as a**
13 **Family Court judge, and how do you feel your legal and**
14 **professional experience, thus far, will assist you to be an**
15 **effective judge?**

16 A. Obviously, I look to the response that I gave in
17 my application materials. But it really isn't complicated
18 at all. I've done this for twenty years. Family Court is
19 what I know, and it's what I love. I have no desire to be
20 anything other than a Family Court judge. I've been with
21 my firm for twenty years, and probably for the last fifteen
22 years, my practice has focused exclusively on Family Court.
23 I have found it at times thrilling, and at times
24 frustrating, but always challenging. And that is what I've
25 always looked for in my professional life, is to what --

1 what is the next challenge.

2 I've been lucky enough to be with a firm, while
3 we are all different in our political ideology and our
4 religious backgrounds and our upbringing, we have two or
5 three things in common; and that is, we represent everyone
6 with the same level of service. When we complete a case,
7 we always ask ourselves, "What can we do more and what can
8 we do better?"

9 So that is what -- how I've guided my career, and
10 that is what -- what I look to this next challenge to be.
11 I feel as though I've given twenty years to practicing law,
12 I have always tried to tackle the hard stuff. I would
13 welcome the challenge as a Family Court judge, to decide
14 the hard stuff. Because, quite frankly, my experience has
15 been, the relatively easy things will settle. It's the
16 judges who are called on to make the difficult decisions
17 where people can't agree. And I think that my background
18 and experience, exclusively in Family Court, gives me the
19 experience that I believe will give me the discretion -- or
20 the tools to operate with discretion that is so important
21 for Family Court judges' decisions.

22 **Q. Thank you. Ms. Tiffany, are there any areas of**
23 **the law that you would need to additionally prepare for in**
24 **order to serve as a judge? And how would you handle that**
25 **additional preparation?**

1 A. There is no area of Family Court that I'm not
2 familiar with. I have extensive experience in grounds for
3 divorce, representing children as a guardian ad litem --
4 all different kinds of children -- representing parents in
5 custody cases. Thankfully, for the first several years of
6 my practice, we were all subject to Rule 608 appointments,
7 where I do get extensive experience in representing parties
8 and children in DSS actions.

9 The only area of law where I have not acted as
10 counsel of record is juvenile justice -- juvenile justice
11 cases. But fortunately, in the role as a guardian ad litem
12 in the Department of Social Services cases, and as a
13 guardian ad litem in general, I have become familiar with
14 that area of law. But that is definitely an area that I
15 have less experience in.

16 As I've prepared for two other judicial races, I
17 have -- I've been called on to study, extensively, the
18 Department of Juvenile Justice-related statutes. And so I
19 feel I am intellectually familiar with them. And as a part
20 of the experience of going through judicial screening, I
21 have developed a keen interest in following legislation
22 that affects all areas of Family Court. And so I feel that
23 I have -- I have monitored, in that way, that legislation.
24 But that is something that I would definitely, probably
25 need some more observation with other judges. I would like

1 to meet with the solicitor in charge of the -- those cases,
2 and the juvenile public defender, before I take the bench,
3 if elected, and just try to get perspectives from both
4 sides, so that I can feel as best prepared as I can.

5 **Q. Thank you. Ms. Tiffany, you addressed this in**
6 **your sworn affidavit, but could you please explain to**
7 **members of the Commission what you think is the appropriate**
8 **demeanor for a judge.**

9 A. I think, first of all -- and this is -- departs
10 somewhat from what I answered in my application. But I
11 think, first of all, a judge should approach their job with
12 a sense of obligation, not a sense of entitlement. It's a
13 job -- it's a demanding job. And it should be one that you
14 should be prepared to fulfill to the best of your ability.

15 What I am keenly aware of at this point, if I am
16 elected, that I will go from a situation where my time can
17 pretty much be my own, or subject to some restrictions
18 where it will no longer be my own. So I think it's with a
19 sense of obligation that a judge should take the bench.

20 Obviously, I believe that you should have the
21 experience behind you, so that you can see order out of
22 chaos. Because that is what is -- that is what will be
23 before you: high emotions, high conflict. You will have to
24 have that sense of calmness to direct your decision, and to
25 see the patterns of where your decisions should be.

1 I believe that you should be compassionate. I
2 believe that you should be fair. I believe that you should
3 leave everyone with the sense that they've been heard, but
4 you -- but at the same time, the other side not feel that
5 they have been heard too much. I think it is your job to
6 keep order in the courtroom, and to get the job done.

7 **Q. Thank you. Ms. Tiffany, what suggestions would**
8 **you offer for improving the backlog of cases in the Family**
9 **Court system?**

10 A. Fortunately, in Greenville, I believe that we
11 have a fairly current docket. I know in comparison to some
12 other circuits, that is -- that we are much farther ahead.
13 My personal preference when we set contested cases, what I
14 would like to see is -- we tend to do A/B cases. At one
15 point, we did A, B, C cases. And I would like to see some
16 -- some discussion of that continuing. We have moved the
17 start date, in the last several years of court, from nine
18 to 9:30. And I think that can tend to get cases behind,
19 because people show up and they want to have some last-
20 ditch effort at settlement. So my concern is that
21 sometimes that ends up meaning that all -- both cases, or
22 all three cases that are set end up getting continued
23 because you run out of time.

24 My personal preference would be to -- if the --
25 if this would -- would be possible, is to have on the

1 contested docket for the all-day hearings, have attorneys
2 report at nine o'clock, so that you could status the cases
3 at nine o'clock, so that you can then begin promptly at
4 9:30, so that cases can be disposed of and not end up being
5 held over without -- with it being unintentional.

6 **Q. Thank you. Ms. Tiffany, please briefly describe**
7 **your experience in handling complex, contested Family Court**
8 **matters. And specifically, discuss your experience with**
9 **the financial aspects of Family Court work.**

10 A. Okay. Complex Family Court matters. I actually
11 covered a couple of these in my application. The first --
12 what I would call the first, probably, experience with
13 complex Family Court cases was a matter where my partner
14 and I actually represented a man who was going through a
15 divorce, and we dealt with just about every kind of
16 property that there was. We had to divide livestock. We
17 had -- we had to auction livestock. We had to deal with
18 stocks. We had to deal with real estate. We had to deal
19 with transmutation -- or interest acquired by transmutation
20 and special equity.

21 On the property aspect, most recently, I dealt
22 with a property valuation that dealt with an architectural
23 firm. And it involved a pretty newer -- some pretty
24 complex nuances on the issue of enterprise, or personal
25 goodwill.

1 In terms of finances, I've dealt with different
2 alimony, which I consider to be one of the most difficult
3 issues for -- to predict for a client. Because not only is
4 it just the assessment of alimony, but what goes into that
5 assessment in terms of trying to capture someone's income;
6 for example, someone being self-employed, trying to arrive
7 at what is their actual income for that.

8 With custody cases, the complex aspects that I've
9 dealt with -- and, again, I will refer to my application
10 for what I consider to be one of my most significant
11 custody cases. For three years, I represented a father who
12 was seeking custody of a special needs child. The mother
13 was awarded temporary custody, and after three years we
14 were successful in regaining custody of that child on a
15 permanent basis. We were dealing with parents who lived in
16 two different jurisdictions. We were dealing with mental
17 illness on the part of one of the parties. We were dealing
18 with special needs on the part of the child. So that
19 involved me being knowledgeable enough on the child's
20 special needs, and on the issues that we had to deal with
21 in terms of mental illness, to try to navigate that case.

22 Let's see. Other finances. I have dealt with
23 all aspects of child support. I've been lucky enough to
24 speak before the South Carolina Bar members on issues
25 involving child support, child support of extremes, the --

1 and I believe the topic was actually "Child Support for the
2 Haves and the Have Nots, or child support that is off the
3 charts." So looking at not only at the type cases that
4 involve child support, but the exceptions to the normal
5 child support cases, those that don't necessarily fall with
6 the guidelines.

7 Q. Thank you. Ms. Tiffany, the Commission received
8 215 ballot box surveys regarding you, with 53 additional
9 comments. The ballot box survey, for example, contained
10 the following positive comments:

11 "I regard Katherine as an expert in the field of
12 family law, with the highest moral character. She would be
13 an exceptional judge -- she would be an exception judge and
14 well received by our -- or in the community that we serve.
15 Aside from being an outstanding practitioner, she is an
16 active leader of our state and local Bar, often
17 participating as a speaker, and sharing her vast knowledge
18 and time to educate others."

19 And another comment says:

20 "Katherine Tiffany is one of the most experienced
21 and well prepared Family Court trial practitioners ever to
22 offer for Family Court judge. The State of South Carolina
23 will be the winner if she is elected. She is truly a once-
24 in-a-generation leader whose intellectual talents and deep
25 compassion mark her as a top tier candidate."

1 And then, finally, another comment says:

2 "Ms. Tiffany is extremely well qualified to be a
3 Family Court judge. She has a wide range of experience on
4 all issues in Family Court, and has handled extremely
5 difficult cases in the past, of which I was opposing
6 counsel. She vigorously represented her clients in those
7 matters, while also maintaining a high level of respect and
8 civility. Not only from me, but also from my clients. She
9 is very knowledgeable in Family Court law."

10 Of all of your -- of all of the comments, only
11 two of the written comments expressed concerns. One
12 questioned your professionalism in the courtroom, stating
13 that you speak before thinking. What response would you
14 offer to this concern?

15 A. I wish I knew the context in which that came up.
16 I will tell you sometimes my head does get ahead of my --
17 or my mouth might get ahead of my head. Because I do -- I
18 do get very stimulated by the work that I do. I don't know
19 that I would speak before I think. I think sometimes
20 there's something that I want to say, and I want very much
21 to say it. I do wish I knew the -- and I understand these
22 comments are -- are anonymous. And so, obviously, someone
23 felt it was important enough to say.

24 I wish I could tell you I'm perfect. I wish I
25 could tell you that I might not sometimes speak out of

1 turn. But what I do understand is that I understand the
2 obligation that comes with being a Family Court judge, and
3 my job is to listen. And my job is to understand. And I
4 would work very hard to, hopefully, impress upon that
5 person, that I have that ability.

6 **Q. Thank you. And the other comment questioned your**
7 **judicial temperament. What response would you offer to**
8 **that?**

9 A. I wasn't aware of -- I wasn't aware of that
10 comment. Again, I guess I would have to say in response I
11 -- again, I would say I'm human. I have been very touched
12 by the support of my Bar. And if there is even one person
13 that has concerns about how I conduct myself, then that's
14 enough to keep me ever mindful of what it is I'm supposed
15 to do as a Family Court judge. In some odd way, it's a
16 good thing to have those comments, because we all need
17 those reminders. We all need to remember that we have a
18 job to do, and that it is -- it is before everyone.

19 **Q. Thank you, Ms. Tiffany. Just a couple of quick**
20 **housekeeping questions. Have you sought or received the**
21 **pledge of any legislator, either prior to this date or**
22 **pending the outcome of this screening?**

23 A. No.

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

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

3 A. No.

4 **Q. Since submitting your letter of intent to run for**
5 **this seat, have you contacted any members of the Commission**
6 **about your candidacy?**

7 A. No.

8 **Q. Do you understand that you're prohibited from**
9 **seeking a pledge or commitment until 48 hours after the**
10 **formal release of the Commission's report, and are you**
11 **aware of the penalties for violating the pledging rules?**

12 A. Yes.

13 MS. BROGDON: And I would note that the
14 Upstate Citizens Committee found Mrs. Tiffany is Well
15 Qualified in the evaluative criteria of ethical fitness,
16 professional and academic ability, character, reputation,
17 and experience, and Qualified as to constitutional
18 qualifications, physical health, and mental stability. I
19 would just note for the record that any concerns raised
20 during the investigation regarding this candidate were
21 incorporated into my questions today.

22 Mr. Chairman, I have no further questions.

23 SENATOR MARTIN: Thank you. Any questions
24 by members of the Commission?

25 MR. WILCOX: I have one.

1 SENATOR MARTIN: Dean Wilcox.

2 MR. WILCOX: I just want to put on the
3 record that Ms. Tiffany had the highest score of all the
4 scores on the Family Law test. And I did have one question
5 for you. You got a 99 from one of the graders; what did
6 you do wrong?

7 SENATOR MARTIN: Well, she also got -- she
8 also had the highest score the last time too. So she's
9 consistently a good tester, which indicates a very high
10 intellectual capacity for this subject matter. And we
11 appreciate your --

12 MS. TIFFANY: To answer Dean Wilcox, I think
13 -- I'm not that great of a typist. So in this case, my
14 fingers could not get ahead of what I was thinking.

15 SENATOR MARTIN: Any other comment or
16 question?

17 (No response.)

18 SENATOR MARTIN: Hearing none, Ms. Tiffany,
19 thank you so much.

20 MS. TIFFANY: Thank you.

21 SENATOR MARTIN: This concludes this portion
22 of our screening process. As you know, the record will
23 remain open until the report is published. You could be
24 called back, but I doubt that will occur. Thank you for
25 offering, and I thank you for your willingness to serve.

1 MS. TIFFANY: Thank you. Thank you,
2 everyone.

3 (Candidate excused.)

4 SENATOR MARTIN: Is there a problem with
5 going into executive session?

6 (No response.)

7 SENATOR MARTIN: Hearing none, we'll
8 consider ourselves in executive session.

9 (Off-the-record executive session.)

10 SENATOR MARTIN: We're out of executive
11 session. The first order of business will be to make a
12 determination as to Qualified. Do I have a motion? Ms.
13 Wall?

14 MS. WALL: I move that all candidates get --

15 SENATOR MARTIN: Wait a minute. On the
16 record, no votes were taken in executive session

17 So at least five candidates. And we have a
18 motion from Ms. Wall.

19 MS. WALL: That the five remaining
20 candidates -- Adams, Hodges, Howard, Nichols-Graham, and
21 Tiffany -- be found Qualified.

22 SENATOR MARTIN: All right.

23 MR. WILCOX: Second.

24 SENATOR MARTIN: I have a motion to second.
25 All those in favor, please say "aye."

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

2 SENATOR MARTIN: Opposed no?

3 (No response.)

4 SENATOR MARTIN: The ayes have it. So all
5 are found Qualified. Now we'll need to see -- determine
6 the three who will be nominated. And we'll go in order.
7 Each member of the commission will get three votes. I have
8 a proxy for Senator Campsen, that I will use. Each member
9 will have three votes. And we'll go -- we'll start with
10 Ms. Adams. All the Commission members who would vote for
11 Ms. Adams, please raise your hands.

12 (Commission members cast their vote.)

13 SENATOR MARTIN: All right. All for Mr.
14 Hodges, please raise your hand. And I'm going to vote for
15 Senator Campsen, proxy.

16 (Commission members cast their vote.)

17 MS. DEAN: Hodges got five. Ms. Adams got
18 six.

19 SENATOR MARTIN: All right. And now Ms.
20 Kimberly Boan Howard.

21 (Commission members cast their vote.)

22 SENATOR MARTIN: All right. Ms. Nichols-
23 Graham.

24 (Commission members cast their vote.)

25 SENATOR MARTIN: And Ms. Tiffany.

1 (Commission members cast their vote.)

2 MS. DEAN: And the proxy?

3 SENATOR MARTIN: And the proxy. So what are
4 we at? All right. We have Ms. Adams who's nominated, Ms.
5 Tiffany -- Ms. Tiffany is nominated, and then we have a tie
6 between Mr. Hodges and Ms. Nichols-Graham.

7 MS. DEAN: All three of these proceed to the
8 next ballot.

9 SENATOR MARTIN: All three? Okay. All
10 three proceed to the next ballot. All right. All those
11 who would vote for Mr. Hodges, please raise your hand.

12 (Commission members cast their vote.)

13 SENATOR MALLOY: We only get one vote this
14 time.

15 SENATOR MARTIN: Only one vote. Right.

16 (Commission members cast their vote.)

17 SENATOR MARTIN: All right. And Howard --
18 yeah, Ms. Boan Howard. Right. Ms. Boan Howard.

19 MS. DEAN: Two and the proxy?

20 SENATOR MARTIN: And the proxy.

21 (Commission members cast their vote.)

22 SENATOR MARTIN: And Ms. Nichols -- Nichols-
23 Graham.

24 (Commission members cast their vote.)

25 SENATOR MARTIN: We've got to vote again.

1 All right. We've got to vote again, 'cause it's two for
2 Mr. Hodges and three for Ms. Howard and five for Nichols.
3 I'm going to get -- consult with the local delegation over
4 here.

5 REPRESENTATIVE BANNISTER: I'm going to
6 switch to Hodges.

7 SENATOR MARTIN: All right. Let's go with
8 Mr. Hodges.

9 (Commission members cast their vote.)

10 MS. DEAN: Four with the proxy?

11 SENATOR MARTIN: And the proxy for -- all
12 right. Ms. Howard.

13 (Commission members cast their vote.)

14 SENATOR MARTIN: Ms. Nichols-Graham.

15 (Commission members cast their vote.)

16 SENATOR MARTIN: All right. Is that two?

17 MS. DEAN: That's two. Hodges and Nichols-
18 Graham. Everybody gets one vote.

19 (Off-the-record discussion.)

20 SENATOR MARTIN: All right. We're ready to
21 go. Mr. Hodges.

22 (Commission members cast their vote.)

23 MS. DEAN: One, two, three four. And your
24 proxy?

25 SENATOR MARTIN: The proxy. All right. We

1 know the outcome. Mr. Nichols -- I mean, Ms. Nichols-
2 Graham. We'll pause just for a second, here, as we
3 regroup.

4 REPRESENTATIVE BANNISTER: Why don't we take
5 a five-minute break?

6 SENATOR MARTIN: Do you want to take a five-
7 minute break?

8 MS. WALL: I would.

9 SENATOR MARTIN: Okay. Well, we'll stand in
10 recess for five minutes, and then we'll come back.

11 (A recess was taken from 4:49 p.m. to 4:57 p.m.)

12 SENATOR MARTIN: All right. We're going to
13 go back on the record, and we will try it again. First,
14 we'll -- the first person up will be Mr. Hodges. Those in
15 favor of voting for Mr. Hodges, please raise your hand.
16 And the proxy, right.

17 (Commission members cast their vote.)

18 SENATOR MARTIN: And Ms. Nichols-Graham.

19 (Commission members cast their vote.)

20 SENATOR MARTIN: So we have Ms. Adams, Mr.
21 Hodges, and Ms. Tiffany will all be nominated. Thank you
22 very much. So we will move, now --

23 SENATOR MALLOY: Can we take a break before
24 we get to --

25 SENATOR MARTIN: If you want to. All right.

1 We'll take a five-minute break. Do you want to take a
2 five-minute break?

3 SENATOR MALLOY: Yes.

4 SENATOR MARTIN: All right. Five-minute --
5 another five-minute break.

6 (A recess was taken from 4:58 p.m. till 5:09 p.m.)

7 SENATOR MARTIN: We have James C.
8 Alexander, Family Court, 13th Judicial Circuit, Seat 4.
9 Mr. Alexander, do you have anyone with us, you'd like to
10 introduce?

11 MR. ALEXANDER: I do. I have my wife with
12 me, Linda, we've been married 45 years as of this month.
13 So she came down here with me.

14 SENATOR MARTIN: I know both of y'all very
15 well. And we're glad to have you with us. If you would,
16 please, raise your hand and take the oath.

17 WHEREUPON:

18 JAMES CRAYTON ALEXANDER, being duly sworn
19 and cautioned to speak the truth, the whole truth and
20 nothing but the truth, testifies as follows:

21 SENATOR MARTIN: Mr. Alexander, have you had
22 the opportunity to review your personal data questionnaire?

23 MR. ALEXANDER: I have.

24 SENATOR MARTIN: Any changes need to be
25 made? Any amendments?

1 MR. ALEXANDER: No, sir.

2 SENATOR MARTIN: All right. Do you object
3 to our making this summary a part of your sworn testimony?

4 MR. ALEXANDER: No, sir.

5 SENATOR MARTIN: It will be done at this
6 point in the transcript.

7 (EXHIBIT NO. 24 - JUDICIAL MERIT SELECTION
8 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR JAMES
9 CRAYTON ALEXANDER DATED MARCH 1, 2016)

10 SENATOR MARTIN: The Judicial Merit
11 Selection Commission has thoroughly investigated your
12 qualifications for the bench. We've received no affidavits
13 in opposition to your election. No witnesses are present
14 to testify. Do you have a brief opening statement you'd
15 like to make?

16 MR. ALEXANDER: A brief one. I don't know
17 that y'all need a lot. I've been practicing law for a long
18 time, and I still enjoy the practice. My son's a lawyer,
19 so I get to practice with my son. Been practicing with him
20 about thirteen years, now, and it's been good. So I've had
21 a good career. And I've applied for this position because
22 I hope I can make a good contribution to the Family Court.

23 SENATOR MARTIN: Good enough. Would you
24 please answer Mr. Davidson's questions.

25 MR. DAVIDSON: Thank you, Mr. Chairman.

1 Nice to see you, Mr. Alexander. You should have before
2 you, the sworn statement you provided, with detailed
3 answers to over thirty questions regarding judicial
4 conduct, statutory qualifications, office administration,
5 and temperament. Are there any amendments you'd like to
6 make at this time?

7 MR. ALEXANDER: There is none.

8 MR. DAVIDSON: Mr. Chairman, I would ask
9 that Mr. Alexander's sworn statement be entered as an
10 exhibit at this time.

11 SENATOR MARTIN: Is there any objection?

12 (No response.)

13 SENATOR MARTIN: Hearing none, it will be
14 entered into the record at this time.

15 (EXHIBIT NO. 25 - JUDICIAL MERIT SELECTION
16 COMMISSION SWORN STATEMENT OF JAMES CRAYTON
17 ALEXANDER DATED MARCH 12, 2016)

18 MR. DAVIDSON: Could you please state, for
19 the record, the city and circuit in which you reside?

20 MR. ALEXANDER: I reside in the 13th
21 Circuit, Pickens County.

22 MR. DAVIDSON: In the city?

23 MR. ALEXANDER: The City of Pickens would be
24 the closest. That's where I practice, the City of Pickens.
25 But I live in Pickens County, outside the city limits.

1 MR. DAVIDSON: For the record, based on the
2 testimony contained in the candidate's PDQ which has been
3 included in the record, with the candidate's consent, Mr.
4 Alexander meets the statutory requirements for this
5 position regarding age, residence, and years of practice.

6 EXAMINATION BY MR. DAVIDSON:

7 Q. Mr. Alexander, could you please explain to the
8 Commission why you would like to serve as a Family Court
9 judge, and how do you feel your legal and professional
10 experience, thus far, will assist you to be an effective
11 judge?

12 A. I've been practicing law since 1974. I spent
13 four years in the Air Force. And I came back home, grew up
14 -- was not born here. My dad was in the Navy. I came back
15 here, back home, at three months from San Diego,
16 California, and have been here since. I came back in 1978,
17 after I got out of the Air Force, and practiced law in
18 Greenville County, first. And since 1987, Pickens County,
19 since that times.

20 I've had a long career. I feel blessed. I feel
21 I've helped a lot of people through the years. I've had
22 the opportunity -- as I've said, my son went on to become a
23 lawyer, and we practice together. We have a good practice.
24 I think we've helped a lot of people.

25 I have seen what I consider a lot of good judges,

1 how -- what is the proper way to do things, and what's not
2 the proper way to do things. I've seen, you know, good
3 judges, mediocre, bad. I mean, since 1978, I've seen a lot
4 of it. And I've practiced extensively in the Family Court.
5 I've always done a general practice -- a general trial
6 practice. And the Family Court's always been a big a part
7 of that practice. So I've had a lot of experience in the
8 Family Court.

9 I consider Family Court to be important. I mean,
10 our society is formed around our families. I mean, that's
11 the basic core of our society. And when those families
12 break up, I think it's important that if they're not going
13 to live together again, they need to be able to move away
14 in a positive manner; and how their case is handled in the
15 Family Court sets the stage for how they go on about their
16 lives. And, hopefully, in a positive manner. And the
17 trial judge has a lot to do with that. Obviously, he is
18 the one who makes decisions, or helps them get the case
19 settled.

20 So with the experience I've had -- I've handled,
21 as far as I know, about every kind of case, many times,
22 that can come before the Family Court. And I think my
23 experience would allow me to help people adjudicate
24 disputes, and make the system more friendly for the
25 litigants. The litigants are the ones that are involved,

1 and they need to be -- get on with their lives. And that's
2 what I would hope to do.

3 **Q. Are there any areas of the law that you would**
4 **need to additionally prepare for in order to serve, and if**
5 **so, how would you handle that additional preparation?**

6 A. I would be -- you know, very candidly, it's been
7 about six or seven years since I've handled the juvenile
8 adjudication. That's the one area. As far as the -- I've
9 been able to keep up with DSS. My son has a guardian --
10 represents the guardian in Pickens County. And I will go
11 over there -- and I represent the guardian in a lot of
12 occasions, so I've been able to keep up with DSS. I do a
13 lot of work on the private side of the docket.

14 I worked for the public defender in Pickens
15 County, back when there was only one. Before you had the
16 circuit court system, I did every juvenile adjudication,
17 literally, that was appointed by the public defender for
18 about eight years. So I've had extensive experience in
19 that area. But I haven't done one in about five or six
20 years, so I would need a little bit. But other than that,
21 I think it would be a short learning curve on that issue.
22 But that would be one area.

23 **Q. Could you explain what you think is the**
24 **appropriate demeanor for a judge?**

25 A. I think a judge needs to be courteous, respectful

1 to the litigants, the lawyers, and all court personnel, and
2 has absolutely got to be impartial and fair to everyone. I
3 mean, those are -- if you -- you're courteous, you're
4 respectful, you're fair and impartial, I think those are
5 the things that make a good judge.

6 **Q. What suggestions would you offer for improving**
7 **the backlog of cases on the Family Court docket?**

8 A. Mediation has been a wonderful thing, in at least
9 in my practice, and that's gone a long way towards settling
10 things. I will say one thing: It seems like sometimes in
11 mediation, we get pretty close to settling cases, but we
12 don't quite get there sometimes. And I know in Pickens
13 County, we'll settle that case for an all-day case, and
14 then charge the client for the time involved in getting to
15 trial. And then we get there, and a lot of times those
16 cases settle.

17 If you settle both cases, an A and B case, then I
18 guess the judge goes home; I don't know what he does. But
19 if he settles both of them -- I talked to one lawyer in
20 another county, they do an A, B, C, and a D case. Which to
21 me seems like a pretty good idea; that way, you've got
22 something to do in the afternoon, if you settle both the
23 cases.

24 But, you know, another way to do it may be -- in
25 Pickens County, this judge will -- this office is Pickens

1 County residency. You may want to consider doing some
2 status conferences on some of those cases, before they're
3 set for an all-day case. Because if you've got -- come
4 close in mediation, you might be able to settle it at the
5 status conference, rather than set it for a full day.

6 So there's several different things that we can
7 do to make the system more efficient. One of my biggest
8 complaints from my clients are, "Why does it take so long?"
9 And those are some things we can do to maybe shorten that
10 time a little bit. And there -- you know, there are other
11 things.

12 **Q. Thank you. Lastly, please briefly describe your**
13 **experience in handling complex, contested Family Court**
14 **matters. And, specifically, discuss your experience with**
15 **the financial aspects of Family Court work.**

16 A. Well, I've handled since 1978 -- I do a general
17 practice. I do civil work as well as Family Court work.
18 I've handled equitable distribution of property, alimony
19 factors, custody of children throughout my career. I mean,
20 I -- I do that on a routine basis, dealing with the
21 financial aspects of it. The statutory factors for
22 distribution of property, for alimony, the whole gamut of
23 cases. And that's basically what I've done since 1978.

24 **Q. Moving on to the ballot box surveys. The**
25 **Commission received 132 ballot box surveys regarding your**

1 candidacy, with 17 additional comments. The surveys, for
2 example, contained the following positive comments:

3 "He's an excellent attorney. Well knowledgeable.
4 His temperament is well suited for the Family Court, and he
5 is someone who understands that there's a difference
6 between being a zealous advocate for your client, and
7 simply impeding the case."

8 Eight of the written comments expressed concerns;
9 four of those eight raised concerns about your age. What
10 response would you offer?

11 A. You know, I can't get any younger. I mean,
12 that's about the only thing I can say. I wish I could. I
13 told -- somebody was asking me about that, and I said,
14 "Well, I guess I can get a toupee and have some Botox."

15 But I am what I am. I can't do anything about
16 it. I think, age-wise, I've had a lot of experience. And
17 I would just do the best I can. I mean, I -- very
18 candidly, I can serve five years and six months of this
19 term period. I will not be eligible for reelection. I
20 mean, that's a fact. And some people may have some
21 concerns with that, but I can't do anything about it.

22 I just want -- and I'm not doing -- I'm not
23 looking for a job. That's what I told one person, that's
24 what one person asked me. You know, I practice with my
25 son, I've got a good job right now. You know, so I'm not

1 looking for something to do.

2 I really think I can make the system better. And
3 at least I'm -- that's what I want to try to do. I'm on
4 the down end of my career -- obviously, at my age, I am.
5 And I would just like to see if I can't do something to
6 give back to a profession that's been so good to me
7 throughout my life.

8 **Q. Thank you. The four remaining comments indicated**
9 **concerns about temperament. Do you have any response to**
10 **those concerns?**

11 A. I can only say I'm sorry some people feel that
12 way. My philosophy -- and I've had a lot of contentious
13 cases. My philosophy has always been, that if -- you can
14 disagree about the issues, but you need to do it in an
15 agreeable manner. And that's what I've always tried to do.

16 I didn't -- I can't sit here and testify under
17 oath, and say I've never been a little off with some
18 lawyers. I mean, I'm sure it's happened. I mean, anybody
19 says that, I'd like to meet them. But that's not my
20 philosophy in how I normally try to do things. I learned a
21 long time ago, that you can settle any kind of a case -- or
22 you have the potential of settling a case, if you get along
23 with the other lawyer, professionally and personally. If
24 you don't, if the two lawyers are at odds, you're not going
25 to settle anything; you're going to be in a knock-down,

1 drag-out litigation, even though it may not be in your
2 client's best interest.

3 So I always try to get along with the other
4 lawyer. And I've had a lot of cases -- I cited several in
5 my testimony, about some very contentious cases, to where
6 the other lawyer and I, who I'd never met before on that
7 case, we got along well, and we were able to settle the
8 cases. So getting along is important. That's what I will
9 try to do. And I'm sorry if I've made somebody mad along
10 the way; it's not my intent.

11 **Q. Thank you. At this time, I'm going to ask you a**
12 **series of quick questions. Have you sought or received a**
13 **pledge of any legislator, either prior to this date or**
14 **pending the outcome of your screening?**

15 A. I have not.

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

20 A. You know, I am not. And I will -- since I've
21 become a judicial candidate, I have not.

22 **Q. Since submitting your letter of intent to run for**
23 **this seat, have you contacted any members of the Commission**
24 **about your candidacy?**

25 A. I have not.

1 Q. Do you understand that you are prohibited from
2 seeking a pledge or commitment until 48 hours after the
3 formal release of the Commission's report, and are you
4 aware of the penalties for violating the pledging rules?

5 A. I do understand.

6 MR. DAVIDSON: I know that the Upstate
7 Citizens Committee found Mr. Alexander to be Qualified as
8 to constitutional qualifications, physical health, and
9 mental stability. He was found Well Qualified as to
10 ethical fitness, professional and academic ability,
11 character, reputation, experience, and judicial
12 temperament.

13 Mr. Chairman, I would note that any concerns
14 raised during the investigation regarding this candidate
15 were incorporated into my questioning today. I have no
16 further questions.

17 SENATOR MARTIN: Thank you, Mr. Davidson.
18 Any questions by members of the Commission?

19 (No response.)

20 SENATOR MARTIN: Hearing none, the
21 Commission -- we have a couple new Commission members with
22 us today. And I'll tell them we've been -- we've been --
23 I've been privileged to know Jim Alexander since they moved
24 back to Pickens, back in the '80s. And he and Linda have
25 been in our church --

1 SENATOR MALLOY: Teaches Sunday School.

2 SENATOR MARTIN: And we taught Sunday School
3 together for a while. You remember well.

4 SENATOR MALLOY: I do.

5 SENATOR MARTIN: And he's a much better
6 teacher. They would come when he -- the Sundays he taught.

7 MR. ALEXANDER: I appreciate that.

8 SENATOR MARTIN: And he still does.

9 MR. ALEXANDER: I still teach.

10 SENATOR MARTIN: You teach a different class
11 now.

12 MR. ALEXANDER: That's right. I will teach.

13 SENATOR MARTIN: That's right. But any --
14 any other comments?

15 SENATOR MALLOY: Well, I'll add one thing.
16 He didn't say it this way, but he did say that -- that --
17 something to the effect, not in these words, that he and
18 his wife had something in common: They were in love with
19 the same man. But what he really said was, he was her
20 better half.

21 MR. ALEXANDER: I have made that mistake,
22 Senator. And I --

23 SENATOR MALLOY: And he's sorry he said it
24 now. And I think that he went through a period of time,
25 whenever he was talking about John -- John Bolt, that he

1 worked for John Bolt, and most of the folks that remember
2 the Civil Rights struggle in the fight, they knew that he
3 would represent any and everybody. We were in law school
4 with his son, Sam.

5 MR. ALEXANDER: That's right.

6 SENATOR MALLOY: And so -- but we know that
7 you've been here before, and -- and have done a good job.

8 MR. ALEXANDER: Thank you, Senator.

9 SENATOR MARTIN: Any other comments?

10 (No response.)

11 SENATOR MARTIN: Hearing none, thank you
12 very much. That will completion this portion of the
13 screening process. As you know, the record will remain
14 open until the report is published. So we thank you for
15 your offering and for your willingness to serve. And I
16 hope you have a good trip back to Pickens.

17 MR. ALEXANDER: Thank you, Senator.

18 SENATOR MARTIN: Thank you.

19 MR. ALEXANDER: Thank you, Ladies and
20 Gentleman.

21 (Candidate excused.)

22 SENATOR MARTIN: Welcome.

23 MS. ROPER: Thank you.

24 SENATOR MARTIN: We have Karen Sanchez
25 Roper, Family Court, 13th Judicial Circuit, Seat 4. Do you

1 have someone with you, you'd like to introduce to us?

2 MS. ROPER: Yes, I do, Senator Martin. I
3 have with me, my husband of almost 22 years, Ken Roper. He
4 is also my law partner, not for quite as long. But I did
5 hire him on a few -- some years ago -- some 15 years ago.

6 SENATOR MARTIN: Does he have a good work
7 ethic?

8 MS. ROPER: He does. I have to say, in both
9 capacities, he's turned out quite well.

10 SENATOR MARTIN: You trained him; is that
11 right?

12 MS. ROPER: Yes. Yes.

13 SENATOR MARTIN: All right. Would you
14 please -- now I'm going to put her under oath.

15 WHEREUPON:

16 KAREN SANCHEZ ROPER, being duly sworn and
17 cautioned to speak the truth, the whole truth and nothing
18 but the truth, testifies as follows:

19 SENATOR MARTIN: Ms. Roper, have you had the
20 opportunity to review your personal data questionnaire?

21 MS. ROPER: Yes, I have.

22 SENATOR MARTIN: Any need for change or
23 amendment, related to it?

24 MS. ROPER: No, I do not. I have the copy
25 of the amendment, here, that I'd submitted earlier. So it

1 all appears correct.

2 SENATOR MARTIN: Oh, okay. Do you object to
3 us making it a part of the sworn testimony?

4 MS. ROPER: No, I do not.

5 (EXHIBIT NO. 26 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR KAREN
7 SANCHEZ ROPER DATED MARCH 3, 2016)

8 (EXHIBIT NO. 27 - AMENDMENT TO PERSONAL DATA
9 QUESTIONNAIRE DATED APRIL 28, 2016)

10 SENATOR MARTIN: The Judicial Merit
11 Selection Commission has thoroughly investigated your
12 qualifications for the bench. Our inquiry has focused on
13 the nine evaluative criteria. We received no affidavits in
14 opposition to your election, no witnesses are present to
15 testify. Do you have a brief opening statement you'd like
16 to make?

17 MS. ROPER: No, I do not have any opening
18 statement, other than to just thank you for having me here
19 today. I know that y'all have had a long day, so I will
20 keep it brief. And so far, I've thoroughly enjoyed this
21 process of getting to know legislators as well as my fellow
22 candidates. So thank you for letting me be here to speak
23 with you today.

24 SENATOR MARTIN: Thank you. If you would,
25 kindly answer the questions of Ms. Brogdon, your screening

1 attorney.

2 MS. ROPER: Yes.

3 MS. BROGDON: Good afternoon, Ms. Roper.

4 MS. ROPER: Hello.

5 MS. BROGDON: How are you?

6 MS. ROPER: Good to see you again.

7 MS. BROGDON: Ms. Roper, you have before you
8 the sworn statement you provided, with detailed answers to
9 over thirty questions regarding judicial conduct, statutory
10 qualifications, office administration, and temperament.

11 MS. ROPER: Yes.

12 MS. BROGDON: Are there any amendments you'd
13 like to make to your sworn statement?

14 MS. ROPER: No, there are not.

15 MS. BROGDON: Mr. Chairman, at this time I
16 would ask that Ms. Roper's sworn statement be entered as
17 an exhibit into the hearing record.

18 SENATOR MARTIN: Is there any objection?

19 (No response.)

20 SENATOR MARTIN: Hearing none, it will be
21 entered into the record at this time.

22 (EXHIBIT NO. 28 - JUDICIAL MERIT SELECTION
23 COMMISSION SWORN STATEMENT OF KAREN SANCHEZ ROPER
24 DATED MARCH 3, 2016)

25 MS. BROGDON: Ms. Roper, please state for

1 the record, the city and circuit in which you reside.

2 MS. ROPER: I live in Pickens, South
3 Carolina, in the 13th Judicial Circuit.

4 MS. BROGDON: I note for the record, that
5 based on the testimony contained in the candidate's PDQ
6 which has been included in the record, with the candidate's
7 consent, Ms. Roper meets the statutory requirements for
8 this position regarding age, residence, and years of
9 practice.

10 EXAMINATION BY MS. BROGDON:

11 **Q. Ms. Roper, why do you now want to serve as a**
12 **Family Court judge, and how do you feel your legal and**
13 **professional experience, thus far, will assist you to be an**
14 **effective judge?**

15 A. Well, answering that question really takes me
16 back to why I wanted to become an attorney to begin with.
17 And I applied to law school with the intention of working
18 in the Family Court system, it's issues involving children
19 and families have always been very important to me. And
20 I've made choices in my career, as well as in my personal
21 life, to focus on those areas, anywhere from starting my
22 family law practice, to volunteering with organizations
23 that focus on the health and welfare of children, such as
24 First Steps or Prevent Child Abuse or the Mental Health
25 Board. And I get a lot of satisfaction from doing that.

1 And as well as in my practice with Family Court
2 litigants, I know that families are extremely important and
3 the issues involving families are. I have a husband and
4 two sons, as we mentioned before, and they are the most
5 important things in my life. And I do know that my clients
6 feel the same way about their families. So when they are
7 turning over the most personal and private issues to a
8 Family Court to make a decision, I think it's important
9 that a Family Court judge be someone that they know is
10 going to treat them with dignity and respect, and that they
11 are going to have compassion for the situation; they're
12 going to consider the issues very carefully, and render a
13 thoughtful decision based upon what's best for that family.

14 So I'm hoping that if I -- my life experiences
15 and my education have trained me for that well, that I'll
16 be able to bring that thoughtful approach, hopefully, to
17 the Family Court bench.

18 **Q. Thank you. Ms. Roper, are there any areas of the**
19 **law that you would need to additionally prepare for in**
20 **order to serve as a judge, and how would you handle that**
21 **additional preparation?**

22 A. Okay. Not -- not so much that I think I would
23 have to take a great deal of additional preparation. But
24 as I did indicate in my personal data questionnaire, I do
25 not have a vast array of experience in juvenile matters.

1 I've handled a few juvenile matters. But in our area, it
2 seems to be that most of the juvenile cases are pretty
3 quickly taken up by the public defender's office. And I
4 have not had, you know, a large client base in that regard.

5 So I certainly am familiar with juvenile rules
6 and statutes, and have also worked with some juvenile
7 issues in my capacity for the school district of Pickens
8 County, where I've handled their disciplinary hearings for
9 the last ten years or so. So I do have some familiarity
10 with that process from that end. But that would probably
11 be the area that I'd have the least experience.

12 **Q. Okay. Thank you. Ms. Roper, although you**
13 **addressed this in your sworn statement, could you please**
14 **explain to the members of the Commission what you think is**
15 **the appropriate demeanor for a judge?**

16 A. Certainly. I think that a judge should always be
17 patient and kind and respectful to the parties. I know
18 that there are a lot of tough situations and tough cases
19 that come before the Family Court. And I've seen many of
20 those in my years of practice. But my goal would to be --
21 always to be the calmest person in the room.

22 I have seen, unfortunately, situations,
23 sometimes, where litigants leave the Family Courtroom and
24 they feel like that they haven't been heard, or that
25 they've been disrespected. And I certainly would not want

1 to have any type of atmosphere like that in a courtroom
2 that I was presiding over. I firmly believe that the
3 Family Court judge does set the tone for the proceedings in
4 the courtroom. So if -- my goal would be to project a
5 calm, pleasant, and polite manner, so that everybody would
6 respond accordingly.

7 And I think if you go into the hearing, assuring
8 everybody that everyone's going to be heard, and everyone's
9 going to have their turn to speak, and we're all going to
10 abide by the same rules in this process, that no matter
11 what the decision is, when they leave the courtroom,
12 they'll at least not feel like that injustice was served.

13 **Q. Thank you. Ms. Roper, what suggestions would you**
14 **offer for improving the backlog of cases on the Family**
15 **Court docket?**

16 A. Well, fortunately, I believe, in Pickens County,
17 Judge Alvin Johnson has left us in pretty good shape. I
18 know that the last time I checked I believe that we're only
19 at maybe five percent of cases pending, that are over 365
20 days. So my priority would be, first of all, to do no harm
21 to come to that situation, and not fix something that's not
22 broken.

23 Where I tend to see more of the backlog is really
24 in the DSS matters in our county. I think our Department
25 of Social Services does a wonderful job getting, maybe, the

1 first 72-hour hearing, or the 35-hour -- 35-day merits
2 hearing scheduled in a timely manner. But if there are
3 continuances, for one reason or another, sometimes those
4 cases may fall into an abyss and -- and take a long time to
5 get resolved. But I would certainly -- I've already talked
6 with our clerk of court, and would certainly want to work
7 with him to resolve any of those issues. But as for now, I
8 think we may be in pretty good shape in Pickens County.

9 **Q. Okay. Thank you. Ms. Roper, please briefly**
10 **describe your experience in handling complex, contested**
11 **Family Court matters. And, specifically, discuss your**
12 **experience with the financial aspects of Family Court work.**

13 A. Certainly. I have handled many cases involving
14 equitable distribution of assets, including division of
15 retirement accounts. I have prepared QDRO's, or Qualified
16 Domestic Relations Orders, for clients on these division of
17 retirement accounts. I've handled contested alimony cases,
18 seeking alimony and defending against alimony awards.

19 I've handled many cases with division of real
20 property, prepared deeds for transfer of property, pursuant
21 to Family Court orders, as well as have handled division of
22 the family business. And sometimes small family
23 businesses, even though the numbers may not be large behind
24 them, are sometimes some of the most difficult assets to
25 divide, because there's not always great record-keeping or

1 any experts you can call in, in those matters.

2 So I -- I believe that I have had, certainly, a
3 fair amount of experience with division of those assets.

4 Q. Okay. Thank you. Ms. Roper, the Commission
5 received 157 ballot box surveys regarding you, with 12
6 additional comments. The ballot box surveys contained the
7 following positive comments:

8 "Karen's legal background and practice in Family
9 Court, along with her experience as a DSS attorney, make
10 her wonderful -- make her a wonderful and qualified
11 candidate for Family Court judge. Ms. Roper has the
12 appropriate temperament for the bench."

13 And another provided:

14 "Her honesty, integrity, work ethic, and
15 intelligence were without peer. She will make an excellent
16 jurist."

17 Two of the written comments expressed concerns.
18 Both comments questioned your experience handling
19 complicated Family Court matters and contested actions.
20 You just addressed that. But do you have anything to add?

21 A. Nothing other -- further to say, other than as
22 far as contested matters go, I will say that since the
23 onset of mandatory mediation in my county, that has been
24 very helpful in resolving complex matters. Whereas, we
25 used to have a lot of contested custody, or maybe alimony

1 cases, now through the benefit of mediation, I am usually
2 pretty successful in being able to resolve those. And I
3 think that's a good thing. When families can make their
4 own decisions on these issues, then I think that, that's a
5 better situation.

6 And I pretty much advise my clients all the time,
7 that when you go to mediation, it is something where you're
8 going to decide what you can live with and what you can't
9 live with. But if you take it to trial, the Family Court
10 judge is going to decide what you're going to live with.
11 So I think that, that's actually a good thing, the fact
12 that maybe the amount of contested cases has gone down a
13 little bit, in my experience.

14 **Q. Okay. Thank you, Ms. Roper. A couple of quick**
15 **housekeeping questions. Have you sought or received a**
16 **pledge of any legislator, either prior to this date or**
17 **pending the outcome of your screening?**

18 A. No, I have not.

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

23 A. No, I'm not.

24 **Q. Since submitting your letter of intent to run for**
25 **this seat, have you contacted any members of the Commission**

1 **about your candidacy?**

2 A. No, I have not.

3 **Q. And do you understand that you are prohibited**
4 **from seeking a pledge or commitment until 48 hours after**
5 **the formal release of the Commission's report, and are you**
6 **aware of the penalties for violating the pledging rules?**

7 A. Yes, I am.

8 MS. BROGDON: I would note that the Upstate
9 Citizens Committee found Mrs. Roper is Well Qualified in
10 the evaluative criteria of ethical fitness, professional
11 and academic ability, character, reputation, experience,
12 and judicial temperament, and Qualified in the remaining
13 evaluative criteria of constitutional qualifications,
14 physical health, and mental stability. And I would also
15 note for the record, that any concerns raised during the
16 investigation regarding this candidate, were incorporated
17 into the questioning of the candidate today.

18 Mr. Chairman, I have no further questions.

19 SENATOR MARTIN: Any question by members of
20 the Commission? Dean Wilcox?

21 EXAMINATION BY MR. WILCOX:

22 **Q. Ms. Roper, just a quick question. Do you plan to**
23 **continue to be a member of the Title Company, LLC, if**
24 **you're elected?**

25 A. No. No, I do not. And I was only a member in

1 name only; I did not have any responsibilities. So I would
2 divest myself from any ownership in that company.

3 **Q. And does your husband do real estate work? Or**
4 **does he also practice in Family Courts?**

5 A. No, he used to do real estate work. He doesn't
6 do that any longer. And he has never tried a case in
7 Family Court, I believe, in his life.

8 **Q. That doesn't present any future conflicts in --**

9 A. No, it does not. No, it does not.

10 MR. WILCOX: Thank you. That's all.

11 SENATOR MARTIN: All right. Any other
12 questions?

13 (No response.)

14 SENATOR MARTIN: Well, thank you very much.
15 It's a real pleasure to have you today.

16 MS. ROPER: Thank you.

17 SENATOR MARTIN: And we appreciate your
18 cooperation with our staff. This will conclude this
19 portion of the screening process. As you know, the record
20 will remain open until the report is published. You may be
21 called back, if the need would arise -- which we doubt,
22 very seriously, if that will happen. But we thank you for
23 offering, and wish you the very best.

24 MS. ROPER: Well, I really appreciate it,
25 Senator Martin. And everybody's been very kind. And thank

1 you very much for your time. Thank you for having me.

2 SENATOR MARTIN: Thank y'all. Have a safe
3 trip back.

4 MS. ROPER: Thank you.

5 (Candidate excused.)

6 SENATOR MARTIN: Okay. If we just stay in
7 open session, would that suit y'all to take a vote?

8 SENATOR MALLOY: We find them both
9 Qualified.

10 SENATOR MARTIN: Motion to find them both
11 Qualified and nominated is seconded. Any discussion to not
12 move immediately into a vote. All those in favor, please
13 say "aye."

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

15 SENATOR MARTIN: Opposed no.

16 (No response.)

17 SENATOR MARTIN: The ayes have it. Now the
18 question will be to find -- do them one at a time --

19 SENATOR MALLOY: Qualified --

20 SENATOR MARTIN: -- qualified and nominated.

21 SENATOR MALLOY: And nominated. Yes, sir.

22 SENATOR MARTIN: Oh, I'm sorry. It's been a
23 long day, y'all. Yeah. That does it. Judge Burch? All
24 right. That takes care of that. We're ready to do Judge
25 Burch.

1 SENATOR MALLOY: Yes, sir.

2 SENATOR MARTIN: All right. I think it --
3 I'm thinking ahead, about all the phone calls I've got to
4 make. We're off the record until he comes in.

5 (A recess was taken from 5:40 p.m. to 5:43 p.m.)

6 SENATOR MARTIN: Welcome.

7 THE HONORABLE PAUL BURCH: Good afternoon.

8 SENATOR MARTIN: We have The Honorable Paul
9 Michael Burch, Circuit Court, 4th Judicial Circuit, Seat 1.
10 Do you have anyone here with you? Wife? Nobody with you?

11 THE HONORABLE PAUL BURCH: Just me.

12 SENATOR MARTIN: Just you. There you go.
13 Judge, will you raise your hand and take the oath.

14 WHEREUPON:

15 THE HONORABLE PAUL MICHAEL BURCH, being duly
16 sworn and cautioned to speak the truth, the whole truth and
17 nothing but the truth, testifies as follows:

18 SENATOR MARTIN: Have you had an opportunity
19 to review your personal data questionnaire?

20 THE HONORABLE PAUL BURCH: Yes, sir.

21 SENATOR MARTIN: Is everything in order --

22 THE HONORABLE PAUL BURCH: Yes, sir.

23 SENATOR MARTIN: -- no need for any changes?
24 Do you have any objection to making it part of the
25 transcript --

1 THE HONORABLE PAUL BURCH: I do not.

2 SENATOR MARTIN: -- of your testimony?

3 Hearing none, it will be done at this point in the
4 transcript.

5 (EXHIBIT NO. 29 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
7 HONORABLE PAUL MICHAEL BURCH DATED MARCH 8, 2016)

8 SENATOR MARTIN: The Judicial Merit
9 Selection Commission has thoroughly investigated your
10 qualifications for the bench. Our inquiry has focused on
11 nine evaluative criteria. We received one affidavit filed
12 in opposition to your election, and one witness is present
13 to testify. Do you have a brief opening statement at this
14 time?

15 THE HONORABLE PAUL BURCH: Yes. I want to
16 sincerely thank the Commission and the staff for working
17 with me on the rescheduling of this hearing. As some of
18 you know, we have to schedule our vacations a year ahead of
19 time. And this was originally scheduled for November. Of
20 course, there was no way -- you know, looking at the past
21 hearing, knowing exactly when it was going to be. And I
22 had paid for my family to go on a vacation, and I -- I just
23 want to thank all of you for --

24 SENATOR MARTIN: You're very welcome.

25 THE HONORABLE PAUL BURCH: -- taking that

1 into consideration, in working with me.

2 SENATOR MALLOY: Mr. Chairman.

3 SENATOR MARTIN: The senator for Darlington.

4 SENATOR MALLOY: Thank you, Mr. Chairman. I
5 am -- just want the committee, and for the record, to know
6 that, one, that Judge Burch, I've known him ever since I
7 was a kid in college, when he was in the House of
8 Representatives, and I worked for Jean Harris. And he was
9 in the House, I think, during that time. And he was my
10 resident judge in my area, which I can be a testament to
11 that he is overly fair; sometimes not on my favor.

12 But also, that his son worked in my office
13 for a period of time, over the years, in the Senate. And
14 so I think probably the last 26, 27 -- 26-plus years, he
15 has been on the bench about -- at least longer than that,
16 ever since I've been practicing law, back in the area.
17 I've had chance to have frequent contact with him.

18 SENATOR MARTIN: All right, sir. At this
19 point in time, would you please answer the questions of Ms.
20 Wells, our staff counsel.

21 THE HONORABLE PAUL BURCH: Yes, sir.

22 MS. WELLS: Thank you, Mr. Chairman. Judge
23 Burch, you have before you, the sworn statement you
24 provided, with detailed answers to over thirty questions
25 regarding judicial conduct, statutory qualifications,

1 office administration, and temperament. Are there any
2 amendments you'd like to -- you'd like to make at this
3 time?

4 THE HONORABLE PAUL BURCH: No.

5 MS. WELLS: At this time, Mr. Chairman, I
6 would ask that Judge Burch's sworn statement be entered as
7 an exhibit into the hearing record.

8 SENATOR MARTIN: Is there any objection?

9 (No response.)

10 SENATOR MARTIN: Hearing none, we'll make it
11 part of the record at this point in the transcript.

12 (EXHIBIT NO. 30 - JUDICIAL MERIT SELECTION
13 COMMISSION SWORN STATEMENT OF THE HONORABLE PAUL
14 MICHAEL BURCH DATED AUGUST 4TH, 2015)

15 EXAMINATION BY MS. WELLS:

16 **Q. Judge Burch, after serving 25 years on the**
17 **circuit court, why do you want to continue serving as a**
18 **Circuit Court judge?**

19 A. Well, I would like to continue, as long as I
20 could keep my good health. And I -- so far, the Good Lord
21 has blessed me with good health. And after all these
22 years, I really don't have any desire to go back and try to
23 practice law. I've got two immediate family members that
24 are taking care of that.

25 But I enjoy just meeting people. And,

1 particularly, going around to the various counties, and at
2 this point being able to see attorneys and court staff that
3 I've known for many years. I just enjoy the job.

4 **Q. Thank you. Would you please explain for the**
5 **Commission, one or two brief accomplishments that you feel**
6 **you have completed during your tenure, and then a goal you**
7 **would like to accomplish if reelected.**

8 A. I think probably the goal that I would like to
9 accomplish is to maintain the stability that we have within
10 the court system, and to make sure that we keep stability.
11 I hope I have served well. And most attorneys will tell
12 you that I am firm but fair. And I just have to close that
13 answer by saying that the way things are going on in
14 particular aspects of our society now, I think it's crucial
15 that we maintain stability. And I feel like that I can be
16 a part of that.

17 **Q. Thank you. You addressed this in your sworn**
18 **affidavit, and you mentioned it just now, but would you**
19 **explain to the members of the Commission what you think is**
20 **the appropriate demeanor for a Circuit Court judge.**

21 A. Firm and fair. We've all had to make adjustments
22 over the years. We are now, judges as well as attorneys,
23 have to take the Civility Code. And raising your voice or
24 losing your temper, there's no place for that, especially
25 on the judge's part. And the only time -- the only

1 instances that I can tell you, that I know that would be
2 justified, is where you're on the verge of losing control
3 of the courtroom, or you have an emergency situation where
4 somebody could get seriously hurt.

5 You know, if you have a criminal defendant who,
6 in effect, goes berserk and attacks somebody in the
7 courtroom -- about four or five months ago, we had a
8 incident in Dillon, and some of you may have seen it on TV,
9 where a convicted killer attacked the deputy in the
10 courtroom, with a open handcuff that was -- they were
11 attempting to put on him, and then spat on the solicitor
12 and the sheriff. And the family -- some of the family
13 members came over the rail. And to me, that's an
14 appropriate time to raise your voice a little bit, to try
15 and get it stopped.

16 **Q. Okay. Judge Burch, the Commission received 419**
17 **ballot box surveys regarding you, with 15 additional**
18 **comments. The ballot box surveys, for example, contained**
19 **the following positive comments:**

20 **"A fine, thoughtful judge. Excellent, fairminded**
21 **jurist. One of the best judges on the bench, fair to all**
22 **parties, and still remembers what it was like to practice**
23 **law."**

24 **However, the following negative comment was**
25 **received:**

1 **"Although, I believe Judge Burch is very**
2 **qualified for this position, I have seen situations where I**
3 **believe his temper sometimes affected his rulings, or at**
4 **least his attitude towards litigants or counsel. I do not**
5 **question his ability or his performance, in general,**
6 **however, these flashes of temper have resulted in less than**
7 **maximum ratings for character and temperament on the**
8 **bench."**

9 **What is your response to this one negative**
10 **comment?**

11 A. If I were allowed to bet, I just about could
12 safely guess where that came from. I've got one attorney
13 who's -- you know, who just doesn't want to listen. And I
14 can assure the Commission of this: When I do have to take
15 someone to the woodshed, as a figure of speech, I always
16 ask them to step back in the chambers, and try to give them
17 some sound advice. And I've got one attorney, over in the
18 Pee Dee, that doesn't want to take advice. And I'm not
19 surprised that, that -- that one came in. It may not be
20 him. There may be -- you know, this day and time, when you
21 have to rule one way or the other, a lot of folks don't
22 like it, and they're going to have something negative to
23 say.

24 **Q. I just have a few housekeeping issues. Have you**
25 **sought or received a pledge of any legislator, either prior**

1 to this date or pending the outcome of your screening?

2 A. I have not.

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

7 A. I have not. And I'm not aware of anything.

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

11 A. I have not.

12 Q. Do you understand that you're prohibited from
13 seeking a pledge or commitment until 48 hours after the
14 formal release of the Commission's report, and are you
15 aware of the penalties for violating the pledging rules?

16 A. I am. And I have not.

17 MS. WELLS: I would note that the Pee Dee
18 Citizens Committee reported that Judge Burch is Qualified
19 as to constitutional qualifications, physical -- physical
20 health, and mental stability. And the committee found
21 Judge Burch Well Qualified as to ethical fitness,
22 professional and academic ability, character, reputation,
23 experience, and judicial temperament.

24 Mr. Chairman, do you want to proceed, now,
25 with the complaint that has been received? Or go into --

1 SENATOR MARTIN: Yes.

2 MS. WELLS: -- executive session, first?

3 SENATOR MARTIN: Probably go into executive
4 session.

5 SENATOR MALLOY: I move to go into executive
6 session.

7 SENATOR MARTIN: Motion to go into executive
8 session. Any objection?

9 (No response.)

10 SENATOR MARTIN: Hearing none, so ordered.

11 (Off-the-record executive session.)

12 SENATOR MARTIN: Mr. Brandt, please take a
13 seat. All right. Would you state the name -- your name,
14 for the record.

15 MR. BRANDT: Donald M. Brandt.

16 SENATOR MARTIN: Mr. Brandt, would you
17 please raise your hand and take the oath.

18 MR. BRANDT: You must speak a little louder.
19 I'm very hard of hearing.

20 SENATOR MARTIN: That's what I was going to
21 do. I apologize. My button had been pushed off.

22 WHEREUPON:

23 DONALD M. BRANDT, being duly sworn and
24 cautioned to speak the truth, the whole truth and nothing
25 but the truth, testifies as follows:

1 SENATOR MARTIN: Before we get started, Mr.
2 Brandt, we had a little discussion about the nature of your
3 complaint. You know, we have -- you have supplied the
4 committee with numerous documents and a good bit of
5 information. The Commission has reviewed those, so we're
6 pretty familiar with the nature and the extent of your
7 complaint. What we want to share with you, very briefly --
8 you know, it is getting late, and we want to -- we've heard
9 from you through your written testimony, or your written
10 document that you provided to us. But what we can take a
11 complaint on, under the law, is based on a judge's -- or a
12 candidate's character, competency, ethical fitness, and
13 temperament. We can't re-litigate the outcome of the case,
14 or, you know, somebody's not happy with how a matter came
15 out in court, had it appealed to the Supreme Court back
16 then, or whatever. That's not for us to decide.

17 What we're here to hear about is character,
18 competency, ethic -- ethical fitness, and temperament. And
19 if you would, we would like to -- for you to take no more
20 than about ten minutes, if you -- if you so like -- would
21 like to do, and give us an overview of what your complaint
22 is in that regard.

23 MR. BRANDT: Sir, that would be impossible.
24 It would -- it would take a book to tell the wrongs this
25 man did.

1 SENATOR MARTIN: Well --

2 MR. BRANDT: A book.

3 SENATOR MARTIN: We've got all the written
4 information. But can you summarize it for us? If you
5 can't summarize it for us --

6 MR. BRANDT: I didn't come prepared --

7 SENATOR MARTIN: -- we don't need to hear
8 from you.

9 MR. BRANDT: I didn't come prepared to do
10 that. But I'll -- I'll read my closing -- my conclusion,
11 if y'all -- all read all of that. First, though, I'm
12 Donald Brandt. I am from Bamberg County. I have six
13 daughters, five of them well educated, and all of them in
14 professional fields. My wife and I took in three girls,
15 shortly after we got married. We lost one in a accident.
16 And we raised three girls that wasn't ours.

17 And y'all are familiar about the case.
18 Okay. You, the Honorable Judicial Committee, must ask your
19 self is Judge Burch honorable or unfit. The evidence
20 presented Judge Burch being unfit and biased against me is
21 overwhelming -- whelming. I've had constitutional and
22 unlawful acts by Judge Burch committed against me. Never
23 did the judge display any integrity. I would try, but not
24 been given a warrant, arrest, arraignment, and notice or
25 read my Constitutional Rights. But most importantly, he

1 disregarded Judge Diane Goodstein's earlier order given on
2 May 17th, 2001. She dismissed this contempt proceeding
3 against me until Attorney Elizabeth's trial for
4 malpractice.

5 You must ask yourself, the committee, how is
6 it possible that a American citizen, in South Carolina, be
7 put in prison three times, never have been served with a
8 warrant. Also, I will -- I was never arrested. But I've
9 also been in county jail, probably, four or five times.

10 Judge Burch's illegal acts have put my
11 family through hell for 16 years, literally. No amount of
12 money could compensate for this anguish. My family and I
13 have spent three -- over \$3,600,000 for Judge Burch's
14 illegal acts. I also lost my dedicated wife during this
15 process.

16 I've been accused of introducing a forged
17 letter into the court. And he went on to say that I forged
18 the letter with no proof. The Gooding's law firm at
19 Allendale has been scaring people, for decades, to settle.
20 It's a small county, and it's predominantly black. There
21 has been, and continues to be, multiple lawsuits of which
22 they cater to their mostly-black jury in favor of the
23 Goodings.

24 Ronald Summers with Edisto Farm Credit, Don
25 Houck, Elizabeth Gooding, here in court, were sued for

1 conspiracy.

2 SENATOR MARTIN: Mr. Brandt, none of that
3 has anything to do with Judge --

4 MR. BRANDT: Okay.

5 SENATOR MARTIN: -- Burch's --

6 MR. BRANDT: Okay. Okay. It had to -- it
7 had to have been a -- it had to -- it's about this -- my
8 thoughts. It has been arranged by Gooding's lawyer to have
9 this letter copied to take out the watermarks. They stole
10 \$968,000 of family money, and gave Don Houck \$300,000 at
11 closing, never --

12 REPRESENTATIVE RUTHERFORD: Mr. Brandt, I'm
13 sorry, but you've got to focus on what you're alleging that
14 Judge Burch did.

15 MR. BRANDT: Okay. I'll try my best.

16 REPRESENTATIVE RUTHERFORD: You're
17 disparaging Mr. Gooding, but you're not talking about Judge
18 Burch. And Mr. Gooding -- it's not fair, he doesn't have a
19 right to defend himself. It's not his hearing.

20 MR. BRANDT: I'm pretty sure, it is.

21 REPRESENTATIVE RUTHERFORD: It's not his
22 hearing. It's Judge Burch's hearing.

23 MR. BRANDT: Okay. Okay.

24 REPRESENTATIVE RUTHERFORD: So if you would
25 focus --

1 MR. BRANDT: I will. I will. The thing is,
2 Judge Burch believes in kangaroo court. He forced me to be
3 my own attorney at Allendale. Like I said earlier, I've
4 never had a warrant, never been arrested, read my rights or
5 anything. Judge Goodstein -- it boils down to a letter.
6 She was concerned about that letter being tampered with. I
7 had my attorney present a motion, asking the court to
8 appointment an examiner to examine the letter. The other
9 side objected.

10 All right. Judge -- I had -- I had my
11 attorney present a motion asking the court to appointment
12 an examiner. The Gooding's lawyer objected. I had earlier
13 presented Jack Early, now Judge Early -- he was my attorney
14 for many years -- this letter. He saw it was evident -- he
15 said it was evidence -- evident. There were so many
16 lawyers involved in this. Unbelievable. Several judges.

17 So -- okay. All of the Gooding's lawyer,
18 Jim Collins and other, never presented Judge Diane -- Diane
19 Goodstein, a motion to reconsider or amend. All of the
20 lawyers -- and that includes Gooding, Speights, Bill
21 Collins -- my attorneys told me they were -- they went
22 judge-shopping. They wanted to find a judge that would
23 negotiate with them, and favor -- favor the Goodings.

24 SENATOR MARTIN: Mr. Brandt.

25 MR. BRANDT: That is -- that is just wrong.

1 SENATOR MARTIN: Mr. Brandt, I'm going to
2 have to stop you. We've heard quite enough. We still
3 haven't heard anything about your testimony, specifically
4 to Judge Burch's character, competency, ethical fitness,
5 and temperament.

6 MR. BRANDT: Just give me about a minute. I
7 could -- I could go back to the court's transcript, in
8 Chesterfield, where he says he did not care anything about
9 the American way. I could tell you the page. And when he
10 was asked to reconsider at Chesterfield, he said he didn't
11 want to hear anything from us -- I mean, my lawyer and me.
12 Then he went on to say he didn't care anything about the
13 American -- American way --

14 SENATOR MALLOY: Mr. Chair.

15 MR. BRANDT: -- or what one judge did.

16 SENATOR MALLOY: Mr. Chair.

17 SENATOR MARTIN: The senator from
18 Darlington.

19 SENATOR MALLOY: Could I -- could I just ask
20 you when was -- what year was that, that you allege that,
21 that comment was made?

22 MR. BRANDT: It's in the Chesterfield --

23 SENATOR MALLOY: I'm from Chesterfield.

24 MR. BRANDT: -- 2001.

25 SENATOR MALLOY: 2001.

1 MR. BRANDT: Yes.

2 SENATOR MALLOY: And you are -- your
3 testimony, now, is that -- is that because he said
4 something is not the American way --

5 MR. BRANDT: You've got to speak a little
6 louder, sir.

7 SENATOR MALLOY: You said it's -- he said
8 that he -- that something was not the American way?

9 MR. BRANDT: He said he didn't care anything
10 about the American way. If you've got a copy of it --

11 SENATOR MALLOY: He didn't care about the
12 American way --

13 MR. BRANDT: -- of it in Chesterfield --

14 SENATOR MALLOY: -- in 2001.

15 MR. BRANDT: -- on page -- page 5 -- on page
16 6, from 10 to 21. And I'll read it to you.

17 REPRESENTATIVE RUTHERFORD: Mr. Brandt, we
18 have -- we have that. And we have all of the paperwork
19 from all your cases, so you don't have to read it. We've
20 got it.

21 MR. BRANDT: Well, it seems like this
22 gentleman --

23 REPRESENTATIVE RUTHERFORD: No, he was just
24 asking whether that was your allegation that the judge said
25 that it was not the American way. So we were just making

1 sure that, that's what you were focusing on --

2 MR. BRANDT: Yeah.

3 REPRESENTATIVE RUTHERFORD: -- in your
4 complaint.

5 MR. BRANDT: There's quite a few --

6 REPRESENTATIVE RUTHERFORD: In 2001,
7 correct?

8 MR. BRANDT: Yes.

9 REPRESENTATIVE RUTHERFORD: All right.

10 MR. BRANDT: Yes.

11 REPRESENTATIVE RUTHERFORD: Well, thank you.
12 Thank you for coming. Oh, there's more? I'm sorry.

13 MR. BRANDT: I'm the last -- I'm the last
14 person, right?

15 REPRESENTATIVE RUTHERFORD: Yes, sir. But
16 the chairman gave you ten minutes. So we're about at the
17 end of the ten minutes. I just want to make sure that you
18 get all of your allegations in before the ten minutes ends.

19 MR. BRANDT: Well, I hadn't got them all in.

20 He allowed witness tampering. Professor
21 John Freeman reported witness tampering by three prominent
22 people. One of them's dead. And one's Miles Loadholt, and
23 one was Jim Anders. But he's passed away. And Richard
24 Breibart, he's in safe-keeping somewhere, I understand.
25 Give me -- give me one more minute.

1 On that, he testified that -- he said -- he
2 testified that if you -- he was approached by Miles
3 Loadholt as he -- it would be beneficial if he would drop
4 out of the case if Gooding would give money to the
5 University of South Carolina. Richard Breibart also
6 approached it. Of course, Jim Anders is dead now, he can't
7 defend his self.

8 REPRESENTATIVE SMITH: At some point, I
9 agree with Mr. Rutherford, that this seems to not be
10 related to the complaint against Judge Burch, as you
11 outlined. And it's really at the point where it's becoming
12 dilatory. And so, you know, I would -- if we are not going
13 to focus on this, then we need to wrap up this testimony
14 and move forward with letting Judge Burch respond to the --

15 MR. BRANDT: Will you let me say one more
16 thing?

17 SENATOR MARTIN: One more thing and that's
18 it.

19 MR. BRANDT: He said -- he -- he -- he
20 charged me for a felony. For him to be a longtime judge --
21 the Supreme Court ruled that the letter that you -- that he
22 -- he said dirty hands -- they went so far to say I had
23 filthy hands. You would -- you can be assured I have dirty
24 hands, 'cause I've worked hard all my life, and raised
25 these six girls.

1 Oh, boy. The only thing I could tell you,
2 there will be a book coming out, a whole book on him, and -
3 - and the other -- the other people as well. I been
4 working on it twelve years. The thing is, my family spent
5 \$3.6 million for him -- ignored Judge Goodstein's order,
6 that I should not be -- have no contempt charges till after
7 the malpractice. And it's believed that he hadn't read any
8 of the -- any of the transcript of deposition. Many, many
9 hours of depositions to that effect.

10 SENATOR MARTIN: Okay. Well, thank you very
11 much for coming. I appreciate it. Judge Burch, would you
12 like to respond? Thank you, Mr. Brandt.

13 MR. BRANDT: The proof is here, his own
14 words.

15 SENATOR MALLOY: Would you like to respond?

16 THE HONORABLE PAUL BURCH: Mr. Chairman, I -
17 -

18 SENATOR MALLOY: Briefly.

19 THE HONORABLE PAUL BURCH: I know y'all have
20 been here all day, and I'll just take just a minute. I
21 think I've covered everything in my response to Counsel
22 Wells. Several things were said that completely caught me
23 off guard. I found Mr. Brandt in contempt. There was no
24 felony. I think that concerns the actual trial by jury he
25 had over in Charleston, before Judge Young, where he was

1 convicted and got a prison sentence. And the witness
2 tampering, I don't -- I don't -- I don't know what that's
3 all about. Attorney Breibart and Miles Loadholt? That's
4 something that's completely new to me.

5 The two things I would like to comment on
6 concerning Judge Goodstein's order. Mr. Brandt had been
7 ordered to get an attorney, and the reason -- I walked into
8 the Allendale Courthouse, not knowing really, hardly
9 anybody from Allendale, except for a highway patrolman,
10 that was from Chesterfield County, that was assigned there.
11 And I walked into a legal hornet's nest, is the only way I
12 can describe it, after all the years that I went here.

13 And in order to hear the summary judgement
14 that the clerk of court asked me to hear, that brought into
15 play the letter. And I made it absolutely clear to Mr.
16 Brandt, that no one was accusing him of actually signing
17 the letter, or, you know, forging it, per se. But the
18 problem was, he filed a forged letter, and had to know that
19 it was filed. And I don't know of any way to describe what
20 happened here in pulling such a fraud on the court, except
21 to say that in my opinion it was a direct intent. And the
22 Supreme Court of South Carolina unanimously agreed with me.

23 Now, we've all learned from this. The Court
24 of Appeals in Richmond did not agree that it was direct
25 contempt. And the way I read their order, they rewrote

1 "direct contempt" for South Carolina, for the 4th Circuit.
2 They did not -- they did not consider that direct contempt.
3 And I think there was a concern there, about maybe a
4 attorney -- Mr. Brandt showed up with special counsel and
5 asked for a continuance. And, obviously, they were having
6 trouble getting judges to hear this. And I was not going
7 to allow a continuance, the way this thing was dragging
8 out. I was not going to allow anybody to take that letter
9 out of the court's possession.

10 And I did what I had to do. Because to me,
11 other than some kind of physical assault, what Mr. Brandt
12 did here was a pure, calculated fraud pulled on the court.
13 And it deserved immediate action. God only knows the
14 mental stress and anguish that all of this caused to
15 various people.

16 Yes, I learned from this. I'll know next
17 time, as well as every judge in the 4th Circuit, to take
18 that extra step about representation. But Mr. Brandt had
19 been ordered to have an attorney, and he defied that. And
20 once again, in order to rule on the summary judgement
21 motion, that letter had to come into play.

22 And I did what I thought was the best thing
23 to do. I have no other description except to go back to
24 what President Franklin Roosevelt said in December of 1941:
25 What happened here was despicable, as far as the court is

1 concerned.

2 SENATOR MARTIN: All right. Any questions
3 of Judge Burch?

4 (No response.)

5 SENATOR MARTIN: Hearing none, thank you so
6 much. That concludes --

7 MS. WELLS: I would note for the record, any
8 concerns raised during the investigation regarding Judge
9 Burch, were incorporated into the questioning of him today.
10 And I have no further questions.

11 I do need to put into the evidence, the
12 witness affidavit form, Exhibit 1 of Mr. Brandt's, and also
13 Judge Burch's written response.

14 SENATOR MARTIN: All right.

15 (EXHIBIT NO. 31 - LETTER FROM DONALD M.
16 BRANDT TO THE JUDICIAL MERIT SELECTION COMMISSION
17 DATED 10/25/2015)

18 (EXHIBIT NO. 32 - JUDICIAL MERIT SELECTION
19 COMMISSION WITNESS AFFIDAVIT FORM OF DONALD M.
20 BRANDT DATED OCTOBER 28, 2015)

21 (EXHIBIT NO. 33 - RESPONSE TO JUDICIAL MERIT
22 SELECTION COMMISSION REGARDING COMPLAINT FILED BY
23 MR. DONALD BRANDT)

24 REPRESENTATIVE RUTHERFORD: Mr. Chair.

25 SENATOR MARTIN: Yes.

1 REPRESENTATIVE RUTHERFORD: I did want to
2 note that Woody Gooding is out there as well, and that
3 disparaging remarks were made about him. And I just want
4 to make sure that he didn't feel compelled to respond
5 today. He certainly doesn't have to, but he --

6 MR. GOODING: I appreciate it. I thank you.
7 I would like to, but I don't think it's appropriate at this
8 time.

9 SENATOR MARTIN: Thank you very much. With
10 that, Judge Burch, we appreciate you being here. As you
11 know, the record will remain open until such time as the
12 report is published. You could be called back, but I doubt
13 very seriously that will happen. Thank you for offering,
14 and I thank you for your service to South Carolina.

15 THE HONORABLE PAUL BURCH: Thank you. And I
16 want to take just a second to thank the staff here. They
17 have been wonderful to work with, and they've had a lot of
18 patience with me. And I sure appreciate it.

19 SENATOR MARTIN: You're very welcome. We
20 think so too. Thank you. All right. With that --

21 SENATOR MALLOY: Mr. Chair.

22 SENATOR MARTIN: Yes, sir.

23 SENATOR MALLOY: I move -- I move that Judge
24 Burch be qualified and nominated.

25 SENATOR MARTIN: A motion --

1 MS. WALL: Second.

2 SENATOR MARTIN: -- is to qualify and
3 nominate. Second. Any other discussion? Move immediately
4 into a vote. All those in favor, please say "aye."

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

6 SENATOR MARTIN: Opposed no?

7 (No response.)

8 SENATOR MARTIN: The ayes have it. Judge
9 Burch has been found qualified and is nominated. Any other
10 business come before the Commission?

11 (No response.)

12 SENATOR MARTIN: Hearing none, we'll stand
13 in recess, subject to the next call.

14 (There being nothing further, the proceedings
15 concluded at 6:27 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 131 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 28TH DAY OF APRIL 2016.

PATRICIA G. BACHAND, COURT REPORTER
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