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PUBLIC HEARINGS

April 01, 2019

JUDICIAL MERIT SELECTION COMMISSION

REPORTER: Jennifer Nottle

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND)
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5 JUDICIAL MERIT SELECTION COMMISSION
6 TRANSCRIPT OF PUBLIC HEARINGS

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8 BEFORE: REPRESENTATIVE G. MURRELL SMITH, JR., CHAIRMAN
9 SENATOR RONNIE A. SABB
10 SENATOR TOM YOUNG, JR.
11 MS. HOPE BLACKLEY
12 REPRESENTATIVE CHRIS MURPHY
13 MR. J.P. "PETE" STROM
14 MS. LUCY GREY MCIVER
15 MR. ANDREW N. SAFRAN
16 MS. ERIN CRAWFORD, CHIEF COUNSEL

17 * * * * *

18 DATE: April 1, 2019
19 TIME: 1:03 p.m.
20 LOCATION: Gressette Building
21 1101 Pendleton Street
22 Columbia, South Carolina 29201
23 REPORTED BY: JENNIFER NOTTLE, COURT REPORTER
24
25

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1 CHAIRMAN SMITH: So Representative Murphy moves that
2 we go into executive session. Seconded by
3 Senator Sabb. All in favor say, aye.

4 (Ayes are heard.)

5 CHAIRMAN SMITH: All opposed.

6 (No replies are heard.)

7 CHAIRMAN SMITH: Ayes have it. We're going to be in
8 executive session.

9 EXECUTIVE SESSION

10 CHAIRMAN SMITH: Mr. Safran moves that we come out of
11 executive session. All in favor say, aye.

12 (Ayes are heard.)

13 CHAIRMAN SMITH: All opposed.

14 (No replies are heard.)

15 CHAIRMAN SMITH: Ayes have it. We're coming out of
16 executive session. Let me state for the record,
17 now that we've come back out of executive
18 session, that while we were in executive session
19 that there were no decisions made and no votes
20 were taken. And so now we're going to proceed
21 with the commencement of these proceedings and --

22 SENATOR YOUNG: I have a motion to make.

23 CHAIRMAN SMITH: Senator Young.

24 SENATOR YOUNG: I move that the Honorable Murrell
25 Smith be elected chairman of the Commission.

1 REPRESENTATIVE MURPHY: Second.

2 CHAIRMAN SMITH: So I guess I'm the vice chairman of
3 the Commission right now, so I'm proceeding in
4 the chairman's absence. So there's been a
5 nomination by Senator Young and a second for me
6 to serve as chairman. And just by the rules, for
7 those of you are new -- Pete, you're not new.
8 You understand that when it's time for the House
9 members to serve as chairman, we alternate
10 chairmanship every year. Are there any other
11 nominations on the floor?

12 (No replies are heard.)

13 CHAIRMAN SMITH: No other nominations. Any discussion
14 as to the nomination of myself as chairman?

15 (No replies are heard.)

16 MR. CHAIRMAN: All right. All in favor to Senator
17 Young's motion to nominate myself as chairman
18 signify by saying, Aye.

19 (Ayes are heard.)

20 CHAIRMAN SMITH: All opposed?

21 (No replies are heard.)

22 CHAIRMAN SMITH: Ayes have it. Do y'all want me to
23 give a welcome and a thank you speech now? I
24 appreciate -- all right, with that, why don't you
25 start off and let me read my script?

1 MS. CRAWFORD: Okay. Mr. Chairman, initially, I'd
2 like to introduce to the commission the new
3 members of the commission, Hope Blackley of
4 Spartanburg. Pete Strom from Columbia. Mr.
5 Chairman, at this time, I'd also like to request
6 a vote on the cover page for the draft report.
7 It shows that the report will be delivered
8 Thursday, April 11th. The 48-hour period ends at
9 noon on Tuesday, April 16th. And the election is
10 currently scheduled for noon for Wednesday, May
11 1st. And y'all should have the report cover page
12 in your tab B.

13 CHAIRMAN SMITH: Senator Young?

14 SENATOR YOUNG: Can we vote on that part later today?

15 CHAIRMAN SMITH: Yeah. Why don't we pass over this
16 right now. And I'm going to tell you one concern
17 I have, and we need to go into legal briefing.
18 I'd like a legal -- have a legal briefing on
19 this, but I'm going to raise the issue that I
20 know the House is on furlough for the week of
21 April 16th. That's the week before Easter.
22 I don't know what y'all's plans are with the
23 Senate, but, you know, I can tell you I know
24 that's the one thing when we're on furlough and
25 reports are released, or somebody's not there,

1 that I hear more complaints about from the
2 legislative session because people ultimately
3 have to start seeking commitments on noon when
4 nobody's in session and people's phones ring.
5 Candidates have difficulty about getting a hold
6 of legislators and being able to do deal with
7 that. So I'm wondering if there's any way --
8 we'll talk about that in executive session. I'll
9 put that issue out there. So we need to look at
10 a calendar and we will -- we will discuss that,
11 so we're going to pass over on that motion for
12 right now and we'll move forward. Senator Sabb.

13 SENATOR SABB: Thank you, Mr. Chairman. If I'm in
14 order, and I do want to congratulate you on your
15 ascension to the chairmanship. We obviously
16 could not have found a better chairperson. And I
17 would place for the body's consideration a
18 nomination for vice chair. And I would like to
19 nominate the Honorable Luke Rankin, vice chair of
20 this Commission.

21 CHAIRMAN SMITH: All right. Is there a second to that
22 nomination?

23 SENATOR YOUNG: Second.

24 CHAIRMAN SMITH: All right. Senator Sabb moves
25 Senator Rankin be vice chairman and seconded by

1 Senator Young. Any other nominations?

2 (No replies are heard.)

3 CHAIRMAN SMITH: All right. With that being said, any
4 discussion as to the nominations?

5 (No replies are heard.)

6 CHAIRMAN SMITH: And with that, all in favor of
7 Senator Rankin being the vice chairman of the
8 Commission signify by saying, aye.

9 (Ayes are heard.)

10 CHAIRMAN SMITH: All opposed?

11 (No replies are heard.)

12 CHAIRMAN SMITH: Ayes have it. And so, in absentia,
13 we will congratulate Senator Rankin for his vice
14 chairmanship. And by the way, guys, I will not
15 be at the election, so Senator Rankin gets the
16 distinct pleasure of being on the floor two times
17 for this session for the nominations.

18 MS. CRAWFORD: Mr. Chairman, can we distribute the
19 signature page to the commission members now for
20 the draft report?

21 CHAIRMAN SMITH: Yes.

22 MS. CRAWFORD: And then you'll do so at this time. At
23 this time, I'd like to present the Commission
24 with the judicial seats that we expect to screen
25 for the fall 2019. It's kind of a draft that's

1 in your notebooks as well, in review. Mr.
2 Chairman, I'd also like to offer and have made
3 exhibits to the record of the following: the
4 Spring 2019 Citizens Committee Reports from the
5 Midlands, as well as the Spring 2019 South
6 Carolina Bar's Judicial Qualifications Commission
7 Report.

8 CHAIRMAN SMITH: All right. So we're going to have
9 the 2019 Citizens Committee reports and the South
10 Carolina Bar reports marked as exhibits and
11 entered into the public record. Is there any
12 objection to the same?

13 (No replies are heard.)

14 CHAIRMAN SMITH: All right. With no objection, that's
15 so ordered. And then that's all the business we
16 have before the Commission right now. So if
17 everybody's ready -- is everybody ready to
18 proceed with candidate hearings? All right. So
19 we will proceed with the candidate hearings. So
20 let me start, let's call the meeting back to
21 order and start by saying Judicial Merit
22 Selection Commission is called pursuant to
23 Chapter 19 of Title Two of the South Carolina
24 Code of Laws requiring the review of candidates
25 for the judicial office. The function of the

1 Commission is not to chose between candidates,
2 but rather to declare whether or not the
3 candidates who are offered for positions on
4 bench, in our judgement, are qualified to fill
5 the positions they seek. The inquiry we
6 undertake is a thorough one and they center
7 around the Commission's nine evaluative criteria.
8 It involves a complete personal and professional
9 background check on each candidate. These public
10 hearings are convened for the purposes of
11 screening the candidates, and today we will
12 screen one open seat for the Circuit Court of the
13 Second Judicial Circuit.

14 (Exhibit Number 1 was marked for identification
15 purposes - (5 pages) Spring 2019 South Carolina Bar's
16 Judicial Qualifications Commission Report.)

17 (Exhibit Number 2 was marked for identification
18 purposes - (6 pages) Spring 2019 Citizens Committee
19 Reports.)

20 CHAIRMAN SMITH: Ms. Pope, welcome. How are you doing
21 today?

22 MS. POPE: I'm well, thank you.

23 CHAIRMAN SMITH: I appreciate you being here. Do you
24 have -- I see you have somebody you brought with
25 you. Would you like to introduce?

1 MS. POPE: I would. I brought my husband. He is a
2 teacher and a coach down at Midland Valley, and
3 he took the day off to spend up here with me.

4 CHAIRMAN SMITH: Okay. Well, good. Welcome. We
5 appreciate you being here today, Mr. Pope.

6 MR. POPE: Thank you.

7 CHAIRMAN SMITH: Ms. Pope, we have before you --
8 let me first swear you in. Will you please raise
9 your right hand.

10 MS. POPE, having been duly sworn, testifies as
11 follows:

12 CHAIRMAN SMITH: We have before you two documents
13 there, your Personal Data Questionnaire and your
14 Sworn Statement. Are these both documents that
15 you have submitted to the Commission?

16 MS. POPE: Yes, sir.

17 CHAIRMAN SMITH: Are they both correct, to the best of
18 your knowledge?

19 MS. POPE: Yes, sir.

20 CHAIRMAN SMITH: Do you have any objection to those
21 being made as a part of the record here today?

22 MS. POPE: No, sir, I do not.

23 CHAIRMAN SMITH: And are there any changes or
24 additions that you need to make to those two
25 documents?

1 MS. POPE: No, sir.

2 CHAIRMAN SMITH: All right. So without objection
3 we're going to make that a part of the record of
4 the transcript of your hearing today. Ms. Pope,
5 the Judicial Merit Selection Commission has
6 thoroughly investigated your qualifications for
7 the bench. Our inquiry is focused on the nine
8 evaluative criteria that has included a ballot
9 box survey, a thorough study of your application
10 materials, verification of compliance with your
11 state ethics laws, a search of newspaper articles
12 in which your name appears, study of previous
13 screenings that may have occurred, and checks for
14 economic conflicts of interest. We have received
15 no affidavits today in opposition to your
16 election and there are no witnesses present to
17 testify. Do you wish to make a brief, and I
18 emphasize brief, opening statement at this time?

19 (Exhibit Number 3 was marked for identification
20 purposes - (14 pages) Personal Data Questionnaire for
21 Courtney Clyburn Pope.)

22 (Exhibit Number 4 was marked for identification
23 purposes - (5 pages) Amendment to Personal Data
24 Questionnaire for Courtney Clyburn Pope.)

25 (Exhibit Number 5 was marked for identification

1 purposes - (3 pages) Sworn Statement of Courtney
2 Clyburn Pope.)

3 (Exhibit Number 6 was marked for identification
4 purposes - (3 pages) Amendment to Sworn Statement of
5 Courtney Clyburn Pope.)

6 MS. POPE: I don't. I just wish to thank everyone for
7 allowing me this opportunity to be here.

8 CHAIRMAN SMITH: Ms. Crawford is the attorney -- is
9 the counsel for all candidates this time, so I
10 don't have to look around the room. So will you
11 answer any questions that Ms. Crawford may have.

12 MS. POPE: Thank you.

13 MS. CRAWFORD: Thank you.

14 MS. POPE - EXAMINATION BY MS. CRAWFORD:

15 **Q. Ms. Pope, how do you feel that your legal and**
16 **professional experience thus far renders you**
17 **qualified and will assist you to be an effective**
18 **circuit court judge?**

19 A. Yes, ma'am. I would like to start off by saying
20 that this is the best profession, to me, in the
21 world. And I do believe that my love and my
22 dedication for the law has helped me throughout
23 my career. And starting in law school, I worked
24 very hard to maintain my grades. I made very
25 good grades and I was given an academic

1 scholarship to tutor civil procedure, and so I'm
2 very familiar with those rules. And in fact, I
3 was given a 75 percent scholarship and the next
4 year I was given that same exact scholarship to
5 run the entire tutorial program. After law
6 school, I practiced in different areas of the
7 law. And I think that given that diverse
8 background from workers' compensation to personal
9 injury and criminal defense and prosecution --
10 and my role as a staff attorney allows me to do
11 all kinds of different law, employment law,
12 contract law; that's done a daily basis. So I do
13 believe that those professional experiences have
14 conditioned me for this job, but I also believe
15 that my personal experiences have conditioned me
16 for this job. I do not believe that judicial
17 temperament can be taught. I think it's
18 something that is ingrained in you. And I do
19 believe that I have the stamina and the
20 temperament to serve, and I would love the honor
21 to do that.

22 **Q. Thank you, Ms. Pope. Ms. Pope, the Commission**
23 **received 245 ballot box surveys regarding you**
24 **with 33 additional comments. Many positive**
25 **comments about your temperament and demeanor,**

1 including: a smart honorable lawyer with
2 excellent temperament; an excellent addition to
3 the bench; this candidate will be fair to
4 litigants and attorneys who appear before her;
5 her demeanor is well suited for the position of a
6 circuit court judge. Seventeen of the 33 written
7 comments expressed concerns, and several of these
8 comments indicated that you do not have enough
9 experience for this position, especially in the
10 circuit court. What response would you offer to
11 this?

12 A. Yes, ma'am. I think that I have much more
13 experience than some of my colleagues may
14 realize. I think I look younger than what I
15 really am. I'll be 40 in November, and this is
16 my twelfth year of practice. Law is my second
17 career, actually. And so I have a bit more
18 experience than I think many people are aware of.
19 For example, in terms of civil court, before I
20 got the position that I have now, I practiced in
21 civil court within the last five years. In my
22 current position as a staff attorney, I handle
23 those affairs for the City right now in circuit
24 court. I was hired by Fulcher Hagler to handle
25 all of their PCR. And in fact, some other firm -

1 - some local firms, I handle all of their PCR
2 cases for them. And so I think that there may be
3 some misunderstanding as to how much experience I
4 do have in civil court. Now, in terms of
5 criminal court, you know, I've always done
6 criminal defense. And right now I'm working as a
7 city solicitor, as a prosecutor, so, you know, I
8 have trial experience. We use the same rules of
9 evidence that any other court uses. We use the
10 same rules of criminal procedure that general
11 sessions uses. A trial in municipal court is the
12 same as a trial in general sessions, just
13 different charges. And so I think that I do have
14 a little bit more experience than people may
15 realize or give me credit for.

16 **Q. Okay. And you touched on this earlier. In the**
17 **similar vein, there were some concerns that you**
18 **lacked the requisite legal knowledge for this**
19 **position. You touched on it a little bit with**
20 **your tutoring with the rules of civil procedure.**
21 **One comment phrased it as a "Real world grasp of**
22 **circuit court trials." And how would you respond**
23 **to that?**

24 **A. Again, you know, I know that there have been --**
25 **well, through this process, I learned that there**

1 were some concerns regarding my alleged lack of
2 experience, but I would not have submitted this
3 application if I thought I would be doing a
4 disservice to anyone in my community or anyone in
5 this state. I certainly have the academic skills
6 to conduct research to figure out some of these
7 legal problems that I have not -- you know,
8 there's no attorney that has done every single
9 aspect of the law. But certainly through my
10 position as city solicitor and staff attorney, I
11 come across various types of issues for which I'm
12 required to do the research. There is no mentor
13 there, it's me. And so I handle those things
14 accordingly. I don't think that there should be
15 any concern as to whether or not I have the legal
16 knowledge, nor should there be any concern
17 whether or not I have the capability to
18 supplement that legal knowledge. In fact, you
19 know, during this process when that concern
20 became aware to me, I took five CLE courses just
21 to brush myself up over this span of time, and I
22 also -- I couldn't find a civil trial to observe
23 in the state, but I observed a civil trial 403
24 that was available online through the Bar.

25 **Q. Thank you, Ms. Pope. The third thread of concern**

1 indicates issues with your time management skills
2 and concerns about the huge backlog and potential
3 increase in the backlog of criminal cases that
4 have not moved during your tenure of the
5 prosecutor in the city courts. What response
6 would you offer to that?

7 A. Well, it's hard for me to really respond other
8 than to give you the numbers. I don't know who
9 may have been misinformed about my numbers as a
10 prosecutor. However, when I took this position
11 with the City of Aiken, there were well over 100
12 cases on the docket. As of Friday, there were
13 176 cases on the docket. There's not a huge
14 backlog of cases on my docket, and I think my
15 supervisors at the City will tell you that
16 there's not a huge backlog of cases. So I'm not
17 sure how to respond, other than there's not a
18 huge amount of merit to that comment.

19 Q. Thank you, Ms. Pope. We discussed this that the
20 SLED report indicated two matters in which you
21 are a named defendant. The first one is Security
22 Federal Bank v. Eric D. Muhlbaier, and then the
23 second one was Zasadil v. Liden, et al. These
24 were not disclosed on your PDQ. Were you ever
25 served in these matters?

1 A. I was not. I don't know that -- my name's
2 Courtney Pope, so I'm not sure if there's another
3 Pope.

4 Q. Right. Ms. Pope, the SLED report also noted, and
5 you've indicated in your amendment to the PDQ,
6 that a lien was filed against you in 2016 by
7 Pennington Place Homeowner's Association for
8 \$769.85. And can you please explain the nature
9 and circumstances surrounding this lien?

10 A. I can. That is a rental property that I own here
11 in Columbia. We actually reside in Aiken,
12 obviously. I was not aware, until this process,
13 that there had ever been a lien placed on that
14 property. Those homeowners association
15 assessments have been paid. They've been paid
16 for several years. And so I was not served with
17 notice of a lien, but I was made aware of that
18 and I amended my PDQ to include that.

19 Q. Okay. The SLED report and your PDQ also showed
20 that around the same time in August of 2016 Wells
21 Fargo instituted a debt collection against you.
22 Can you explain the nature and circumstances
23 surrounding that action?

24 A. I can. I have a young child who was born in
25 2014, and we have had some medical challenges

1 with my son. And it has required several
2 surgeries. He's had four surgeries, one of which
3 was during this process. With that said, during
4 that time in 2016, I did pay for those medical
5 procedures on that credit card and so that's --
6 it's not -- you know, that's what that credit
7 card debt was for. And I did not realize that I
8 had let it go so long. Once I received that
9 notification, I cleared that up immediately. And
10 so that was dismissed with prejudice.

11 **Q. Okay. And relating to this, I assume, we**
12 **discussed on the public records section of your**
13 **credit report there was a medical collection of**
14 **\$351. Can you address this?**

15 **A.** Yes, ma'am, I can. I actually called Experion --
16 Equifax to inquire about that medical bill and
17 they believed that that was a mistake on my
18 credit, that bill had been paid and they did not
19 know why there was a credit -- there was a report
20 for a zero balance on my credit.

21 **Q. Thank you. Mr. Chairman, I'd like to request**
22 **that we now go into executive session to handle a**
23 **matter.**

24 CHAIRMAN SMITH: All right. We need to go into
25 executive session. Mr. Safran moves we go in

1 executive session, seconded by Representative
2 Murphy. All in favor say, aye.

3 (Ayes are heard.)

4 CHAIRMAN SMITH: All opposed?

5 (No replies are heard.)

6 CHAIRMAN SMITH: Ayes have it. Ladies and gentlemen
7 who are not part of this -- you stay here, Ms.
8 Pope. And the people in the audience, if y'all
9 leave while we're under executive session and
10 then we'll call you back in when we complete
11 executive session.

12 EXECUTIVE SESSION

13 MR. STROM: I would like to make a motion to come out
14 of executive session.

15 MR. SAFRAN: Second.

16 CHAIRMAN SMITH: Mr. Strom has made a motion that we
17 come out of executive session, all in favor say,
18 aye.

19 (Ayes are heard.)

20 CHAIRMAN SMITH: All opposed?

21 (No replies are heard.)

22 CHAIRMAN SMITH: Ayes have it. We're out of executive
23 session and we'll open the doors for people to
24 come back in. Let me state for the record, while
25 we were in executive session, there were no

1 decisions made and no votes taken. All right.
2 So we're going to continue proceeding with the
3 public portion of this session. Ms. Crawford.
4 MS. CRAWFORD: Thank you, Ms. Pope. Thank you, Mr.
5 Chairman. I would note that the Midlands Citizen
6 Committee reported that Ms. Pope is well
7 qualified in evaluative criteria of ethical
8 fitness, character, reputation, and judicial
9 temperament. Qualified in the evaluative
10 criteria of constitutional qualifications,
11 physical health, and mental stability.
12 Unqualified in the evaluative criteria of
13 professional and academic ability and experience.
14 Under the experience criteria the Committee
15 stated, "Lack of trial experience or other
16 experience in the common pleas or general
17 sessions court. She admitted her lack of
18 experience and realized it as an impediment to
19 some to being a circuit judge. She has great
20 potential in the future and would be an asset to
21 the judiciary once she gains more experience."
22 In summary, the Citizens Committee noted,
23 "Unfortunately, the Committee has to find her
24 unqualified because of lack of experience and not
25 being well versed in procedural and evidentiary

1 issues. She made a very impressive presentation
2 and appearance." One comment of a committee
3 member was that she would have to have on-the-job
4 training. She admitted that while serving on the
5 bench she would often have to consult with other
6 sitting judges for advice. With more experience
7 in the future the Committee felt she would be
8 well qualified to be a circuit court judge.

9 **Q. Ms. Pope, would you like to respond to these**
10 **findings?**

11 A. I would. Thank you so much for allowing me to
12 clear up this report. I will first start off by
13 saying that during my Bar committee meeting, I
14 was given four substantive questions about the
15 law. I answered those questions and they deemed
16 me qualified in all areas.

17 **Q. Go ahead.**

18 A. Yes, they deemed me qualified in those areas.
19 And again, I was asked four substantive
20 questions. During my Citizens Committee
21 interview, I was asked one substantive question
22 and that question was, am I familiar with the
23 Daubert Standard. Now, the Daubert Standard is a
24 standard that is used in federal court, not state
25 court, in order to qualify expert witnesses.

1 South Carolina is not a Daubert state, and I do
2 not practice federal law. I would not have known
3 what the Daubert standard is. Now, that was the
4 only substantive question that I was asked, and
5 so I find it -- I just know that my transcripts
6 from law school were not submitted, and I find it
7 difficult to believe that they were able to
8 assess my academic ability based on one question
9 that's not relevant to state court. I absolutely
10 know how to qualify an expert witness in state
11 court, but we do not use the Daubert Standard
12 which is why I was not familiar with it. And
13 secondly, I would like to offer to the Committee
14 I was asked several times whether I would admit
15 that I was not qualified due to my lack of
16 experience. And every time I was asked that
17 question I responded by saying I do have
18 experience in civil court. I was just in common
19 pleas about three weeks before my interview. So
20 I'm not quite sure where the misunderstanding
21 was, but I never, at any time, admitted that I
22 was not qualified for this position and that it
23 would be a hindrance to this position. I'm not -
24 - I'm really not sure where that
25 misinterpretation of my answer was, but I was

1 asked three or four times whether I would admit
2 that I was not qualified and that I did not have
3 the adequate trial experience. And I did not
4 respond with those answers. And so I did, when
5 asked, hey, do you have this experience, what
6 would you do if you did not know the answer to
7 something, I did say, well, I would do some
8 research and I would reach out to fellow members
9 of the bench. But I did not indicate that I
10 would rely solely on any members of the bench in
11 order to gain knowledge. And so I really
12 appreciate the opportunity to address that, but I
13 do not believe the report accurately reflects
14 what happened that day. And again, I do not know
15 what the misunderstanding was with the answers
16 that I gave during that committee meeting.

17 **Q. Thank you, Ms. Pope. I'm going to get to some**
18 **housekeeping questions. Are you aware that as a**
19 **judicial candidate you are bound by the Code of**
20 **Judicial Conduct as found in Rule 501 of the**
21 **South Carolina Appellate Court Rules?**

22 **A. Yes, ma'am.**

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

1 A. I will say that, the day after I submitted my
2 letter of intent, I did contact Senator Young. I
3 left him a message and he let me know that he was
4 sitting on this committee. We did not at any
5 time speak about my candidacy, and I did
6 apologize. I was not aware at the time that he
7 was on this committee. I'm aware of that now.
8 And so to answer your question, that's the only
9 time I've done that, but we did not talk about
10 anything. He said nothing to me about this
11 process and I said nothing to him after he made
12 aware.

13 Q. Thank you. Are you familiar with § 2-19-70,
14 including the limitations on contacting members
15 of the General Assembly regarding your screening?

16 A. I am.

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

21 A. No, ma'am.

22 Q. Have you asked any third parties to contact
23 members of the General Assembly on your behalf?

24 A. No, ma'am.

25 Q. Are you aware of anyone attempting to intervene

1 in this process on your behalf?

2 A. No, ma'am.

3 Q. Have you reviewed and do you understand the
4 Commission's guidelines on pledging as well as SC
5 Code § 2-19-70(e)?

6 A. Yes, ma'am, I'm aware.

7 MS. CRAWFORD: Mr. Chairman, I would note for the
8 record that any concerns raised during the
9 investigation by staff regarding this candidate
10 were incorporated into my questioning, and I have
11 no further questions.

12 CHAIRMAN SMITH: All right. Thank you, Ms. Crawford.
13 Any questions of Commission members of Ms. Pope?
14 Senator Sabb.

15 SENATOR SABB: Thank you, Mr. Chairman.

16 MS. POPE - EXAMINATION BY SENATOR SABB:

17 Q. Good to see you. And of course, you know that I
18 served in the House with your dad and a part of
19 Georgetown is in my senatorial district. And
20 so your grandmom, whom I got to meet on your
21 mom's side, that was one of my favorite folks.
22 So I'm well aware of your family and everything,
23 so let me congratulate you.

24 A. Thank you.

25 Q. I know they're very proud of all that you're

1 doing, and so am I. A couple of points, if I
2 might, and I want to make sure that I understood
3 you correctly. So at the Citizens Committee
4 meeting, you were asked one substantive question
5 relating to Daubert?

6 A. That's correct.

7 Q. No other questions associated with the Rules of
8 Civil Procedure?

9 A. No, sir.

10 Q. All right. And I understand the answer that if
11 you're not sure what to do you call other members
12 of the bench. I know some judges that have been
13 judging now for a bunch of years, and guess what
14 they do when they have questions that they're not
15 sure about? Absolutely they round table it with
16 their colleagues, and so there's nothing that's
17 out of the ordinary as it relates to that. Did
18 you say that you were asked the question about
19 whether or not you thought that the experience
20 that you had was either disqualifying or an
21 impediment, and that when asked the question as
22 to whether or not you thought it was
23 disqualifying, that you never agreed that it was
24 in fact disqualifying? Did I understand you
25 correctly when you said that?

1 A. That's correct, sir. I was asked several times
2 too -- if I would admit that I was -- that I did
3 not have the trial experience to be qualified for
4 this position. And in responding to that
5 question, I answered I do have experience in both
6 common pleas and general sessions. I've worked
7 in both of those courts for years. And I
8 repeated that. So I'm not quite sure where the
9 misunderstanding was.

10 Q. I understand. And the question associated with
11 whether or not it serves as an impediment to your
12 ascension to the bench, how did you respond to
13 that?

14 A. I was never asked that question, if anything
15 would be an impediment.

16 Q. Okay. All right. So you're not sure exactly
17 sure where that would have come from?

18 A. I am not, sir.

19 Q. All right. And so tell me about your experience
20 when it comes to trying cases in municipal court,
21 though.

22 A. Yes, sir. I will tell you that that answer is
23 twofold.

24 Q. Yeah.

25 A. I've conducted jury trials in municipal court and

1 often times I -- we hold court in Aiken, every
2 day, Monday through Friday from 8:00 a.m. to
3 maybe 9:30 a.m. Fridays are reserved for trial
4 time. But often times I walk in and we've got
5 bench trials ready to go. And so I handle those
6 bench trials, if I can. If there's not witnesses
7 or victims available, I handle those bench trials
8 immediately. And so we use the same rules of
9 evidence. We use the same rules of criminal
10 procedure, and I'm well versed in that.

11 Q. And of course, one of the problems when you're a
12 prosecutor is that there is really no such thing
13 as discovery. And so you kind of have to assess
14 your -- I prosecuted for 20 years.

15 A. Yes, sir.

16 Q. And so you kind of have to assess your evidence
17 and then you just try the case?

18 A. Yes, sir.

19 Q. And then when the defense comes with whatever
20 story that they've had an opportunity to analyze
21 over a course of however long the charges are
22 pending, then you have to cross-examine them on
23 whatever their story is?

24 A. That's correct.

25 Q. And I remember -- and Mr. Chairman, I'll finish

1 with this, but when I was prosecuting and I had
2 just started, I was a little uncomfortable with
3 cross-examination. I remember a fine jurist who
4 was my fellow assistant solicitor at the time, he
5 suggested that defendants will have a story, but
6 that based upon the legal training that we've
7 received, they can never think as far as we can
8 go in our analytical questioning of them. And so
9 that has been something that was shared with me
10 early on in my career, and I continue to find
11 that is true. Has that been true in your --

12 A. Yes, sir.

13 Q. I guess my last, Mr. Chairman, if you don't mind,
14 would be on the issue of some of the things that
15 you handled in circuit court. As I understand
16 it, when you were a -- was it a public defender
17 or just defending cases, which was it?

18 A. Well, I had my own law firm --

19 Q. That's right. So you were --

20 A. -- Clyburn, Pope & Price. I was a criminal
21 defense attorney, but we were also contract
22 attorneys with the state indigent defense fund.

23 Q. I understand.

24 A. So we did both.

25 Q. Sure. And so you really kind of did everything

1 associated with those procedures, other than
2 having to try a case because you all worked them
3 out; did I understand that correctly?

4 A. That's correct. Yes, sir.

5 Q. And a good plea is better than a good trial
6 almost any day, right?

7 A. I would agree, sir.

8 Q. Thank you.

9 SENATOR SABB: That's all I have, Mr. Chairman.

10 CHAIRMAN SMITH: Thank you, Senator Sabb. Any further
11 questions? Ms. McIver.

12 MS. MCIVER: Thank you, Mr. Chairman.

13 MS. POPE - EXAMINATION BY MS. MCIVER:

14 Q. Ms. Pope, thank you for being here today.

15 A. Thank you for having me.

16 Q. I was going through some of the records that
17 they've given us. And with regard to CLEs,
18 are you currently in compliance with all of the
19 CLE requirements for this term, for this year?

20 A. For this past year?

21 Q. For this past year. Yeah, for our last
22 compliance reporting period which --

23 A. Yes, ma'am.

24 Q. -- February or March.

25 A. Yes, ma'am. I'm in compliance, and I've actually

1 gone well over. Even before this process began,
2 I believe I carried over six -- six or seven
3 credits. I'm not sure, but it's around that
4 number. And in taking theses last five CLEs, I'm
5 well over for this year.

6 **Q. For the current year. For 2017/2018, it looks**
7 **like there may have been an issue. Did you**
8 **receive a notice of noncompliance at some point**
9 **for not having completed CLEs?**

10 A. No, ma'am. No, ma'am. I -- every year my
11 employer sends me to the South Carolina Bar
12 convention, and I usually take some just to brush
13 up on evidence, but I've always been over the
14 amount for CLEs.

15 **Q. What about for 2015/2016? Same thing?**

16 A. Yes, ma'am. At any time, I've not been -- I've
17 never been behind on my CLE hours.

18 **Q. Thank you very much.**

19 A. Yes, ma'am.

20 CHAIRMAN SMITH: Any further questions? Senator
21 Young.

22 MS. POPE - EXAMINATION BY SENATOR YOUNG:

23 **Q. Ms. Pope, can you hear me?**

24 A. Yes, sir.

25 **Q. Thank you so much for your interest in serving**

1 the Second Judicial Circuit as circuit judge.
2 I've looked over your application and your many
3 documents that you had to submit as part of this
4 process. One of the things that I've read is
5 your Amended Personal Data Questionnaire in which
6 you answered several questions, I guess, as a
7 supplement to what you initially provided to the
8 Commission. One of the questions was number
9 eleven, and it asked you to talk about your
10 experience in a number of matters with your law
11 practice. And in your answer you stated, "My
12 experience in civil court has been very limited."
13 Can you elaborate on what your experience in
14 civil court and circuit court has been?

15 A. Yes, sir. Most of my work in civil court has
16 been in common pleas, has been, again as I
17 mentioned, PCR work. I've handled dozens of PCR
18 complaints and as well as PCR appeals. I've
19 handled a defamation case with my law partner,
20 Jason Price. We handled some dog and horse
21 litigation quite a few years ago. In addition to
22 that, you know, just personal injury. I've
23 handled two defamation cases in civil court.

24 Q. Let me ask you this: you have -- when you say
25 you've handled the PCR cases, so you've had to

1 argue non-jury matters in circuit court numerous
2 times?

3 A. That's correct. Yes, sir.

4 Q. Have you handled any other non-jury matters in
5 circuit court that you can recall, other than the
6 post-conviction relief matters?

7 A. Not that I can recall right now. I can't think
8 of anything right now within the last five years.

9 Q. So if the -- you obviously are aware that the
10 Citizens Committee expressed concerns about
11 experience?

12 A. Yes.

13 Q. And the Bar also had an asterisk in its report in
14 its report about experience. So can you -- I
15 know you had touched on this earlier, but can you
16 tell us in your own words how you can assure the
17 Commission that you have adequate experience to
18 serve this state as a circuit judge?

19 A. Yes, sir. I will say that I've been practicing
20 law for twelve years, and during those twelve
21 years I've spoken to many of my colleagues, a lot
22 of whom are criminal defense attorneys, as I was,
23 or prosecutors, as I am, as well as those who
24 litigate who do purely civil litigation. And so,
25 you know, the amount of cases that actually go to

1 trial is a lot less than some of my predecessors
2 have experienced, just honestly speaking. That
3 doesn't mean that I'm not versed in evidence, and
4 it doesn't mean I don't know how to conduct
5 myself during a trial. Those things I think that
6 I am very comfortable in. I've got a vast amount
7 of experience in criminal trial just from my role
8 as a prosecutor. So again, I would not have
9 applied for this job if it was going to damage
10 our community, damage this state, or damage the
11 image of the judiciary in any way. And so I'm
12 confident that if there are some weaknesses there
13 I'll work to alleviate those weaknesses. I've
14 tried to do that a little bit through taking
15 those CLE courses. And again, I've always been a
16 quick learner. I've been able to navigate
17 through different areas of the law with diligence
18 and with research. As a matter of fact, my most
19 recent case with the City of Aiken has been tax
20 litigation. And I had no idea prior to doing
21 those two cases what I was doing, what that area
22 of the law was. But I was able to research that
23 and able to defend the city and defend them
24 successfully. And so I don't think it's a matter
25 of me not being able or me not having the

1 academic ability to supplement what may be
2 perceived as a lack of trial experience in common
3 pleas or in general sessions.

4 **Q. So you -- going back to the -- in your private**
5 **practice, when you were in practice with Mr.**
6 **Price, you primarily practiced in either general**
7 **sessions or magistrate level criminal cases?**

8 A. Well, in that experience, we mostly -- or I
9 mostly practice in criminal court, in general
10 sessions --

11 **Q. Either in general sessions or at the magistrate's**
12 **level?**

13 A. Or at the magistrate's level --

14 **Q. One or the other.**

15 A. But I also handled quite a bit of family law. We
16 also did workers' compensation, so I just want to
17 give you a fair picture of things that we did in
18 that firm.

19 **Q. And so in that six years, you handled a variety**
20 **of things in the criminal arena?**

21 A. Yes, sir.

22 **Q. Primarily as a private practice lawyer but also**
23 **as a hired attorney to do public defender type**
24 **work through the state --**

25 A. Yes, sir.

1 Q. -- indigent defense fund? And then since you
2 went in to work for the City, you have worked as
3 a prosecutor and you've handled a variety of
4 different cases in the city criminal court -
5 municipal court?

6 A. That's correct. Yes, sir.

7 Q. And then in addition to your time as a city
8 prosecutor, you've handled a variety of things in
9 other courts on behalf of the City?

10 A. That's correct.

11 Q. I may have some more questions in a minute.

12 A. Yes, sir.

13 Q. Thank you.

14 CHAIRMAN SMITH: Mr. Strom.

15 MS. POPE - EXAMINATION BY MR. STROM:

16 Q. Thank you. Just following up on Senator Young's
17 questions. Have you tried any cases, either in
18 common pleas or general sessions, to a jury?

19 A. I have not tried to a jury, no, sir.

20 Q. Okay. Have you bench tried a full case, either
21 common pleas or a criminal non-jury matter, other
22 than the post-conviction reliefs in circuit court
23 or general sessions?

24 A. Nothing other than the post-conviction relief,
25 Your Honor -- excuse me, sir. But again, I try

1 cases very often on the municipal level. We use
2 the same --

3 Q. I started out in the solicitor's office and I
4 tried a lot of cases there too. And I agree with
5 you, the rules are very much the same.

6 A. Yes, sir.

7 Q. Thank you.

8 CHAIRMAN SMITH: All right. Any further questions?

9 MS. POPE - EXAMINATION BY CHAIRMAN SMITH:

10 Q. Ms. Pope, let me just follow up on a couple of
11 those, and I think you hit it at the end. I
12 presume as a prosecutor I had to -- I prosecuted
13 last year for my city for a while, while they
14 were in between prosecutors. And I tried about
15 six weeks of -- I did six terms of court, six
16 week terms of court, and I presume you've had to
17 try a couple of cases from time to time --

18 A. Yes, sir.

19 Q. -- to a jury in municipal court; is that right?

20 A. Yes, sir.

21 Q. Same rules of evidence, almost like general
22 sessions court, isn't it?

23 A. Yes, sir.

24 Q. Same law, except it's misdemeanors, correct?

25 A. Yes, sir.

1 Q. And same type of having -- either they had a
2 public defender or they had a private defense
3 attorney on the other side; is that right?

4 A. That's correct. Sometimes we have pro se
5 litigants, which is interesting, but, yes, sir.

6 Q. Yeah. I had the pleasure of doing that on my
7 last one over Christmas. So in that regard, have
8 you tried -- I know it's before a judge, but have
9 you tried post-conviction relief to a conclusion?

10 A. Yes, sir.

11 Q. And then when you did workers' compensation at
12 McAngus, did you try any workers' comp cases
13 before a commissioner?

14 A. Yes, sir.

15 Q. To conclusion. And in those cases you would have
16 to -- when you would -- I presume you did defense
17 while you were at McAngus, right?

18 A. That's correct. Yes, sir.

19 Q. And I presume then that you would have to go take
20 depositions of the claimants and understand their
21 case and then probably go depose witnesses,
22 meaning expert witnesses, via doctors --

23 A. Doctors, yes, sir.

24 Q. -- as to the approximate cause of the injury or
25 the types of injuries; is that right?

1 A. That's correct, sir.

2 Q. Okay. And then when you were in private
3 practice, did you say you had handled some civil
4 cases also?

5 A. I did, yes, sir.

6 Q. And I think you were talking about maybe some
7 defamation cases and some personal injury and
8 things to that effect?

9 A. That's correct.

10 Q. And did you have to file suit and start the
11 discovery process through there?

12 A. Yes, sir.

13 Q. And did you have to go to motion hearings on
14 those cases?

15 A. That's correct. Yes, sir.

16 Q. And you just didn't try them; is that right?

17 A. Yes, sir.

18 Q. And most of them, I presume, settled with
19 mediation, like probably 98 percent of the civil
20 cases in this state; is that right?

21 A. That's correct, sir.

22 Q. So I think one of the thing that all of us lament
23 it was a lot more fun, I started practicing law
24 in the early '90s was, you know, we tried a lot
25 more cases back then. We didn't mediate that.

1 And I think what we observe from over here now is
2 that that trend's broken. I mean, I used to try
3 ten or twelve cases a year. I'm lucky to try one
4 case -- one or two cases every two or three years
5 now. And I think it's difficult for people who
6 are coming out of law school in this day and age
7 of being able to try cases, but, you know, -- and
8 so, you know, I presume you have a wealth of
9 experience that goes along with everything up
10 through trial; is that right?

11 A. That's correct, sir.

12 Q. And are you well versed on the rules of evidence?

13 A. Yes, sir.

14 Q. And you use those rules of evidence in your term
15 -- in your role as city prosecutor; is that
16 right?

17 A. That's correct. Yes, sir. As well as in my role
18 as staff attorney.

19 Q. And I'll say this is, you know, I tell people
20 this when I've been up here for a while is I had
21 a law partner who is now sitting on the Supreme
22 Court, and he never -- he did nothing but
23 insurance defense work. Tried -- defended
24 governmental entities and defended car wrecks and
25 never -- I joke with him the only one case he

1 ever had when he was there was an appointed
2 probation revocation case and Judge King since
3 did a full revocation on his client, and so other
4 than that, he never had any experience. And when
5 he came, he was the go-to trial judge in general
6 sessions while he was on the bench in Third
7 Circuit. So it's really your analytical ability,
8 your ability to learn, and your ability to adapt
9 to that role, and as long as you have the
10 substantive knowledge. Do you believe you have
11 the basics of what you need in order to be a
12 successful trial judge?

13 A. I do, sir. Yes, sir.

14 Q. Is there any training that you can think that you
15 would -- additional training or -- other than
16 actually participating in a trial, but is there
17 any additional training you think you would need
18 in order to be a successful circuit court judge?

19 A. Well, I will say this, that I do not profess to
20 know everything about the law. And I think that
21 that's very dangerous if someone says, I have
22 nothing to learn. You know, attorneys take
23 continued -- the required CLEs for us to continue
24 to learn; other professions do that as well. And
25 I think that I certainly have the qualifications

1 and I have the academic stamina, as well as the
2 physical stamina, to do what is required of me as
3 a trial judge. That doesn't mean that I'm not
4 always willing to learn more or to get better at
5 doing that, and that's something that I'm more
6 than willing to do.

7 **Q. And you've practiced for twelve years?**

8 A. Yes, sir.

9 **Q. And the entire time you've been in continuous**
10 **practice, one way or another through either comp,**
11 **criminal defense, civil work, and now as a city**
12 **attorney? Is that what you are, a city attorney**
13 **for Aiken?**

14 A. Well, I am the -- we have a city attorney who is
15 city councils' attorney, but I serve as the city
16 solicitor. It's a dual role. They used to be
17 two separate jobs, but they've merged those two
18 positions together. And so I serve as a
19 solicitor in the morning. And in the afternoon,
20 I serve as the staff attorney. So everything
21 that comes through the City, you know, comes past
22 my desk.

23 **Q. You handle mostly their litigation? That's not**
24 **farmed out by the insurance company?**

25 A. Well, what I -- it comes to my desk first.

1 Employment issues are most definitely farmed out.
2 And those workers' compensation issues, if I --
3 if we can't come to some sort of -- some of those
4 are farmed out as well, those workers' comp
5 issues. But in terms of contract law, minor
6 workers' comp type issues, tax litigation,
7 anything that the City needs handled, I handle
8 that.

9 **Q. All right. I appreciate you answering my**
10 **questions.**

11 A. Thank you.

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

14 MS. POPE - RE-EXAMINATION BY SENATOR YOUNG:

15 **Q. This is a question I've asked a lot of different**
16 **candidates in the time I've been on the**
17 **Commission; I'm going to ask you too. You were a**
18 **private practice lawyer with a partner for six**
19 **years?**

20 A. That's correct.

21 **Q. And you have handled a lot of cases in multiple**
22 **courts, especially when you were in private**
23 **practice. I mean, you might be scheduled in the**
24 **morning to be in magistrate's court in Aiken and**
25 **then in that afternoon you might have a PCR**

1 matter in wherever.

2 A. Yes, sir.

3 Q. And so during that time, did you -- let me phrase
4 it this way: do you believe that you would -- if
5 you were elected circuit judge, that you would be
6 sensitive to the time constraints and scheduling
7 conflicts that face lawyers who practice in small
8 firms, as it relates to being pulled from one
9 court to the next, depositions in different
10 matters, court appearances, family obligations?
11 Do you think you'd be sensitive to that?

12 A. Yes, sir, I do. I've practiced for twelve years
13 and I know how it feels to have to rush from one
14 place to the next, or to even just have to
15 prepare for several things at once. That being
16 said, I'm very much aware of alcoholism, in our
17 community and our profession, as well as
18 increasing rates of depression. Attorneys need
19 vacations and attorneys need breaks. And I do
20 think that there is a delicate balance of moving
21 the docket and of making sure that the community
22 has their case expeditiously heard. I do think
23 that that's important, but I also think that the
24 mental health of attorneys is also important. I
25 think that that is a plus for their clients if

1 they're in good mental health. And to answer
2 your question, you know, I have three children
3 and I do have family obligations. My husband's a
4 football and a basketball coach. And so I do
5 understand that attorneys need to have a balance
6 of family and of work as well. And so I don't
7 have any issues with orders of protection. I
8 think that they're helpful in letting both
9 parties know when an attorney is available and
10 when an attorney needs to take a break, take a
11 vacation. So I think that I would be
12 understanding of those issues. And I think I've
13 tried to do that now in my career as a city
14 solicitor. I think I'm easy to work with, but I
15 also -- you know, my priority is to make sure
16 that that docket is moving and is running, but
17 I'm also very reasonable.

18 **Q. When you were in private practice, did you handle**
19 **any cases in Barnwell and Bamberg?**

20 A. I handled a few cases. I think I maybe had one
21 case out of Bamberg and I had a few cases through
22 my work at the indigent defense. I had a few
23 cases out of Barnwell.

24 **Q. So you have had -- is it fair to say that you've**
25 **had some cases in Barnwell and Bamberg, which are**

1 two of the other counties in the Second Judicial
2 Circuit and you are familiar with members of the
3 Bar in those communities?

4 A. I'm familiar with some of those members, yes,
5 sir.

6 Q. Okay. I don't have anything further at this
7 time.

8 CHAIRMAN SMITH: Thank you. No further questions --
9 any further questions? All right. Ms. Pope, I
10 appreciate you being here today. Thank you
11 for participating in the screening process. I
12 want to take this opportunity to remind that
13 pursuant to the Commission's evaluative criteria,
14 the Commission expects candidates to follow the
15 spirit as well as the letter of the ethics laws.
16 And we review violations or the appearance of
17 impropriety as serious and potentially deserving
18 of heavy weight in screening deliberations. On
19 that note, the record will remain open until the
20 formal release of the Report of Qualifications
21 and you may be called back at any time that it
22 may arise. I thank you for your offering today.
23 I thank you for your participation in this and
24 wish you the best of luck.

25 MS. POPE: Thank you. Thank you for having me today.

1 (Off the Record)

2 CHAIRMAN SMITH: We're back on the record, and I think
3 you've requested to clarify something?

4 MS. POPE: I apologize. Thank you for allowing me to
5 come back on the record. I realized, in walking
6 out, that I misstated. When I was being
7 questioned about my CLE experience, I do remember
8 that maybe four or -- some while ago, maybe four
9 or five years ago, they were not reported on
10 time. But it wasn't that I had not completed the
11 CLEs, but I do think I remember receiving a
12 letter, and that may be what you were
13 referencing. And so I apologize. I just
14 remember doing all of my CLEs, but it may have
15 been a reporting error on my end, not necessarily
16 that I had not completed those courses.

17 CHAIRMAN SMITH: All right. Any further questions in
18 regards to that statement or testimony? All
19 right. Appreciate it.

20 MS. POPE: Thank you.

21 (Off the record)

22 CHAIRMAN SMITH: Good afternoon, Mr. Miller, how are
23 you doing?

24 MR. MILLER: Well, sir.

25 CHAIRMAN SMITH: I appreciate you being here. I see

1 you've brought some company with you. Would you
2 like to introduce them to the Commission?

3 MR. MILLER: Yes, sir, if I may. To the left here --
4 or to my left is Ashley Jacobs. She is a
5 longtime friend of mine, going back to high
6 school, and she is the newly announced county
7 administrator for Beaufort County, but we have a
8 long relationship with each other. And to her
9 right is another very good friend of mine, my
10 wife, Christy Miller. And she and I have also
11 been friends for quite some time.

12 CHAIRMAN SMITH: I hope so. Well, welcome both of
13 y'all. I appreciate you being here today. Mr.
14 Miller, let me place you under oath, if you'll
15 raise your right hand, sir.

16 MR. DAVID W. MILLER, having been duly sworn, testifies
17 as follows:

18 CHAIRMAN SMITH: All right. Mr. Miller, before you,
19 you have before your Personal Data Questionnaire
20 and your Sworn Statement. Are those both
21 documents that you've submitted to the
22 Commission?

23 MR. MILLER: They are, sir.

24 CHAIRMAN SMITH: Are they both correct?

25 MR. MILLER: Yes, sir. I would note that there is an

1 amendment to the Personal Data Questionnaire as
2 well.

3 CHAIRMAN SMITH: And are there any other changes that
4 need to be made or updated at this time other
5 than your amendment?

6 MR. MILLER: No, sir.

7 CHAIRMAN SMITH: All right. If you'll hand that to
8 Lindi for me, please, sir. Do you have any
9 objection to us making this an exhibit to your
10 transcript of your sworn testimony here today?

11 MR. MILLER: I do not.

12 CHAIRMAN SMITH: All right. Mr. Miller, the Judicial
13 Merit Selection Commission has thoroughly
14 investigated your qualifications for the bench.
15 Our focus has been on the nine evaluative
16 criteria, has included a ballot box survey, a
17 thorough study of your application materials,
18 verification of your compliance with state ethics
19 laws, a search of newspaper articles in which
20 your name appears, study of previous screenings,
21 and checks for economic conflicts of interest.
22 Today, we've received no affidavits in opposition
23 to your election and there are no witnesses
24 present to testify. We offer you the opportunity
25 to make a brief, and I emphasize brief, opening

1 statement, if you would like.

2 (Exhibit Number 7 was marked for identification
3 purposes - (16 pages) Personal Data Questionnaire for
4 David W. Miller.)

5 (Exhibit Number 8 was marked for identification
6 purposes - (2 pages) Amendment to Personal Data
7 Questionnaire for David W. Miller.)

8 (Exhibit Number 9 was marked for identification
9 purposes - (7 pages) Sworn Statement of David W.
10 Miller.)

11 MR. MILLER: I would waive that opportunity.

12 CHAIRMAN SMITH: Thank you. Good answer. Please
13 answer any questions Ms. Crawford may have.

14 MR. MILLER: Thank you.

15 MR. MILLER - EXAMINATION BY MS. CRAWFORD:

16 **Q. Good morning -- good afternoon, Mr. Miller.**

17 **A. Good afternoon.**

18 MS. CRAWFORD: I note for the record that based on the
19 testimony contained in the candidate's PDQ, which
20 has been included in the record with candidate's
21 consent, David W. Miller meets the constitutional
22 and statutory requirements for this position
23 regarding age, residence, and years of practice.

24 **Q. Mr. Miller, how do you feel that your legal and**
25 **professional experience thus far renders you**

1 **qualified and will assist you to be an effective**
2 **circuit court judge?**

3 A. My legal experiences span both criminal and civil
4 matters. It's a little unusual that I was in the
5 reverse order from a lot of folks. But when I
6 came out of law school, I clerked for a circuit
7 court judge. Following that, I went into private
8 practice. And that really gave me an
9 appreciation both while handling civil matters,
10 plaintiffs work predominately, but also some
11 criminal defense work. It gave me the
12 opportunity to learn how to be a lawyer and how
13 to be a trial lawyer and how to respond to the
14 court. Then, in the unusual part of -- move of
15 the career, Solicitor Strom Thurmond was elected,
16 and it gave me the opportunity to go work in the
17 solicitor's office for him, which I took because
18 of the fact that I really wanted to get into the
19 courtroom more. I wanted to be a trial lawyer.
20 I wanted to be in the courtroom. I wanted to be
21 trying cases, and working for the solicitor's
22 office was an excellent way for me to do that.
23 And so I've had kind of a varied career, as far
24 as concentrating on civil in the first half of my
25 career and for the last ten years concentrating

1 exclusively on criminal cases. But I think that
2 it's given me the ability to kind of understand
3 where practicing lawyers are coming from, and
4 particularly when it comes to the private Bar, to
5 understand that these people are working and they
6 have office responsibilities and home
7 responsibilities and other responsibilities that
8 need to be tended to, and that needs to be taken
9 into account.

10 Q. Thank you, Mr. Miller. Mr. Miller, the
11 Commission received 326 ballot box surveys
12 regarding you with 87 additional comments. The
13 ballot box survey contained the positive --
14 contained several positive comments. For
15 example, "David is an excellent candidate. He
16 works hard and is diligent in everything he does.
17 He listens when you have an issue and comes up
18 with reasonable solutions that are manageable for
19 all parties. I believe he would be an excellent
20 judge." That's one comment. Two: "David is a
21 fantastic lawyer and an advocate who works hard
22 for his client while maintaining excellent
23 relationships with opposing counsel. He is
24 ethical and assertive in his cases and his
25 dealings with other lawyers. Think he is the

1 best candidate for the seat." Five of the
2 written comments expressed concerns and several
3 of these indicated that you do not have the
4 temperament for this position. What response
5 would you offer to this concern?

6 A. Well, first of all, I would like to say that I am
7 concerned about the concerns. It is not
8 something that I take lightly. I don't know how
9 to specifically address a concern as to
10 temperament when I don't specifically know what
11 the circumstances were surrounding that, but I
12 would say that it is something that I am aware
13 of. I've become aware of it during the course of
14 this process. It is something that I am
15 concerned about addressing while I am doing my
16 job. But in general, to respond to it, I would
17 say part of the issue is the job that I have.
18 I'm the deputy solicitor. I have two assistants
19 that are -- that work with me in Barnwell and
20 Bamberg County. And as a deputy solicitor, as
21 somebody that's in charge for our office, I am a
22 lot of times the one that attorneys want to go to
23 to try to get a better deal than they may have
24 been offered than from one of my assistants. And
25 even if it's one of my own cases, very often

1 people aren't happy with the answers that they
2 get. And being firm and trying to be fair is
3 sometimes misread by people who are
4 disappointed, who want to tell their clients
5 something better than they're able to tell them
6 or better than I'm able to offer. But one of the
7 biggest problems that I encountered in that is
8 that when we have an office policy, I have to
9 stick to that office policy. I don't necessarily
10 let people know when I'm doing something because
11 Strom has said that it is the way we are going to
12 do things, but I try to do what's right and I try
13 to be fair to everybody. As far as the specific
14 allegations, I would say this: I only -- I think
15 it's only fair to go back and look at my record.
16 And my record over the 18 years I've been in
17 practice, I have never had a founded grievance
18 filed against me. I have never been held in
19 contempt of court. I've never been threatened
20 with contempt of court. I have always conducted
21 myself in what I thought was a fair and courteous
22 manner. That's not to say that I haven't ever
23 lost my temper; I'm sure that I have. But there
24 have been many times whenever I've gone up to
25 somebody after a hearing or after a incident,

1 where we might have had cross words with each
2 other, and apologized to them. And I make it a
3 habit, something I've taught my assistants to do,
4 when I've lost a case, a criminal case -- it has
5 happened, when I lose a case, I try to give it a
6 week and then I call up that opposing counsel and
7 I talk to them and tell them that I owe them a
8 drink of their choice. So I try to be fair and I
9 try to be courteous, and I try to be respectful.
10 But as to the specifics of the allegations -- or
11 of the comments, I can't directly direct them,
12 but I can just refer back to my record, what is -
13 - actually is there.

14 **Q. Okay. Thank you. We discussed that there were**
15 **concerns that you would not be able to or could**
16 **have a tough time transitioning from the**
17 **solicitor officer's to a judicial role. How do**
18 **you respond to that?**

19 **A.** Two ways. First, there's the -- there is the
20 issue of conflict, which obviously you have to
21 deal with those types of issues. I have not been
22 in Aiken County, prosecuting in Aiken County
23 since May of 2015. So largely the conflicts that
24 were there -- or the cases that were open
25 whenever I left Aiken have largely been resolved.

1 As far as Barnwell and Bamberg, they're much,
2 much smaller counties. So we know that it's
3 going to take some time for those things to work
4 out. But I believe, based upon the feedback that
5 I've gotten from people, that in all but the most
6 egregious of circumstances, or difficult of
7 circumstances, that there would likely be many
8 people that would be willing to waive conflicts
9 if I was on the bench, as far as defense counsel
10 and defendants, as well as anybody in our office.
11 But obviously I know that would be something I
12 would have to do, is to put that out there on the
13 record so that people could address that if they
14 wanted to address it.

15 **Q. Thank you. In your PDQ, you mentioned that you**
16 **are a named defendant in federal 1983 action**
17 **filed by a criminal defendant in which you were**
18 **sued as your individual capacity. Can you**
19 **explain the nature and disposition of this**
20 **lawsuit?**

21 **A.** Summary judgement was granted for me and a couple
22 of the other named defendants in the case.
23 Essentially, a defendant had made some
24 threatening allegations to Judge Early and to
25 Sheriff Carroll. Included in the threats were

1 the fact that he had people inside the jail that
2 he could send messages through -- this defendant
3 could send message through. A decision was made
4 to submit him for safekeeping status. And his
5 lawsuit was about his disagreements with the
6 process by which he got put into safekeeping
7 status. And summary judgement was granted for
8 everyone by the federal district court. It went
9 to the United States Fourth Circuit of Appeals,
10 and there myself and the jail administrator, we
11 were -- our summary judgement was affirmed. A
12 couple of the causes of action, though, the
13 district -- or the Court of Appeals did send back
14 to the federal district court. I'm not aware of
15 what's gone on with the lawsuit since then. I
16 didn't have anymore involvement with it.

17 **Q. Okay. Thank you. In your amendment to your PDQ**
18 **you mentioned that you were a plaintiff in a**
19 **civil action filed in Aiken magistrate's court in**
20 **2008. This was in the SLED report as well,**
21 **involving AT&T and Apple. Can you explain the**
22 **nature and disposition of this lawsuit?**

23 **A.** I got into a contract dispute with -- it started
24 with AT&T because I had purchased a Apple care
25 protection plan for my iPhone. And when my

1 iPhone broke, AT&T tried to push me off to Apple
2 and Apple tried to push me back to AT&T, so I
3 brought a lawsuit against them in magistrate's
4 court. Ultimately, AT&T defaulted, but Apple
5 sent a representative and we had a bench trial
6 and I got a judgment from Apple that they ended
7 up paying.

8 **Q. Thank you. In the SLED report in your amendment**
9 **to your PDQ it's mentioned you're a named**
10 **defendant in two separate guardian ad litem**
11 **cases. In one, you represented Megan Audrey**
12 **Daves and Harrison Alexander Daves. And in the**
13 **other you represented Avery Page and Whitney**
14 **Page. Please explain the nature and disposition**
15 **of these lawsuits.**

16 **A.** The first one that you mentioned with the Daves,
17 those were minor children and it involved an
18 estate. And a guardian ad litem needed to be
19 appointed to go in and essentially approve for
20 the probate courts the distribution of some land
21 that was involved in the estate. The second one
22 was -- involved a minor child who was the child
23 of a very close friend of mine, a personal friend
24 of mine. They had retained a law firm, a local
25 law firm, to represent them in a case where they

1 were making a claim for a dog bite. And the
2 lawyer who was representing them explained to
3 them that to get the minor settlement approved
4 they would need to have an attorney guardian ad
5 litem, somebody to act as guardian ad litem. And
6 I offered to do that for them for free. I
7 cleared it with Solicitor Thurmond. I wasn't
8 actually representing them, except in the
9 guardian ad litem context and didn't receive any
10 compensation for it. And by that point, when
11 they asked me to come in, it was truly a matter
12 of here's what the petition and the order are. I
13 looked over and we went in front of Judge Early,
14 and Judge Early approved everything.

15 **Q. Thank you.**

16 MS. CRAWFORD: Mr. Chairman, I'd like to request that
17 we now go into executive session to handle a
18 matter.

19 CHAIRMAN SMITH: All right. Mr. Safran moves we go
20 into executive session. All in favor say, aye.

21 (Ayes are heard.)

22 CHAIRMAN SMITH: All opposed.

23 (No replies are heard.)

24 CHAIRMAN SMITH: Ayes have it. For those of y'all in
25 the audience, if y'all could clear the room and

1 Mr. Miller, we'll stay in here until executive
2 session.

3 EXECUTIVE SESSION

4 CHAIRMAN SMITH: Ms. McIver has motioned that we lift
5 the veil and come out of executive session. All
6 in favor say, aye.

7 (Ayes are heard.)

8 CHAIRMAN SMITH: All opposed?

9 (No replies are heard.)

10 CHAIRMAN: We're coming out of executive session.

11 We're back on the record and I'd like to state
12 that while we were in executive session there
13 were no decisions made or votes taken during that
14 time. Ms. Crawford, you can resume questioning.

15 MS. CRAWFORD: Thank you, Mr. Chairman. Thank you,
16 Mr. Miller. I would like to note that the
17 Midlands Citizens Committee reported that Mr.
18 Miller is well qualified in the evaluative
19 criteria of ethical fitness, professional and
20 academic ability, character, reputation,
21 experience, and judicial temperament, and
22 qualified in the remaining evaluative criteria of
23 constitutional qualifications, physical health,
24 and mental stability. In summary, the Citizens
25 Committee noted, "The Committee felt that Mr.

1 Miller was very well qualified to sit as a
2 circuit court judge. He was energetic, eager to
3 stay involved in making the judicial system more
4 efficient. Pleasant and exhibited good
5 temperament." A few housekeeping questions.

6 **Q. Mr. Miller, are you aware that as a judicial**
7 **candidate you are bound by the Code of Judicial**
8 **Conduct as found in Rule 501 of the South**
9 **Carolina Appellate Court Rules?**

10 A. Yes, ma'am.

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

14 A. Absolutely not.

15 **Q. Since submitting your letter of intent, have**
16 **you sought or received the pledge of any**
17 **legislator either prior to this date --**

18 A. No, ma'am.

19 **Q. -- or pending the outcome of this screening?**

20 A. No, ma'am.

21 **Q. Are you familiar with § 2-19-70, including the**
22 **limitations on contacting members of the general**
23 **assembly regarding your screening?**

24 A. I am.

25 **Q. Have you asked any third parties to contact**

1 members of the General Assembly on your behalf?

2 A. I have not.

3 Q. Are you aware of anyone attempting to intervene
4 in this process on your behalf?

5 A. I am not.

6 Q. And have you reviewed and do you understand the
7 Commission's guidelines on pledging, as well as
8 SC Code § 2-19-70(e)?

9 A. I have.

10 MS. CRAWFORD: Mr. Chairman, I would note for the
11 record that any concerns raised during the
12 investigation by staff regarding the candidate
13 were incorporated into the questioning of the
14 candidate today, and I have no further questions.

15 CHAIRMAN SMITH: All right. Thank you very much. Any
16 questions for Mr. Miller?

17 MR. MILLER - EXAMINATION BY CHAIRMAN SMITH:

18 Q. Mr. Miller, let me just ask you a couple of
19 questions while maybe my colleagues can figure
20 out whether they want to ask questions or not.
21 But one thing we ask everybody is -- obviously
22 you've been a solicitor for how long now?

23 A. My ten year anniversary was January of this year.

24 Q. Okay. Congratulations. And you practiced civil
25 law for how long?

1 A. Seven years prior to that.

2 Q. Seven years?

3 A. Yes, sir.

4 Q. Did you try any cases in common pleas during that
5 time?

6 A. As the first chair, no, sir. The -- I had four
7 or five cases that I tried with Bob Hart or that
8 I tried with Ronnie Maxwell, some other people
9 where we would all be together, but as far as
10 first chair, they were -- and I'm trying to think
11 to make sure that there wasn't any, because I
12 haven't thought about it in so long. I don't
13 believe so. Actually, that was one of the
14 driving factors that led me to the solicitor's
15 office was the inability to get into the
16 courtroom in civil cases. I did have some
17 situations where I tried things in front of a
18 Master-in-Equity or a special referee, that type
19 of thing, but these weren't -- they weren't jury
20 trials. They were contested trials, but they
21 were not jury trials where we were going in and
22 striking juries on cases.

23 Q. All right. But I would presume, as part
24 of handling civil cases, you handled some on your
25 own and you would have to go to motion hearings

1 or discovery, conduct depositions and things to
2 that affect?

3 A. Absolutely. Yes, sir.

4 Q. And did you try any civil cases to conclusion as
5 first chair in magistrate's court any during that
6 time?

7 A. Yes, sir.

8 Q. And then obviously you've got a wealth of
9 criminal experience, I presume, as being deputy
10 solicitor of the Second Circuit.

11 A. Yes, sir.

12 Q. Have you tried any death penalty cases?

13 A. I have been involved in three separate
14 death penalty cases. I was the lead counsel in
15 David Mark Hill's case. That was as a defense
16 attorney. Ultimately, I was one of the witnesses
17 for his execution. I was one of the attorneys,
18 second chair, in a case that was out of Barnwell,
19 and it was very early on in my career. State v.
20 David McClure was a death penalty case that was
21 in an interesting procedural posture, but we had
22 to go forward with it as a death penalty case.
23 And then the most recent death penalty case that
24 I was directly involved in was State v. Stefan
25 Carter where in fact our office was seeking the

1 death penalty against Mr. Carter for the killing
2 of a police officer for Aiken Department of
3 Public Safety.

4 Q. So you've been on both sides of a death penalty,
5 for the defense and for the prosecution?

6 A. Yes, sir. And been certified -- death penalty
7 certified for, I believe, fifteen years.

8 Q. As solicitor, the one thing, I presume, in your
9 circuit y'all -- the solicitor controls the
10 docket; is that right?

11 A. Absolutely.

12 Q. And so you decide whether a case gets put on the
13 trial roster and whether you're going to call it
14 that week or not; is that right?

15 A. Yes, sir.

16 Q. All right. Now, through that, you have some
17 ability akin to what a judge would about
18 controlling a civil docket or requesting
19 continuances or granting continuances. And so
20 one question we ask everybody, how do you balance
21 the needs of an attorney who has family
22 obligations or other obligations that they need
23 to attend to as to the disposition of cases on
24 the civil roster or a criminal matter? I presume
25 you've got some experience with that as being a

1 **solicitor and deciding what cases to call?**

2 A. Yes, sir. And actually just got the numbers this
3 morning. We're at about -- we're at 88 percent
4 of our cases in Barnwell are less than 360 days
5 old -- 365 days old, and we're at 92 percent of
6 our cases are less than 365 in Bamberg. And the
7 reason I point that out is to say this, we plan.
8 We plan in advance. We ask the attorneys to plan
9 in advance. And we have found great success by
10 being flexible, by being able to move, and by
11 really just communicating with the defense Bar.
12 We don't put cases on the docket and tell people
13 you're going to be here at this time and we're
14 going to do X, Y, and Z. We say -- generally, we
15 will go in and say, we think this might be a
16 trial because we've made an offer and you haven't
17 accepted it and you wanted to think about, but we
18 think this might be a trial. When over the next
19 two or three terms do you think that you would be
20 in a position to do that? And so if they have
21 attorney matters that need to be brought up or if
22 they have discovery questions or any of those
23 types of things, we can go ahead and do it and
24 we're not wasting time down the road trying to
25 cram it in the week of trial. As far as where

1 does the attorneys -- and I don't mean this -- I
2 don't mean it in a dismissive way, where does the
3 attorney's personal life come into the -- into
4 affecting the courtroom. I think it's something
5 that needs to be -- that needs to be worked
6 around and needs to be accommodated in every way
7 possible. Most of the time that attorneys have
8 had, for lack of a better term, carte blanche to
9 be protected when they wanted to, most of the
10 time there's not any problem at all. And
11 certainly that would be my position as until
12 there is a problem with somebody who always is
13 trying to be protected during a given time
14 period, then it's not a big deal. We didn't --
15 we had Judge Early as our chief administrative
16 judge for so long that we forgot anything about
17 orders of protection. Because if a defense
18 attorney came to us and said, my child's
19 graduating from college or my wife's having
20 surgery or I want to go on a ski trip or I've got
21 a conference, you didn't need an order of
22 protection to do that. If you tell us in
23 our circuit, we're going to say all right, good
24 enough, we can't do it this two weeks. What do
25 you think about the next month or the next term,

1 and we work with them. And certainly that's the
2 kind of -- that's the kind of thing I would
3 expect. More often than not, in the second
4 circuit, we have the defense saying we want these
5 cases to get tried faster, I've got a client in
6 jail; I want to get the case moved. But
7 realistically I think it's more important --
8 there's always going to be another case. I get
9 nervous, I get -- I get anxious whenever there's
10 a client sitting in jail and I don't think that
11 their attorney's doing anything to try to move
12 the case. So I will try to reach out to them and
13 maybe push them a little bit earlier to say what
14 do you think about this guy, what are we planning
15 to do with him. But if the client's out, if he's
16 out on bond, I'm not going to let the fact that
17 his case is getting close to 365 days old or 545
18 days old, I'm not going to let that be the
19 driving factor to say you've got to come in and I
20 don't care that you're going to miss your kid's
21 basketball game or something like that. Because
22 that's just not the way -- nobody gets along with
23 that.

24 **Q. And this happens often in courts around the state**
25 **is in civil court, if you were successful as a**

1 judge, you know, for one reason or other, the
2 term breaks down and some judges just roll with
3 it and say, you know, well, that's the way it is.
4 I'm not going to force anybody to try. And some
5 judges come into circuits and say I don't care
6 what you got, we need to try these cases. How do
7 you balance those two of trying to get the speedy
8 disposition of the cases as opposed to attorneys
9 not being ready for one reason or the other to
10 try cases?

11 A. Well, in my experience, particularly the visiting
12 judge, if it is a visiting judge coming in, which
13 I would be doing in a vast majority of these
14 situations, the lawyers know more about the case
15 and what needs to happen with the case than the
16 judge does. It's very similar to a guilty plea
17 where there's a recommendation. On some level,
18 you have to kind of accept the fact that you
19 don't know everything about their case and
20 you don't know everything about what's going on.
21 And if there's a problem where this lawyer
22 really, really wants to try his case and this
23 lawyer's really, really trying to avoid it, then
24 at that point time you got to look into it more.
25 But I've had court break down when I was in

1 charge of it as a solicitor too many times to sit
2 there and cast dispersions at anybody for things
3 happening. And I know what it's like trying to
4 get all of the cats herded. And I don't think
5 that the worst thing in the world that can happen
6 is for court to break down. But can't have it
7 break down all the time. You got to get stuff
8 moved at some point. But I think attorneys just
9 getting into the courtroom or getting summoned to
10 court a lot of times is a pretty good nudge to
11 try to get something resolved. And if they can't
12 resolve it, then we can try it. But it doesn't -
13 - it doesn't have to be this is absolutely how
14 it's going to be. You can still have a life and
15 be a lawyer.

16 **Q. I presume you being so close to Bamberg and**
17 **Barnwell, those are in the Second Circuit; is**
18 **that right?**

19 **A. Yes, sir.**

20 **Q. And so you see the small town lawyers that in**
21 **criminal general sessions, common pleas,**
22 **magistrate's court, real estate closings, and**
23 **everything in between, and recognize that**
24 **sometimes we've got to wear many hats to make a**
25 **living in practicing law in the smaller areas.**

1 A. Absolutely. One of the biggest challenges for
2 some of them is whenever they get the
3 administrative hearing officer there so they can
4 do the refusals. You know, they can't miss that
5 day. I understand that this is a guy that's the
6 administrative hearing officer, but that's super
7 important for those guys and it's super important
8 for their clients. And we might need -- and we
9 have. We've said, look, we're going to move
10 first appearances because we didn't know that the
11 ADR judge -- administrative law judge was going
12 to be in Bamberg so we'll move Barnwell first
13 appearances. You got to make some accommodation,
14 because if you're trying to do it all you just
15 can't do it without some help.

16 Q. And let me just on a personal note, I noticed you
17 clerked for Judge Rodney Peeples for some period
18 of time.

19 A. I did.

20 Q. Did it give you a great wealth of experience on
21 how to handle a courtroom? You're under oath.
22 That's a joke.

23 A. I mean, it was a great experience.

24 Q. You can plead the fifth amendment, if you like,
25 Mr. Miller.

1 A. I would like very much so.

2 Q. I have a judge from Sumter, Judge McFaddin, who
3 clerked with Rodney Peeples. And I do enjoy
4 hearing the stories, I'm just glad I wasn't
5 on the receiving end of some of those stories.

6 A. Well, Judge Peeples was much easier to work for
7 than he was to work around. So I don't have any
8 bad stories about him treating me poorly because
9 he's always treated me very, very well, but I
10 understood it could be tough.

11 Q. All right. Any further questions?

12 MR. MILLER - EXAMINATION BY MS. BLACKLEY:

13 Q. Hello. Thank you for being here. I do -- I want
14 to circle back around to just temperament and the
15 past experiences that you've had. I believe that
16 it's also important to have the experience and be
17 able to be well qualified, as far as process and
18 procedures of the court system, but also as well
19 as having a positive temperament. And I know you
20 touched on it a little bit earlier, but I'd like
21 to again circle back around and -- do you know of
22 any instances where there have been an issue in
23 the past that people would comment about your
24 temperament or I know you stated that when you've
25 had a case here or there you circle back around

1 in a week or so and maybe offer a drink of their
2 choice. But could you elaborate a little bit
3 more on some instances where your temperament has
4 been questioned?

5 A. Actually, ma'am, I can't because I have never --
6 nobody has ever come to me and said, your
7 temperament is creating an issue. If I -- and my
8 statement about going to opposing counsel a week
9 or so, I'm talking about adverse jury verdict,
10 adverse in my view. I've never been a huge fan,
11 although certainly I will -- for the sake of
12 appearance, I will shake the hand of my opposing
13 counsel. It's never seemed genuine to me. But
14 when you got back to them the next week and you
15 say, you know, you really did do a good job
16 trying that kind of case, I mean, that's the kind
17 of person that I try to be. I really don't know
18 of any specific instance. I know there have been
19 times whenever I've been upset in the courtroom.
20 I really do my best to hide it, and I think -- I
21 would tell you that I always do a really good job
22 of hiding it. That's certainly something that I
23 was kind of surprised about. Other personnel in
24 the courtroom, the court reporters, the clerks,
25 the bailiffs, those types of folks, I mean,

1 they're probably the ones that see me the most in
2 the courtroom because you're always with them.
3 And I've never been asked a question or never
4 heard any comments from anybody like that. So
5 having said that, whenever I was earlier on in
6 this process, I actually asked around. And the
7 assistant solicitors that work with me and Ms.
8 McElveen, the clerk of court, Mr. Petey, the
9 clerk of court in Bamberg, and nobody really
10 could say, well, it was probably that time so and
11 so happened. I know that there have been times
12 whenever I've been frustrated and I know that
13 there have been times when people have been upset
14 with me. I'm sure that it's happened. I don't
15 know specifically which one. But I do try to
16 come back and always come back to it later on.
17 If I think that there is somebody that's upset
18 with me, I'll come back to it later on and just
19 kind of try to talk it out with them. But this -
20 - we get a number of attorneys. And as the world
21 is changing and there's so many more attorneys
22 that are coming out of the law schools, it's not
23 unusual for us to have an attorney that we've
24 never seen before show up in Bamberg for one
25 case. And they're in and they're out and they're

1 gone. And so I don't know. You know, maybe that
2 was the case and maybe -- I just don't know.

3 **Q. Is there --**

4 MS. BLACKLEY: let me get a point of clarification.

5 Can I ask about comments that have been made in
6 the report from the ballot box comments?

7 CHAIRMAN SMITH: Absolutely.

8 **Q. So -- and where I'm going with this is the one**
9 **that I have a -- just like to hear back from you**
10 **on, there was a comment made that says, "Has**
11 **publicly made derogatory and sexist comments**
12 **about women's bodies in the courtroom where he**
13 **thought only men heard them. Arrogant."**

14 A. I have -- and I was actually asked about that. I
15 have absolutely no idea where that came from.
16 That's -- it's not me. It's not -- that's not
17 the kind of thing that I would say about someone.
18 I believe, whenever I was questioned about it
19 before, it was that someone had overheard me make
20 a sexist comment in the workplace. And everybody
21 that I asked about it was like where in the world
22 could that have come from. I don't know where
23 that came from or what that comment allegedly
24 was, so I really have no way to respond to that.
25 I just I can't -- I can't say why somebody would

1 say that.

2 Q. Thank you.

3 CHAIRMAN SMITH: All right. Mr. Safran.

4 MR. MILLER - EXAMINATION BY MR. SAFRAN:

5 Q. Mr. Miller, thank you for being here. Let me
6 just take, I guess, a step, I guess, from where
7 we were just now in terms of the ballot box
8 comments. And certainly we look at those and we
9 always have to look at them, you know, with some
10 level of balance because, you know, people have
11 agendas, people say things, certainly, for
12 reasons that may go beyond the truth, and then
13 again they may also be very candid in these
14 things because they feel like it's something the
15 public needs to know or at least that we need
16 to know.

17 A. Yes, sir.

18 Q. That said, I've been very impressed with your
19 comments. I think that pretty much substantially
20 everybody that I, at least, am reading has a
21 high, high opinion of your integrity, of your
22 honesty, of your willingness to work with people.
23 And having been somebody that never practiced in
24 that circuit much but came up -- I started there
25 working for Judge Ness. I mean, I'm very

1 familiar with, kind of, how that practice is.
2 And, you know, I think what I'm hearing from you
3 it's continuing even now 30, 40 years later that
4 people do respect the lawyer's time. They do,
5 basically, try to work together and they
6 recognize that, really, everybody's going to be a
7 winner if there's some degree of cooperation.
8 And from what I'm hearing from you that hasn't
9 changed.

10 A. That has not, in the Second Circuit.

11 Q. And as a judge, I'm assuming you would continue
12 that same tradition?

13 A. Everything that I could do to make that happen, I
14 would do.

15 Q. And, you know, I think having been in front of
16 Judge Early now for so many years, he continued
17 that.

18 A. Absolutely.

19 Q. And I understand Judge Peeples was a little bit
20 different in that respect. I mean, I hate to
21 have to admit it, but I went and clerked with him
22 for about two weeks so when I was with Judge
23 Ness, so I've been there. You know, certainly
24 don't have your battle scars. But comparatively,
25 where is the time element devoted to circuit

1 court civil compared to when you were a law
2 clerk? I'm understanding from what Justice
3 Kittredge said a couple years ago when we had him
4 here that it's gotten down to almost nothing.

5 A. As far as I am aware, in the -- going on May --
6 end of May will be four years I've been in
7 Barnwell and Bamberg. There have been two civil
8 cases that have been tried.

9 Q. Okay. So it --

10 A. And Aiken is a similar number.

11 Q. So it's a very small number?

12 A. It is a very small number, which is not
13 necessarily a bad thing. I think that the
14 mandatory ADR has been an absolute godsend to the
15 civil dockets because of the fact that, you know,
16 Judge Peebles used to spend a lot of time with
17 his pretrial memos and twisting arms back there
18 before the jury came in, trying to save the money
19 so that the jury didn't have to come in to have a
20 term breakdown. And, in fact, a couple of the
21 older lawyers even joked around with me about the
22 fact that they wanted to make sure I wouldn't be
23 trying to bring back those old Judge Peeple's
24 pretrial memo days. And I asked them, I said why
25 in the world would I do that; with ADR you've

1 already gone and mediated your case, you've
2 already done what you can do to get it resolved.
3 The whole reason Judge Peeples was trying to do
4 that was to make the lawyers look at their cases
5 and make them start thinking seriously about how
6 he was going to present his case to a jury. And
7 sometimes, on the courthouse steps, the light
8 looks a little bit different and it would get
9 cases moved. So, yeah, I think that the ADR has
10 pushed -- I think that a lot of is the ADR
11 pushing those civil cases to resolutions before
12 where they might have been -- especially if it
13 was a basic little wreck case it might have been
14 tried before.

15 Q. Well, and let me ask you this, in the same vein,
16 though, just because the cases aren't going to
17 trial doesn't mean that there is not an ongoing
18 motion practice and a lot of things that are
19 necessarily going to have to get done in front of
20 the circuit judge in those civil cases.

21 A. Absolutely.

22 Q. And let me ask this, you also have that
23 experience having practiced in the civil realm
24 for about seven years and you've also seen it on
25 the other side when working for Judge Peeples?

1 A. Correct.

2 Q. I mean, so do you feel like that experience is
3 something that gives you at least a leg up in
4 terms of being able to handle what you're going
5 to see from the civil side, notwithstanding all
6 of your criminal experience?

7 A. Absolutely, I do. And I would also note that
8 when I became an assistant solicitor, so my first
9 four or five years that I was working in the
10 Second Circuit solicitor's office, I would also
11 handle the magistrate's criminal appeal. So any
12 appeals from criminal court, magistrate's court,
13 we would handle in the circuit court. And I
14 loved doing it because I would go up there with
15 my files and I'd be ready to go. And because I
16 was getting paid to be there anyway, Judge Early
17 would always make our appeals be the last thing
18 that was heard for the CP&J day. And so I'd sit
19 there and listen to everybody's motions and try
20 to figure out where the -- you know, what were
21 the issues in them and those types of things.
22 And it was not unusual at all -- Aiken, you can
23 still look up the filings online. I used to go
24 in and look up the filings and read about motions
25 that had been made in certain cases, just because

1 I was interested in them.

2 Q. So, basically, though, what I'm hearing is, is
3 that really if you were to happen to be able to
4 get this position, the Second Circuit practice in
5 terms of circuit court's really not going to
6 change any from what it's been doing for as long
7 as Jack Early's been on the bench, which was some
8 period of time, correct?

9 A. That is correct, yes, sir. To the extent that I
10 could. Now, obviously, if they pass some new
11 rule or some new statute that requires, for
12 example, judges taking over the criminal dockets,
13 then obviously I'd have to do that. But to the
14 extent that I could and to the extent that things
15 haven't changed, I think things run pretty well
16 in the Second Circuit.

17 Q. And even if you were to be in charge of the
18 criminal docket, I'm assuming you were going to
19 bring the same thing you've discussed with us in
20 terms of how you would allow that docket to flow.

21 A. Absolutely.

22 Q. Okay. Thank you.

23 A. Thank you.

24 CHAIRMAN SMITH: All right. Mr. Murphy?

25 REPRESENTATIVE MURPHY: Thank you, Mr. Chairman.

1 MR. MILLER - EXAMINATION BY REPRESENTATIVE MURPHY:

2 Q. Mr. Miller, I know this is your third time
3 offering for a circuit court position, so I
4 commend you for your desire to serve the citizens
5 of South Carolina. One thing I just wanted to
6 note was looking at your letters of
7 recommendation, one from now solicitor Byron
8 Gipson, and one from the current public defender
9 Grant Gibbons, both of whom tried cases and
10 appeared as adversaries against you in the second
11 circuit while you were a solicitor. Both of
12 those gentlemen, who I know very well, have high
13 remarks for you, your integrity, and your ability
14 to manage a courtroom. I was glad to hear how
15 y'all handle the docketing in the Second Circuit.
16 You know, we have a couple bills that are trying
17 to make their way through the General Assembly
18 about managing the courtroom and who the general
19 sessions docket. And I just think that one size
20 does not fit all, and I am heartened to hear how
21 y'all are doing it in the second circuit. So I
22 commend you on that.

23 A. Thank you.

24 Q. And then also would like to recognize Ms. Jacobs,
25 who I've known for a long time. When I was a

1 county councilman down at Dorchester County and
2 she served with us as the deputy administrator,
3 so it's always good to see you again, Ashley. So
4 thank you, that's all I have.

5 CHAIRMAN SMITH: All right. Mr. Strom.

6 MR. MILLER - EXAMINATION BY MR. STROM:

7 Q. Quickly, just to follow up on this last line of
8 questions, I also noticed that Mr. Nance, who's
9 probably one of the top civil defense lawyers,
10 has written a letter of recommendation for you,
11 along with Ronnie Maxwell and Senator Young, who
12 are two of the top plaintiffs lawyers. Mr.
13 Maxwell wrote a letter for you, so I found that
14 informative for us. And the other thing I wanted
15 to ask you, the Second Circuit is one of the
16 three in the state that only has one resident
17 judge. And, of course, Judge Early has retired
18 and he's no longer there to fill in. Is there
19 anything you think you need to do, if you were
20 elected, to be prepared to hit the ground running
21 on day one?

22 A. I would need to be ready to work. I think that
23 the -- the concern that I have right now is that
24 Judge Early has been gone for going on a month.
25 It's been a month. It was February 28th that he

1 left. And there were certain things that Judge
2 Early was doing to make sure that the trains ran
3 on time, so to speak, that necessarily are piling
4 up somewhere. But certainly I am -- I'm excited
5 about the opportunity and I am very much
6 interested in jumping into it as fully and
7 completely as possible. I would be going back
8 and looking for law review articles and that type
9 of thing, and summaries of stuff to make sure
10 there weren't big civil issues that I had
11 missed out on. But I have some friends that I
12 think I could reach out to to get those types of
13 things from. But, yes, sir, I know I need to go
14 to work and that's what I want to do.

15 Q. Thanks. That's all I have.

16 MR. MILLER - RE-EXAMINATION BY CHAIRMAN SMITH:

17 Q. Let me just ask you this, if you were elected --
18 I probably should have asked all of these. Mr.
19 Strom brings out a good point. Y'all are without
20 a circuit judge over there and you've been for a
21 few months, at least. Would you start right away
22 or --

23 A. Yes, sir.

24 Q. -- would you need months to get through with your
25 current obligations?

1 A. Solicitor Thurmond and I have prepared for the
2 contingencies for me being elected, and if that
3 was to happen I could start immediately.

4 **Q. Okay. All right.**

5 CHAIRMAN SMITH: Senator Young.

6 SENATOR YOUNG: Thank you, Mr. Chairman.

7 MR. MILLER - EXAMINATION BY SENATOR YOUNG:

8 **Q. Mr. Miller, I want to thank you for your interest**
9 **in serving our circuit as a circuit judge. I**
10 **commend you on your service so far in the**
11 **solicitor's office for the past decade. When I**
12 **was reviewing your candidacy file, I noticed that**
13 **the Bar comments -- I think there were over --**
14 **nearly 90 -- approximately 87 Bar comments, of**
15 **which most of them were very positive and less**
16 **than five were negative.**

17 A. Yes, sir.

18 **Q. And I want to commend you on that because, number**
19 **one, that is a very large number of Bar comments**
20 **for a candidate, from my experience, in looking**
21 **at these. And in proportion to the volume of**
22 **comments, the negative comments were very, very**
23 **minimal. And I think that you should be**
24 **commended publicly for that.**

25 A. Thank you, sir.

1 Q. My question to you, one of them, is you practiced
2 in private practice for five or six years before
3 you went to the solicitor's office --

4 A. Yes, sir.

5 Q. -- is that correct? And in the time that you've
6 been in the solicitor's office you have worked
7 with a number of attorneys in the Second Judicial
8 Circuit, most of whom primarily come from small
9 law offices?

10 A. Or the public defender, but, yes, sir.

11 Q. And so the ones that are in private practice that
12 come with smaller law offices, I know that the
13 Chairman touched on a little bit of this and with
14 a question he asked earlier, but I want to ask
15 you this as well: do you believe that if you were
16 elected to the circuit court bench that you would
17 be sensitive to the time challenges that face
18 lawyers who come from smaller practices and that
19 you would endeavor to accommodate those within
20 reason from -- in your position as a circuit
21 judge, if you were elected?

22 A. Yes, sir. Absolutely, I would.

23 Q. Another question I have for you is, can you
24 elaborate a little further on your civil
25 experience in handling non-jury matters?

1 A. As far as the time period whenever I was --
2 before I was at the solicitor's office?

3 Q. Yes.

4 A. Yes, sir. Basically, the position that I was in
5 when I first left clerking for Judge Peeples was
6 I was an associate attorney for Bob Hart. And
7 Bob Hart had a general civil litigation and
8 criminal defense practice. After working with
9 him for a period of time, doing any number of
10 things, mostly the things that his schedule
11 didn't allow him to do, whether it was covering
12 hearings or covering depositions or what needed
13 to happen, I then went to work with, at the time,
14 a firm called Smith, Massey & Brody. Ultimately,
15 when Solicitor Thurmond left US Attorneys Office
16 he came there and the firm added some more
17 people. But at one time, I guess it was and
18 maybe still is, the biggest law firm in Aiken,
19 which is not as impressive as it might sound.
20 But in that firm, it was -- I was working for
21 myself and was responsible for every aspect of
22 every single that we had. And if we had clients
23 that had contract disputes, I might be defending
24 someone on a contract dispute, or I might be
25 representing the plaintiff in a contract dispute,

1 boundary line issues, condemnation actions. I
2 did try a condemnation action to a jury verdict,
3 now that I think about it. There was those types
4 of things that I was doing at that time.
5 Obviously, there were wreck cases and that type
6 of stuff. But a lot of the things that I was
7 doing during that time really didn't get past the
8 motions practice. I mean, we would go in and we
9 would take the depositions and do the
10 interrogatories and the request to produce and
11 fight off the summary judgement motion, settle
12 the case. And that's kind of where things were.

13 **Q. You tried cases in Bamberg, Barnwell, and Aiken**
14 **counties?**

15 A. Yes, sir.

16 **Q. To verdict?**

17 A. Yes, sir.

18 **Q. I don't have any further questions.**

19 CHAIRMAN SMITH: All right. Any further questions for
20 Mr. Miller? All right. Mr. Miller, this
21 concludes this portion of your screening process.
22 Let me take this opportunity to remind you that
23 pursuant to the Commission's evaluative criteria,
24 the Commission expects candidates to follow the
25 spirit as well as the letter of the ethics laws.

1 And we will view violations or the appearance of
2 impropriety as serious and potentially deserving
3 the heavy weight they deserve in the screening
4 deliberations. The record will remain open until
5 the formal release of the Report of
6 Qualifications. You may be called back at such
7 time if the need arises. I thank you for
8 offering. Thank you for your service to the
9 state of South Carolina. I appreciate your
10 patience. We're running a little bit behind
11 today, but maybe if you run a courtroom, you know
12 how that goes.

13 MR. MILLER: Thank you, Mr. Chairman.

14 CHAIRMAN SMITH: Thank you, Mr. Miller. I appreciate
15 you being here.

16 (Off the Record)

17 CHAIRMAN SMITH: Judge Griffith, let me place you
18 under oath. If could, please, sir, raise your
19 right hand.

20 THE HONORABLE M. ANDERSON GRIFFITH, having been duly
21 sworn, testifies as follows:

22 CHAIRMAN SMITH: All right. Judge Griffith, you have
23 a Sworn Statement and your Personal Data
24 Questionnaire before you. Are these both
25 documents that you've submitted to the

1 Commission?

2 JUDGE GRIFFITH: They are.

3 CHAIRMAN SMITH: Are both of them correct at this
4 time?

5 JUDGE GRIFFITH: I reviewed those before I came and I
6 looked at the amendment form that I signed here
7 today, that I'd previously submitted on the PDQ,
8 and those are correct.

9 CHAIRMAN SMITH: Okay. Any changes or updates that
10 you need at this time?

11 JUDGE GRIFFITH: No others at this time, no, sir.

12 CHAIRMAN SMITH: Other than the amendment that's in
13 there?

14 JUDGE GRIFFITH: Correct.

15 CHAIRMAN SMITH: Do you have any objection to us
16 making these two documents an exhibit to your
17 sworn testimony here today?

18 JUDGE GRIFFITH: No.

19 CHAIRMAN SMITH: All right. Without objection we'll
20 make those exhibits to the sworn -- to the
21 testimony. Judge Griffith, the Judicial Merit
22 Selection Commission has thoroughly investigated
23 your qualifications for the bench. Our inquiry
24 has focused on nine evaluative criteria, has
25 included a ballot box survey, a thorough study of

1 your application materials, verification of your
2 compliance with state ethics laws, a search of
3 newspaper articles in which your name appears,
4 studies of previous screenings, and checks for
5 economic conflicts of interest. We received no
6 affidavits today in opposition to your candidacy
7 and no witnesses are here to testify. Do you
8 wish to make a brief, and I emphasize brief,
9 opening statement to the Commission?

10 (Exhibit Number 10 was marked for identification
11 purposes - (17 pages) Personal Data Questionnaire for
12 The Honorable M. Anderson Griffith.)

13 (Exhibit Number 11 was marked for identification
14 purposes - (1 page) Amendment to Personal Data
15 Questionnaire for The Honorable M. Anderson Griffith.)

16 (Exhibit Number 12 was marked for identification
17 purposes - (8 pages) Sworn Statement of The Honorable
18 M. Anderson Griffith.)

19 JUDGE GRIFFITH: I realize the hour. I'd just like to
20 thank everybody for their patience and
21 participating in this and being here today. And
22 with that, I'll be ready to answer questions.

23 CHAIRMAN SMITH: Thank you. Answer any questions that
24 Ms. Crawford may have for you, please, sir.

25 MS. CRAWFORD: Hi, Judge. Mr. Chairman, I note for

1 the record that based on the testimony contained
2 in the candidate's PDQ, which has been included
3 in the record, Judge Anderson Griffith meets the
4 constitutional and statutory requirements for
5 this position regarding age, residence, and years
6 of practice.

7 JUDGE GRIFFITH - EXAMINATION BY MS. CRAWFORD:

8 **Q. Judge Griffith, you were recently screened for**
9 **reappointment as the -- for the Master-in-Equity**
10 **position of Aiken County?**

11 A. Correct.

12 **Q. Do you know the status of this appointment at**
13 **this time?**

14 A. We filled out one other form for the Governor's
15 office. I was told -- I was confirmed that they
16 received that. I was trying to confirm that for
17 a couple of weeks. And now I received a call
18 from the Governor's office that they had received
19 that. They said it would be two to three weeks
20 before we'd probably have something.

21 **Q. And why are you now seeking this circuit court**
22 **seat?**

23 A. It was not open when I reapplied for the Master-
24 in-Equity position. And actually, I made it a
25 little difficult because I was in the process of

1 one and I didn't want to submit on this one until
2 I completed the process on the other, as far as I
3 could go going through this panel. And so at
4 that time I submitted for the circuit court
5 position.

6 **Q. Yes, sir. How do you feel your legal and**
7 **professional experience, especially your service**
8 **as a Master, renders you qualified and will**
9 **assist you to be an effective circuit court**
10 **judge?**

11 **A.** I think the equity court, being a division of the
12 circuit court, has helped me not only gain
13 experience as a judge, but in dealing with pro se
14 litigants, which we have a lot of in the Master-
15 in-Equity, dealing with attorneys and court
16 personnel, contested cases, ruling from the bench
17 on motions, objections, admission of evidence.
18 And also the position in Master-in-Equity, we
19 don't have a clerk. So if we have contested
20 cases we prepare all our own orders, or at least
21 I do in that regard. And certainly broadened my
22 knowledge, I guess, on the civil side of the law.

23 **Q. Judge Griffith, the Commission received 356**
24 **ballot box surveys regarding you with 34**
25 **additional comments. Some of the positive**

1 comments included: "Judge Griffith has an
2 outstanding judicial temperament, as well as a
3 broad legal and practical experience. It would
4 make him an asset to the circuit court bench."
5 "I tried one matter before Judge Griffith in his
6 equity court, while I lost the case, I believe
7 he has exhibited all the qualities I expected
8 from a judge, namely good composure and
9 temperament, strong focus, and excellent writing
10 skills. I believe he would make a fine" -- and
11 they said general sessions judge. Four of the
12 written comments expressed concerns indicating
13 that you may lack the experience to serve as a
14 circuit court judge. We touched on this briefly,
15 but how would you respond to this?

16 A. I think on the circuit court side, I would -- I
17 guess I would dispute that because I've been
18 hearing circuit court level cases for seven-and-
19 a-half years and ruling on those. I did note on
20 the Citizens Committee they even had a notation
21 in there about not much experience in the last
22 seven years on civil -- on circuit court level
23 cases since he's been serving as Master-in-
24 Equity, and, of course, we only hear circuit
25 court cases in that regard. On the general

1 sessions, which I think those comments may be
2 addressed to, I certainly think some work will be
3 put in on that. Certainly at the time I've been
4 at the Master-in-equity I've not handled any
5 criminal matters. We don't have jurisdiction for
6 that. And most of the general sessions I had
7 were probably in the first decade of my private
8 practice. My civil practice had gotten to the
9 stage where I simply couldn't do both anymore.
10 Our firm did not have a criminal defense
11 representation when I came in there. I had a law
12 enforcement background. I had some interest in
13 doing criminal defense and started doing that,
14 but I've tried to go back and look at the
15 appellate court cases for the last year. I
16 purchased some CLE information in regards to
17 criminal matters to start studying those. I
18 purchased a CLE on criminal procedure from last
19 year to review that. I think it will take --
20 it's like any matter now if I get -- if it's an
21 unfamiliar area, it takes work and you have to
22 persist at it. And so I think those
23 characteristics I would be able to handle both,
24 civil and criminal.

25 **Q. Thank you, Judge. In the SLED report and in your**

1 amendment to the PDQ, it was a -- it listed you
2 as a plaintiff in a -- or your name as a
3 plaintiff in a civil action filed in the Court of
4 Common Pleas in 2008, JR Williams v. David
5 Heyward. Can you explain?

6 A. I can. I was a little surprised that I wouldn't
7 remember a party I was in, but I recognize JR
8 Williams as a former client. I went back. I
9 have a list in my office of all my cases from
10 private practice that I used for a conflicts
11 check and looked up that name. That was a
12 magistrate's court case. I represented Mr.
13 Williams. We had a \$7,500, recovery plus the
14 costs. That was then forwarded from the
15 magistrate's court to the circuit court. It
16 looks like on the document that I reviewed it had
17 the client's name, and I believe maybe his wife
18 or maybe it's his daughter that was in business
19 with him. And then it lists care of and it lists
20 my name and our firm address. The clerk at Aiken
21 County apparently took that to mean I was a party
22 to it and entered me as a plaintiff. I did also
23 look at the record. And I forwarded a copy of
24 the execution form, the Nulla Bona form, because
25 the process of filing it with the clerk in Aiken

1 was to commence supplemental proceedings to try
2 and recover on the judgement. Those forms lists
3 do not have me listed as a party. And so I think
4 it was just a clerical error on that.

5 **Q. Okay, thank you, Judge.**

6 MS. CRAWFORD: Mr. Chairman, I note that the Midlands
7 Citizens Committee report found Judge Griffith to
8 be qualified in all nine evaluative criteria
9 including constitutional qualifications, ethical
10 fitness, professional and academic ability,
11 character, reputation, physical health, mental
12 stability, experience, and judicial temperament.
13 In summary, the Citizens Committee noted, The
14 Committee was concerned about the -- they said
15 2002, it should have been 2001, and 2008 tax
16 liens, but was satisfied with your explanations
17 and didn't think this past experience would
18 affect your ability to serve as a circuit court
19 judge.

20 **Q. Some housekeeping -- do you want to respond to**
21 **any of that?**

22 A. Well, both of those on a tax liens were tried to
23 resolve them. They filed the lien. I paid each
24 of them within two weeks and they were removed
25 from the records on those.

1 Q. Judge Griffith, are you aware that as a judicial
2 candidate you are bound by the Code of Judicial
3 Conduct as found in Rule 501 of the Appellate
4 Court Rules?

5 A. I am.

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

9 A. No.

10 Q. Have you sought or received the pledge of any
11 legislator either prior to this date or pending
12 the outcome of your screening?

13 A. No.

14 Q. Are you familiar with § 2-19-70, including the
15 limitations on contacting members of the general
16 assembly regarding your screening?

17 A. Yes.

18 Q. Have you asked any third parties to contact any
19 members of the General Assembly on your behalf?

20 A. No.

21 Q. Are you aware of anyone attempting to intervene
22 in this process on your behalf?

23 A. No. I've specifically told anybody who asked not
24 to until they would hear something from me.

25 Q. Thank you, Judge. Have you reviewed and do you

1 understand the Commission's guidelines on
2 pledging, as well as SC Code § 2-19-70(e)?

3 A. I do.

4 MS. CRAWFORD: Mr. Chairman, I note for the record
5 that any concerns raised during the investigation
6 by staff regarding the candidate were
7 incorporated into the questioning of the
8 candidate today, and I have no further questions
9 for the judge.

10 CHAIRMAN SMITH: All right. Thank you. Any questions
11 for the judge?

12 JUDGE GRIFFITH - EXAMINATION BY CHAIRMAN SMITH:

13 Q. Judge, you were up here with us in November,
14 weren't you?

15 A. Yeah, that's correct.

16 Q. And I think we screened -- I can't remember
17 whether you were towards the front or towards the
18 end of the master screenings that time.

19 A. I don't remember. I think I may have been in
20 the middle. I believe I had at least a couple of
21 people behind me, maybe.

22 Q. And I think we were breezing through those,
23 weren't we?

24 A. I agree.

25 Q. And now you're seeing that you're at 5:00

1 o'clock. You see how the Commission is again
2 where we're breezing through this one. But let
3 me say this, as I recall, I'm sure many of the
4 members of the Commission recall you being up
5 here and you certainly are well qualified.
6 Appreciate the service you've given to us over
7 these years. And, you know, I recall obviously
8 reading your briefing paper back then and it's
9 equally as impressive as it was now, so
10 appreciate you being here today. So don't take a
11 lack of questions as any concern, but take that
12 as a compliment from your -- from you being up
13 here before.

14 A. Thank you.

15 CHAIRMAN SMITH: Any further questions? Senator
16 Young.

17 SENATOR YOUNG: Thank you, Mr. Chairman.

18 JUDGE GRIFFITH - EXAMINATION BY SENATOR YOUNG:

19 Q. Judge Griffith, I just want to thank you for your
20 interest in continuing your service to our
21 circuit and our county. You have an excellent
22 reputation, and the Bar comments that we received
23 reflect that. There are many Bar comments and
24 there are many, many nice complementary said
25 about you personally about your legal abilities.

1 **One question I have for you is before you went to**
2 **law school were you in law enforcement?**

3 A. I was. I had a criminal justice degree. When I
4 came out of Carolina I worked with the City of
5 Charleston Police Department for about two-and-a-
6 half years. You probably remember the security
7 force out at the SRP site took over from Dupont
8 to Wackenhut. They were looking for law
9 enforcement personnel. I was recently married.
10 My wife was from Aiken. We moved back here and I
11 took a position with law enforcement there until
12 I went back to law school.

13 **Q. And in your private practice days, before you**
14 **were in -- a Master-in-Equity, you were in a**
15 **small practice for many years with two other**
16 **lawyers?**

17 A. Correct. Originally three, John Bodenheimer,
18 Danny Busbee, and Jack Hunter were there. John
19 Bodenheimer, years later, went on his own. And
20 so I did most of the litigation work there on the
21 civil side and any criminal defense work that was
22 done there. We had other attorneys who did
23 mostly domestic and then real estate.

24 **Q. And did you handle cases in Bamberg and Barnwell**
25 **counties when you were in private practice?**

1 A. I did. I would handle cases in Barnwell,
2 Bamberg, Edgefield, Saluda. I tried cases in
3 quite a few counties there, and handled cases in
4 more than that. Fortunately able to resolve a
5 lot of those. And so, yeah, I do have some
6 experience there.

7 **Q. I don't have any further questions.**

8 CHAIRMAN SMITH: Any further questions? All right.
9 Judge Griffith appreciate you being here, and
10 this shall now conclude this portion of your
11 screening process. As you're aware, I want to
12 take this opportunity to remind you that pursuant
13 to the Commission's evaluative criteria, the
14 Commission expects candidates to follow the
15 spirit as well as the letter of the ethics laws.
16 And we review violations or the appearance of
17 impropriety as serious and potentially deserving
18 of heavy weight in the screening deliberations.
19 Also, the record will remain open until the
20 formal release of the Report of Qualifications,
21 and you may be called back at such time if the
22 need arises. I thank you offering. I thank you
23 for your service to the state of South Carolina
24 and I wish you safe travels back to Aiken.

25 JUDGE GRIFFITH: Thank you very much.

1 CHAIRMAN SMITH: All right. Thank you, sir. Senator
2 Sabb moves that we go into executive session. All
3 in favor say, aye.

4 (Ayes are heard.)

5 CHAIRMAN SMITH: All opposed?

6 (No replies are heard.)

7 CHAIRMAN SMITH: Ayes have it. We'll be in executive
8 session.

9 EXECUTIVE SESSION

10 CHAIRMAN SMITH: We're getting back on the record.
11 Senator Sabb moves that we come out of executive
12 session. All in favor say, aye.

13 (Ayes are heard.)

14 CHAIRMAN SMITH: All opposed?

15 (No replies are heard.)

16 CHAIRMAN SMITH: Ayes have it. Let me state while we
17 were in executive session there was no matters
18 decided and no votes taken by the Committee. So
19 we're going to move forward with the three --
20 with electing -- so we're going to move forward
21 with the three candidates that will be up for a
22 vote here this afternoon. And so if we'll go
23 ahead and call those three candidates and take a
24 roll call vote, please.

25 MS. CRAWFORD: The three candidates before you are

1 Courtney Clyburn Pope, David W. Miller, the
2 Honorable M. Anderson Griffith. Do you want to
3 go through and vote for each one?

4 CHAIRMAN SMITH: Let's go through and vote for each
5 one.

6 VOTE

7 MS. CRAWFORD: First we have to vote on the
8 qualifications. All those in favor of finding
9 Courtney Clyburn Pope qualified?

10 (Votes are cast.)

11 MS. CRAWFORD: And proxy?

12 CHAIRMAN SMITH: I have Representative Rutherford's
13 proxy, and he votes aye for being qualified.

14 MS. CRAWFORD: All those opposed?

15 (Votes are cast.)

16 MS. CRAWFORD: David W. Miller.

17 (Votes are cast.)

18 MS. CRAWFORD: So eight.

19 CHAIRMAN SMITH: And Representative Rutherford votes
20 aye to David W. Miller being qualified.

21 MS. CRAWFORD: The Honorable M. Anderson Griffith?

22 (Votes are cast.)

23 CHAIRMAN SMITH: And Representative Rutherford, I have
24 his proxy, and he votes aye as to Judge Griffith
25 being qualified.

1 MS. CRAWFORD: And as there are three candidates found
2 qualified. So these three candidates will be
3 listed as qualified and nominated?

4 CHAIRMAN SMITH: Well, let's vote on the -- let's
5 nominate them.

6 REPRESENTATIVE MURPHY: Move that we find the
7 candidates qualified --

8 CHAIRMAN SMITH: That were found qualified to be --

9 REPRESENTATIVE MURPHY: -- nominated.

10 SENATOR SABB: Second.

11 CHAIRMAN SMITH: So Representative Murphy moves that
12 we find the three candidates who were found
13 qualified to be nominated. All in favor raise
14 their hands.

15 (Votes are cast.)

16 CHAIRMAN SMITH: All opposed?

17 (No hands were raised.)

18 CHAIRMAN SMITH: No opposed. And then Representative
19 Rutherford votes to nominate all three
20 candidates. So with that being said, we are now
21 -- the three candidates that are nominated --
22 found qualified and nominated are Courtney
23 Clyburn Pope, David W. Miller, and the Honorable
24 M. Anderson Griffith. So that will conclude our
25 screening for the resident seat of the Second

1 Judicial Circuit. Senator Young.

2 SENATOR YOUNG: Do we need to notify these notify
3 these candidates or when they are notified do
4 they need to be told that the date of the
5 election could change which would change --

6 MS. CRAWFORD: Well, that's what we didn't talk about.

7 CHAIRMAN SMITH: We're getting ready to talk about
8 that. I think we still got to -- take a vote on
9 the first part of it --

10 MS. CRAWFORD: On the cover sheet.

11 CHAIRMAN SMITH: Let me bring up that issue and is did
12 we delay -- we passed over the vote on the cover
13 sheet. And I think the concern was about the
14 election process and the fact that at least for
15 the House members we're are going to likely be on
16 furlough while the nomination -- while the
17 commitments were being sought, and I don't -- are
18 y'all in budget week that week? So it's not a
19 good week for candidates to do that. And I think
20 there is some discussion about maybe the House
21 has passed the election resolution that set the
22 date on May 1st, 2019. I think there's some
23 discussion maybe pushing it back a week. That
24 would have to occur when the Senate put the
25 resolution for that to occur. So I don't know

1 what y'all want to do.

2 REPRESENTATIVE MURPHY: Can we approve the cover sheet
3 subject to the --

4 CHAIRMAN SMITH: The resolution.

5 REPRESENTATIVE MURPHY: -- the resolution being
6 amended?

7 (Off the Record)

8 CHAIRMAN SMITH: Senator Sabb moves that we have
9 nominations and commitments begin on -- we adopt
10 the cover sheet with the amendment of the current
11 cover sheet to commitments will begin on noon
12 Tuesday, April 23rd, 2019, and the election will
13 be held on noon Wednesday, May 8th, 2019 at noon.

14 SENATOR SABB: You read my mind, Mr. Chairman. So
15 moved.

16 CHAIRMAN SMITH: All right. So Senator Sabb moves and
17 seconded by Representative Murphy. Any
18 discussion? All in favor adopting the cover
19 sheet for those amendments signify by saying,
20 aye.

21 (Ayes are heard.)

22 CHAIRMAN SMITH: All opposed?

23 (No replies are heard.)

24 CHAIRMAN SMITH: Ayes have it. Okay. And with that
25 being said, Mr. Strom, Ms. Blackley, thank y'all

1 for your wonderful work. Look forward to working
2 with y'all.

3 MR. STROM: Yes, sir. I move that we adjourn.

4 REPRESENTATIVE MURPHY: Second.

5 CHAIRMAN SMITH: All in favor say, aye.

6 (Ayes are heard.)

7 CHAIRMAN SMITH: All opposed?

8 (No replies are heard.)

9 CHAIRMAN SMITH: We are adjourned.

10 (There being nothing further, the proceeding concluded at
11 6:05 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
3 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THIS PROCEEDING, ON MONDAY, THE 1ST
5 DAY OF APRIL, 2019, AND THAT THE FOREGOING 111 PAGES
6 CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK
7 REPORT OF SAID PROCEEDING.

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

12 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
13 11TH DAY OF APRIL, 2019.



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15 JENNIFER NOTTLE, COURT REPORTER

16 MY COMMISSION EXPIRES JULY 11, 2023
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