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JUDICIAL MERIT SELECTION COMMITTEE

EVALUATION OF CANDIDATES

BY COMMITTEE MEMBERS

PUBLIC HEARINGS ON JUDICIAL QUALIFICATIONS

PUBLIC SESSION

AFTERNOON SESSION

TUESDAY, NOVEMBER 16, 2010

ROOM 110, BLATT BUILDING

COLUMBIA, SOUTH CAROLINA

COMMENCING AT 2:19 P.M.

REPORTED BY: RITA A. DEROUEN
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1 MEMBERS IN ATTENDANCE:

2 REPRESENTATIVE F.G. DELLENEY, JR.,
CHAIRMAN

3 SENATOR GLENN F. McCONNELL, VICE CHAIRMAN

4 REPRESENTATIVE ALAN D. CLEMMONS

5 PROFESSOR JOHN P. FREEMAN

6 SENATOR JOHN M. "JAKE" KNOTTS, JR.

7 REPRESENTATIVE DAVID J. MACK, III

8 AMY JOHNSON McLESTER

9 SENATOR FLOYD NICHOLSON

10 H. DONALD SELLERS

11 COUNSEL PRESENT:

12 JANE O. SHULER, CHIEF COUNSEL

13 J.J. GENTRY

14 PAULA BENSON

15 BONNIE ANZELMO

16 PATRICK DENNIS

17

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(INDEX AT REAR OF TRANSCRIPT)

25

1 REPRESENTATIVE DELLENEY: Good

2 afternoon, Mr. Englebardt.

3 MR. ENGLEBARDT: Good afternoon.

4 REPRESENTATIVE DELLENEY: We have
5 before us today Mr. Eric K. Englebardt. Before we
6 get started, Mr. Englebardt, do you have some
7 people you'd like to introduce us to?

8 MR. ENGLEBARDT: I certainly do.
9 Behind me is my wife, Helen; my son, Aaron
10 Englebardt. We all were together earlier this
11 morning, Aaron was inducted into the National
12 Honor Society at Greenville High this morning.
13 And we came down separately, I didn't realize they
14 were here yet. But they came down for moral
15 support.

16 REPRESENTATIVE DELLENEY: We're glad
17 to have y'all. Mr. Englebardt seeks a position on
18 the Circuit Court, 13th Circuit, Seat Number Two.

19 If you would at this time please
20 raise your right hand to be sworn.

21 (Candidate sworn.)

22 REPRESENTATIVE DELLENEY: The
23 Judicial Merit Selection Commission has thoroughly
24 investigated your qualifications for the bench.
25 Our inquiry has focused on nine evaluative

1 criteria, which have included a survey of the
2 bench and bar; a thorough study of your
3 application materials; verification of your
4 compliance with State ethics laws; a search of
5 newspaper articles in which your name may have
6 appeared; a study of previous screenings; and a
7 check for any economic conflicts of interest.

8 We have received no affidavits filed
9 in opposition to your election, nor are there any
10 witnesses to testify.

11 Do you have a brief opening statement
12 that you'd like to make at this time?

13 MR. ENGLEBARDT: Mr. Chairman, I'd
14 just like to thank everyone for the time they give
15 to help with this process, which I think is a very
16 meaningful process and ensures having the best
17 bench possible. I look forward to speaking to
18 you.

19 REPRESENTATIVE DELLENEY: Thank you,
20 sir. At this time, answer any questions
21 Mr. Dennis has for you.

22 MR. DENNIS: Thank you. Mr. Chairman
23 and members of the Commission, I have a few
24 procedural matters to take up with Mr. Englebardt
25 before we get started.

1 Mr. Englebardt, you have before you
2 the personal data questionnaire that you submitted
3 as part of your application. Do you have any
4 amendments that you would like to make at this
5 time?

6 MR. ENGLEBARDT: I do not, sir.

7 MR. DENNIS: Mr. Chairman, I would
8 like to have Mr. Englebardt's personal data
9 questionnaire be entered as an exhibit into the
10 hearing record.

11 REPRESENTATIVE DELLENEY: It will be
12 admitted at this point in the transcript without
13 objection.

14 (EXH. 15, Eric K. Englebardt's
15 Personal Data Questionnaire and Sworn Statement,
16 was admitted.)

17 MR. DENNIS: Mr. Englebardt, you have
18 before you also the sworn statement that you
19 provided with detailed answers to over 30
20 questions regarding judicial conduct, statutory
21 qualifications, office administration, and
22 temperament.

23 Do you have any amendments to this
24 statement?

25 MR. ENGLEBARDT: No, sir.

1 MR. DENNIS: At this time,
2 Mr. Chairman, I would ask that Mr. Englebardt's
3 sworn statement be entered as an exhibit into the
4 hearing record.

5 REPRESENTATIVE DELLENEY: It will be
6 admitted at this point in the transcript.

7 MR. DENNIS: One final procedural
8 matter. I note for the record that based on the
9 testimony contained in the candidate's PDQ, which
10 has been included in the record with the
11 candidate's consent, Mr. Englebardt meets the
12 statutory requirements for this position regarding
13 age, residence, and years of practice.

14 Mr. Englebardt, for the record, would
15 you please state the city and the judicial circuit
16 in which you reside?

17 MR. ENGLEBARDT: I reside in
18 Greenville, 13th Circuit.

19 MR. DENNIS: Mr. Englebardt, you've
20 been practicing law for a number of years. Why do
21 you now wish to serve as Circuit Court judge?

22 MR. ENGLEBARDT: Mr. Dennis, as you
23 and most members of this panel know, I've been
24 seeking the judicial seat for quite some time now,
25 and my reason for that really has not changed a

1 great deal over the years.

2 I still find that my favorite part of
3 my practice is in the courtroom, and I also feel
4 that public service is something I've always been
5 called to do, and I can't think of a better way to
6 combine the two than to serve as a member of the
7 Circuit Court bench. I very much want to be that
8 -- be part of the justice system in that way.

9 MR. DENNIS: Mr. Englehardt, can you
10 explain to the Commission how you feel your legal
11 and professional experience thus far will assist
12 you in being an effective judge?

13 MR. ENGLEBARDT: I think, as I said,
14 my favorite part of my practice is being in the
15 courtroom. And I've tried over 70 cases, 70 jury
16 trials to verdict. And certainly I feel that
17 there's nothing better to prepare you for being a
18 judge than spending time in the courtroom and
19 observing judges, observing trials, and
20 participating in trials.

21 It's the best way to know the rules
22 of civil procedure, the rules of evidence; and, on
23 top of that, you can see the pros and cons and how
24 you can be a positive force to make the system
25 work forward in a good way.

1 MR. DENNIS: Are there any areas,
2 including objective areas of the law, that you
3 need additional preparation for before taking the
4 bench and how would you go about that preparation?

5 MR. ENGLEBARDT: Mr. Dennis, as you
6 know and members of the panel know, I have not
7 ever had any kind of extensive criminal practice,
8 that's been sort of the one area that I have not
9 spent much time in other than family court.

10 But, at the same time, I am a quick
11 study. I have spent a great deal of my time in
12 preparing for the qualifications exam, studying
13 the criminal cases more than the civil cases
14 because that was the area I thought was my
15 weakness, and I did my best to answer any criminal
16 question there was on that exam.

17 That's the way I am. If there's
18 something I don't know, I'm a quick study. I like
19 to study and learn new areas. I've spent a great
20 deal of time in the last few years in criminal
21 court, tagging along with criminal lawyers to
22 watch how they do things, watch how the criminal
23 courts work.

24 I don't have any problems telling you
25 I'm confident that that would not be something

1 that would stand in the way of me being an
2 effective judge if I was honored enough to be so
3 selected.

4 MR. DENNIS: Although you address
5 this in your PDQ, please explain to the members of
6 the Commission what you think the appropriate
7 demeanor for a judge is.

8 MR. ENGLEBARDT: I think that the
9 best way I could describe it is to have
10 appropriate seriousness but not to the point where
11 you lose your human interest.

12 I think that judges need to remember
13 that they are lawyers wearing black robes, which
14 is not to say that they don't stand apart from the
15 lawyers, but they are simply part of the same
16 system as lawyers.

17 Demeanor wise, I think that cases
18 need to be handled seriously, but there's nothing
19 like the use of humor in the course of how you
20 deal with things to cut sometimes the stress of
21 the issues that you deal with when people are in
22 those very stressful situations.

23 More importantly though, I think the
24 parties in any lawsuit need to be treated with
25 respect no matter what their status in life might

1 be, and I think that's one of my strengths. I
2 think, you know, I spent a whole lot of time as a
3 mediator, I just finished mediating my 650th case
4 last week.

5 And I think the reason people hire me
6 as a mediator is simply because of my demeanor. I
7 think I can talk straight to people while, at the
8 same time, deal with serious issues.

9 MR. DENNIS: What suggestions would
10 you offer for the backlog of cases on the docket,
11 civil or criminal?

12 MR. ENGLEBARDT: Obviously, my role
13 as a mediator also tends to push mediation as a
14 way to lessen the docket. And, in Greenville,
15 we've certainly seen the civil docket stay fairly
16 manageable as a result of the high success of our
17 mediations.

18 On the criminal side, I think
19 particularly in the plea negotiations, there's a
20 methodology for having neutral help for the
21 parties to reach an agreement; of course, the
22 Court doesn't have to agree to it, but I think
23 that that can certainly move the system along.

24 MR. DENNIS: Thank you,
25 Mr. Englehardt. I've got a series of housekeeping

1 questions to run through with you. Have you
2 sought or received a pledge from any legislator
3 prior to this date?

4 MR. ENGLEBARDT: I have not.

5 MR. DENNIS: Have you sought or have
6 you been offered a conditional pledge of support
7 of any legislator pending the outcome of your
8 screening?

9 MR. ENGLEBARDT: I have not.

10 MR. DENNIS: Have you asked any third
11 parties to contact members of the general assembly
12 on your behalf?

13 MR. ENGLEBARDT: I have not.

14 MR. DENNIS: Have you contacted any
15 members of the Commission?

16 MR. ENGLEBARDT: I have not.

17 MR. DENNIS: Do you understand that
18 you're prohibited from seeking a pledge or
19 commitment until 48 hours after the formal release
20 of the Commission's report?

21 MR. ENGLEBARDT: Yes, sir.

22 MR. DENNIS: Have you reviewed the
23 Commission's guidelines on pledging?

24 MR. ENGLEBARDT: I have.

25 MR. DENNIS: As a follow-up, are you

1 aware of the penalties for violating the pledging
2 rules; that is, it is a misdemeanor and, upon
3 conviction, a violator could be fined not more
4 than \$1,000 or in prison not more than 90 days?

5 MR. ENGLEBARDT: Yes, sir.

6 MR. DENNIS: I would note that the
7 Upstate Citizens Committee found Mr. Englebardt
8 qualified for all nine of the evaluative criteria,
9 and I would note for the record that any concerns
10 raised during the investigation regarding the
11 candidate were incorporated in the questioning of
12 the candidate today.

13 Mr. Chairman, I have nothing further.

14 REPRESENTATIVE DELLENEY: Does any
15 member of the Commission have any questions for
16 Mr. Englebardt?

17 There being none, Mr. Englebardt, we
18 would like to thank you for being with us today
19 and hope you and your family have a safe trip back
20 to Greenville.

21 This concludes this portion of your
22 public hearing screening. Of course, any time
23 until we issue the report we can call you back and
24 ask you questions if the need arises, which I
25 don't expect that to happen, but I would just

1 remind you of that.

2 I would also like to remind you of
3 the 48-hour rule. If anyone inquires with you as
4 to whether they could advocate for you, I would
5 ask you to also remind them about the 48-hour
6 rule. And, with that, I would like to thank you
7 for offering to be a circuit judge and wish you
8 all the best.

9 MR. ENGLEBARDT: Thank you,
10 Mr. Chairman; thank you, ladies and gentlemen.

11 (Candidate excused.)

12 REPRESENTATIVE DELLENEY: We have
13 before us today Mr. J. Anthony Mabry, who seeks a
14 position on the Circuit Court, 13th Judicial
15 Circuit, Seat Number Two. Before we get started,
16 Mr. Mabry, do you have some visitors you would
17 like to introduce us to?

18 MR. MABRY: Just one important
19 visitor, my wife of 22 years, Mary Mabry. She is
20 from Simpsonville like I am, Greenville County.

21 REPRESENTATIVE DELLENEY: We're glad
22 to have you here with us. Mr. Mabry, if you would
23 please raise your right hand to be sworn.

24 (Candidate sworn.)

25 REPRESENTATIVE DELLENEY: Thank you,

1 Mr. Mabry. The Judicial Merit Selection
2 Commission has thoroughly investigated your
3 qualifications for the bench.

4 Our inquiry has focused on nine
5 evaluative criteria, which have included a survey
6 of the bench and bar; a thorough study of your
7 application materials; verification of your
8 compliance with State ethics laws; a search of
9 newspaper articles in which your name may have
10 appeared; a study of previous screenings; and a
11 check for any economic conflicts of interest.

12 We have received no affidavits filed
13 in opposition to your election, nor are there any
14 witnesses to testify.

15 Do you have a brief opening statement
16 that you'd like to make at this time?

17 MR. MABRY: Just very briefly. I
18 appreciate the committee taking the time to hear
19 from me today. I'd be glad to answer any
20 questions. Again, I go by Anthony. I was born
21 and raised in Camden, spent my whole life living
22 in Simpsonville except for one year, my last year
23 in law school here at Carolina.

24 I've been practicing for 22 years.
25 As I said, my wife is from Simpsonville. I have

1 two boys, one who's 21 and one who's 17.

2 REPRESENTATIVE DELLENEY: Thank you,
3 sir. If you would answer any questions Ms. Shuler
4 might have for you.

5 MR. MABRY: Sure.

6 MS. SHULER: Mr. Chairman and members
7 of the Commission, I have a few procedural matters
8 to take care of with this candidate.

9 Mr. Mabry, you have before you the
10 personal data questionnaire that you submitted as
11 part of your application and your amendment to
12 questions number 26 and 31.

13 Are there any additional amendments
14 that you would like to make at this time to your
15 PDQ?

16 MR. MABRY: No, ma'am.

17 MS. SHULER: Mr. Chairman, I would
18 ask that Mr. Mabry's PDQ and its amendments be
19 entered into the record as an exhibit.

20 REPRESENTATIVE DELLENEY: It will be
21 admitted at this point in the transcript without
22 objection.

23 (EXH. 16, James Anthony Mabry's
24 Personal Data Questionnaire, Amendments, Sworn
25 Statement, and Case Orders, was admitted.)

1 MS. SHULER: You have before you also
2 the sworn statement that you provided with
3 detailed answers to over 30 questions regarding
4 judicial conduct, statutory qualifications, office
5 administration, and temperament.

6 Do you have any amendments to this
7 statement?

8 MR. MABRY: No, ma'am.

9 MS. SHULER: Mr. Chairman, at this
10 time I would ask that Mr. Mabry's sworn statement
11 be entered into the record as an exhibit.

12 REPRESENTATIVE DELLENEY: The sworn
13 statement will be entered into the record without
14 objection.

15 MS. SHULER: One final procedural
16 matter. I note for the record that based on the
17 testimony contained in the candidate's PDQ, which
18 has been included in the record with the
19 candidate's consent, Mr. Mabry meets the statutory
20 requirements for this position regarding age,
21 residence, and years of practice.

22 Mr. Mabry, for the record, would you
23 please state the city and the judicial circuit in
24 which you reside?

25 MR. MABRY: I live in Simpsonville,

1 South Carolina, and I live in the 13th Judicial
2 Circuit.

3 MS. SHULER: And, Mr. Mabry, although
4 you've already stated this, after practicing law
5 for 22 years, why do you now want to serve as a
6 Circuit Court judge?

7 MR. MABRY: I started thinking about
8 serving as a Circuit Court judge probably 12, 13
9 years ago. I thought it was a natural progression
10 from being a prosecutor to sitting on the bench.
11 I had the privilege of watching Judge Cole Durham,
12 who's the Circuit Court judge of Spartanburg, and
13 the way he handled himself and handled court.

14 I saw that a person could make a
15 difference even though they were youthful, they
16 didn't have to be retirement age or older to be a
17 good circuit judge. And it's just something that
18 I feel like is a natural progression in my career
19 after 22 years.

20 MS. SHULER: Thank you. Mr. Mabry,
21 can you explain to the Commission how you feel
22 your legal and professional experience thus far
23 would help you become an effective Circuit Court
24 judge?

25 MR. MABRY: Just briefly, I actually

1 started trying cases my last year in law school, I
2 was clerking for the U.S. Attorney's Office. I
3 tried a bench trial in Federal Magistrate's Court,
4 a jury trial in Federal District Court. Back
5 then, the rules would allow you to do that.

6 Then I began practicing civil law for
7 about eight months. After I passed the bar exam,
8 I handled civil cases as plaintiffs' attorney. I
9 then joined the solicitor's office and was an
10 assistant solicitor for five and a half years.

11 Then I was promoted to deputy
12 solicitor, so I tried -- I can't tell you how many
13 jury cases I tried, but I tried five death penalty
14 cases where I was second chair with the
15 solicitor. I handled numerous felony cases, large
16 drug cases, hundreds of pounds of marijuana,
17 several kilos of cocaine, those kinds of cases.

18 Then I went into private practice
19 with the Haynesworth firm, five and a half years,
20 and I did strictly civil litigation. Probably 90
21 percent of that was as a defense attorney, a civil
22 litigator. I also did some plaintiffs' work.
23 I've tried cases as a prosecutor and as a criminal
24 defense attorney, and I've tried cases as a
25 plaintiffs' attorney and a civil defense attorney.

1 MS. SHULER: Thank you.

2 MR. MABRY: Yes, ma'am.

3 MS. SHULER: Mr. Mabry, are there any
4 areas of law that you would need to additionally
5 prepare for in order to serve as a judge, and, if
6 so, how would you handle that additional
7 preparation?

8 MR. MABRY: I think I would have to
9 bone up a little bit more on the civil law since
10 it's been three years since I've tried a civil
11 case. I have done capital PCRs in the last three
12 years, which is under the civil rules, I'm
13 familiar with the civil rules, but I think I would
14 have to get a little more educated on the civil
15 side, I would have to study up before on that.

16 MS. SHULER: Thank you.

17 MR. MABRY: Yes, ma'am.

18 MS. SHULER: Mr. Mabry, could you
19 share with the Commission what you believe to be
20 the appropriate demeanor for a judge?

21 MR. MABRY: I think a judge should be
22 relaxed. I don't think a judge should be
23 overbearing. I think if everybody -- if a judge
24 has a good sense of humor, and I don't mean
25 necessarily in front of a jury or in the

1 courtroom, but, in chambers, I think if everybody
2 is relaxed, everybody is more productive.

3 I think you have to be -- in the
4 courtroom, you need to be respectful of everyone.
5 If someone needs to preserve an objection, you
6 shouldn't feel like they're setting you up on
7 appeal, they're just trying to do their job.
8 Because I've been in all those positions before.

9 MS. SHULER: Thank you. Mr. Mabry,
10 could you explain to the Commission some
11 suggestions you might have for improving the
12 backlog in Circuit Court, starting first with
13 civil and then with criminal cases?

14 MR. MABRY: I don't know a whole lot
15 about improving the civil backlog. And I know
16 Greenville -- as far as across the state, I know
17 with the mandatory mediation that we have in
18 Greenville, that has vastly improved the Circuit
19 Civil Court backlog. Most of those cases are
20 resolved at mediation and you're required to
21 mediate them.

22 As far as the criminal docket, I'm
23 not completely convinced that turning over the
24 criminal docket to the Circuit Court is a good
25 idea. I think the Circuit judges have enough to

1 do besides also administering the criminal docket.

2 And I understand why some people want
3 to change that, but I don't think that's
4 necessarily the way to improve it. I haven't seen
5 that successful yet where it's been implemented.

6 MS. SHULER: Thank you. If you would
7 hand to Mr. Mabry those two opinions and some
8 orders, I would like for him to have that before
9 him.

10 Mr. Mabry, let's look at State versus
11 Williams first.

12 MR. MABRY: Sure. Can you tell me
13 where that is in my packet of materials? Is that
14 at the back?

15 MS. SHULER: It should be the second
16 order.

17 MR. MABRY: Got it. Very familiar
18 with that case.

19 MS. SHULER: Thank you. Mr. Mabry,
20 in State versus Williams, in the published opinion
21 in 1995 by the Supreme Court, the Court found that
22 the Constitution, which you were a part of,
23 committed prosecutorial misconduct by interfering
24 with the defendant's ability to interview with a
25 cooperating codefendant witness.

1 Can you just explain briefly what
2 happened in this case, and then I'll ask a follow-
3 up question?

4 MR. MABRY: They actually found that
5 I committed prosecutorial misconduct, not the
6 solicitor. But the way that case -- it was a
7 drive-by shooting at the First Baptist Church.
8 There were -- there were six -- I believe six
9 defendants inside a van.

10 A coach was killed in the parking
11 lot, Ernest Wright. We had one defendant who was
12 cooperating with us. The defense attorney came to
13 me and asked me if it was okay for the other
14 defense attorneys to interview the cooperating
15 witness. I talked to the solicitor and we both
16 agreed, it was a very short conversation, that
17 that would not be a good idea.

18 And I communicated to the defense
19 lawyer that we didn't think that would be a good
20 idea because we were afraid these other defense
21 attorneys would basically shake up or intimidate
22 the cooperating witness into no longer cooperating
23 with us.

24 He was the only person at that time
25 telling us what was going on inside the van before

1 the drive-by shooting occurred. My motivation at
2 that time was not to prevent any defendant from
3 being able to prepare for trial, my sole
4 motivation was to protect the State's case and the
5 victim's rights and make sure that this witness
6 wasn't intimidated into not cooperating with us.

7 Now, the Supreme Court has ruled that
8 that was improper. They did not say I did
9 anything unethical, they said I committed
10 prosecutorial misconduct, which resulted in a
11 reversal of the trial. That was a decision in
12 1995, and I've abided by that decision ever since.

13 MS. SHULER: As follow-up, what have
14 you learned from that decision?

15 MR. MABRY: What I learned from that
16 decision is not to make quick, split-second
17 decisions, even when pressed for time. That was a
18 situation where it was a quick thing, the attorney
19 came and asked me, I stopped Solicitor Gusset in
20 the hall, we talked about it very briefly, we
21 didn't think through the implications or that that
22 might cause the case to be reversed later on.

23 MS. SHULER: The second order I would
24 like for you to look at is more voluminous, it's
25 one by Judge Patterson, Theodore Kelly versus

1 State.

2 MR. MABRY: Yes, ma'am. I'm very
3 familiar with that as well.

4 MS. SHULER: I have several questions
5 related to that order. Is that before you?

6 MR. MABRY: Yes, ma'am. And I would
7 point out to the Committee that each of these
8 matters was disclosed on my application by me,
9 self-disclosed.

10 MS. SHULER: Mr. Mabry, on October 6,
11 2003 Circuit Court Judge Patterson entered an
12 order granting relief in Theodore Kelly versus
13 State. It was a death penalty post-conviction
14 relief case.

15 Judge Patterson found that the
16 prosecution, of which you were a part of,
17 committed several acts of prosecutorial
18 misconduct, and, as a result of that misconduct
19 and other findings in that order, he granted a new
20 trial for Mr. Kelly. So I would like to ask you
21 several questions related to that order.

22 MR. MABRY: Sure.

23 MS. SHULER: The first matter, Judge
24 Patterson found that with respect to matters
25 involving Juror Price, the prosecution failed to

1 disclose information to the trial court about this
2 juror's conduct and discussion with a SLED agent
3 as well as the juror's relationship with a
4 relative of a homicide victim in another capital
5 case and execution.

6 Judge Patterson noted in his order
7 that the juror met directly with you at the end of
8 the trial but before the motion for new trial and
9 revealed the contact and relationship discussed
10 above. According to the order, you failed to
11 disclose the information to the trial court or
12 defense counsel even though you had a plain duty
13 to disclose the matter to the trial court.

14 I guess, Mr. Mabry, what explanation
15 can you offer for Judge Patterson's findings that
16 you failed to disclose this conduct and the
17 relationship to the trial court and defense
18 counsel?

19 MR. MABRY: I don't have a problem
20 answering that. I don't agree with Judge
21 Patterson's finding; I didn't at the time and I
22 still don't agree with it; the attorney general's
23 office didn't agree with it. That was a double
24 murder case and an attempted murder case.

25 After the case was over,

1 approximately a week after the case was over, the
2 foreman came to our office and was talking to us.
3 During the conversation, he related that at some
4 point during the trial he went to a Coca-Cola
5 machine where a SLED agent, which I later
6 determined to be Lamar Wiggins -- and he asked
7 Mr. Wiggins, why is the State seeking the death
8 penalty, is it because the defendant is alleged to
9 have killed two people?

10 And the SLED agent either nodded his
11 head or said yes. That was the substance of the
12 conversation that he related to me. After the
13 conversation, I sat down and considered whether I
14 needed to report this to the judge; I decided I
15 did not need to disclose this, the reason is, the
16 SLED agent did not attempt to influence the juror,
17 he did not tell the juror -- he didn't say, I
18 think you need to find him guilty or I think you
19 need to give him the death penalty.

20 And, more importantly, at the
21 beginning of the penalty phase, Judge Clary
22 instructed the jury that the reason the State was
23 using the death penalty was because two or more
24 people were murdered during one course or scheme
25 of conduct.

1 The only conversations I had with the
2 jurors were after the whole trial was over. And I
3 think that covers it. But it was basically, after
4 considering, I considered it an innocuous question
5 and answer. I did call Lieutenant Stevens with
6 SLED and informed him of the fact that that had
7 occurred and that he needed to make sure, in the
8 future, that any question, whether it's an
9 innocuous question or not, did not need to be
10 answered by a SLED agent, it needed to be directed
11 to the trial judge.

12 MS. SHULER: Thank you.

13 MR. MABRY: Yes, ma'am.

14 MS. SHULER: Second, Judge Patterson
15 found that the prosecution violated Mr. Kelly's
16 due process rights based upon the prosecution's
17 ex-parte selection of a trial judge for this
18 case.

19 He noted that the solicitor's office
20 admitted contacting the judge and requesting a
21 letter from the court administration that a
22 specific trial judge be assigned this case, but,
23 during that time, the prosecution really didn't
24 notify the trial counsel, Mr. Kelly's counsel,
25 about that contact.

1 Mr. Mabry, what explanation can you
2 offer to the judge's findings of ex parte
3 selection of a trial judge?

4 MR. MABRY: There was no improper ex
5 parte communication with Judge Clary. I can tell
6 you exactly how it happened. We decided to seek
7 the death penalty on Mr. Kelly because he was on
8 parole for armed robbery when he committed these
9 two murders and tried to murder his stepdaughter.

10 We filed a motion to seek the death
11 penalty. The solicitor asked me to preside over
12 the trial. I contacted Judge Clary and told him
13 we had a death penalty case and asked him if he
14 would preside as judge, and he said that he would,
15 but he said he would need to contact Mike Talon.
16 That was the substance of the conversation.

17 That is how we did it at the time.
18 This was, I believe, '96 or '97 when we tried that
19 case. That's how it was done. And the solicitor
20 controlled the docket, the solicitor called the
21 case in front of whatever judge they wanted to at
22 that time.

23 MS. SHULER: So, as a follow-up, this
24 is how it was handled in your circuit or across
25 the state?

1 MR. MABRY: That's how it was handled
2 in our circuit. In fact, that's what I asked
3 Hollman at the time, if it was okay to do this.
4 He said, Yeah, that's how you do it, you contact
5 the judge, ask him if he will sit as the judge.

6 And that's what I asked him to do.
7 Judge Clary said, Sure, let me call Mike Talon.
8 And I would tell the Committee, when this order
9 came down, Judge Clary was sitting on the jury
10 pool in Spartanburg and Judge Patterson was the
11 judge, and Judge Clary was furious.

12 In fact, Judge Clary called
13 Mr. Salena at the attorney general's office and
14 reported to him that Judge Patterson apologized in
15 front of the whole jury panel that he didn't mean
16 that Judge Clary did anything inappropriate.

17 MS. SHULER: Thank you.

18 MR. MABRY: Yes, ma'am.

19 MS. SHULER: Third, Judge Patterson
20 also found that the prosecution's use of race,
21 because race was a consideration in the State
22 seeking the death penalty, so affected the whole
23 proceeding such that Mr. Kelly was entitled to a
24 new trial.

25 Mr. Mabry, what explanation can you

1 offer to Judge Patterson's finding that the
2 prosecution inappropriately used race as an
3 intentional factor in seeking the death penalty of
4 Mr. Kelly?

5 MR. MABRY: We did not use race as a
6 factor in deciding to seek the death penalty of
7 Mr. Kelly. We sought the death penalty of
8 Mr. Kelly for armed robbery, and he murdered his
9 wife, murdered his daughter's fiance, and also
10 tried to kill his stepdaughter.

11 The only discussion that ever
12 occurred is what I testified to, that we were
13 discussing the facts of this case and the
14 evidence, whether we had enough evidence to seek
15 the death penalty.

16 I told the solicitor that if we did
17 not seek the death penalty, if you don't --
18 because, ultimately, it's the solicitor's
19 decision. I said, If we do not seek the death
20 penalty, you better be prepared to explain to the
21 African-American community if we don't seek it
22 against Mr. Kelly.

23 Because we were already seeking the
24 death penalty against Andre Rosen for killing two
25 victims that happened to be white. Mr. Kelly

1 murdered his family member and future son-in-law,
2 who were African-American. So I just said to him,
3 You need to be able to, if you don't seek the
4 death penalty, explain why you don't.

5 It was ultimately determined to seek
6 the death penalty because we were convinced that
7 his stepdaughter, who obviously knew Mr. Kelly and
8 survived the assault, she was there in the house,
9 he shot her and stabbed her, the lights were on,
10 and she escaped from the house and she testified
11 against him.

12 MS. SHULER: Thank you. And the last
13 matter related to this order is Judge Patterson
14 found that the prosecution withheld material
15 evidence in this case such as conviction records
16 of victim's felony criminal sexual conduct with a
17 minor.

18 What explanation can you offer
19 concerning Judge Patterson's findings that the
20 prosecution withheld material evidence in this
21 case?

22 MR. MABRY: I can tell you that we
23 turned over the victim's record to John Rollins
24 and John Thompson, his two attorneys. It was
25 turned over before the victim's mother testified

1 as a victim impact witness.

2 So if they wanted to impeach the
3 victim impact evidence and show that the victim
4 had a prior record -- actually, what happened, the
5 victim was a young African-American male who had
6 gotten in trouble at SC State with some underaged
7 girls. And we turned that over before his mother
8 testified.

9 So I don't agree with that finding.
10 And the Committee can ask Mr. Rollins, can ask
11 Mr. Thompson if we turned that over. They decided
12 not to impeach the mother because they didn't want
13 to beat up on the witness.

14 And I don't see any way that the
15 criminal record of the victim would have been
16 admitted at the trial in the guilt phase.
17 Mr. Kelly testified -- and he knew his son-in-
18 law. So if there was some criminal record that
19 would have gone into his thinking -- Mr. Kelly
20 claimed he killed his future son-in-law in self-
21 defense in the front yard, then he blacked out,
22 did not remember what happened after he entered
23 the house, killed his wife and tried to kill his
24 stepdaughter.

25 But, assuming that that was somehow

1 relevant, Mr. Kelly would have known that and he
2 would have relied on that in acting in self-
3 defense. So I do not agree with that finding. I
4 can tell this Committee, we turned it over to the
5 defense before his mother testified. So they had
6 it, and they chose not to cross-examine his mother
7 about the victim's criminal record.

8 MS. SHULER: In summary, is there any
9 general response you would like to make about this
10 order and the findings in the order?

11 MR. MABRY: All I can tell you is we
12 did not agree with the order at the time. I had
13 left the solicitor's office. It's my
14 understanding that Solicitor Gouty did not agree
15 with the order.

16 I believe he made some statements in
17 the paper, I cannot swear to that, but I remember
18 there was some kind of attack on Judge Patterson
19 when that order came out. The attorney general's
20 office did not agree with the finding in that
21 order.

22 The case was appealed to the Supreme
23 Court and they denied cert, so we don't know what
24 -- he granted relief on numerous grounds, so we
25 don't know why they granted cert. All they had to

1 do was find that there was one ground with some
2 merit.

3 MS. SHULER: Thank you. The third
4 opinion is Simpson versus Moore that you have
5 before you.

6 MR. MABRY: Sure.

7 MS. SHULER: In the case of Simpson
8 versus Moore by the Supreme Court in 2006, the
9 prosecution, of which you were a part, was found
10 by the Supreme Court to have committed a Brady
11 violation by failing to disclose potentially
12 exculpatory evidence, a bag of money found behind
13 a store counter where the armed robbery and murder
14 of a store owner occurred.

15 Explain briefly what occurred in this
16 case.

17 MR. MABRY: I sure can. That was an
18 armed robbery of a convenience store in South
19 Carolina. The defendant admitted that they had
20 watched a movie called Menace to Society. In that
21 movie, the defendant takes an Old English 800 out
22 of the cooler, walks up and puts it on the
23 counter, pulls out a gun and shoots the clerk and,
24 I believe, takes money out of the cash register.

25 I haven't seen the movie in a long

1 time. That was our contention at the trial, that
2 Mr. Simpson took money out of the cash register.
3 We never alleged that he took any other money.
4 There was a moneybag that was kept not where the
5 cash register was and not under the counter, but
6 like three or four feet to my left there was a
7 bookshelf, and the moneybag that they used to cash
8 checks was found under that counter.

9 It couldn't be determined by the
10 police whether any money was taken from that
11 moneybag or not. Mr. Simpson would not have known
12 where the moneybag was or of its existence. But
13 there was a boy in the store who was buying a toy,
14 and he saw Mr. Simpson taking money out of the
15 cash register after he shot and killed
16 Mr. Harrison.

17 There was also a customer in the
18 store prior to the shooting who saw -- who
19 borrowed \$20 from Mr. Harrison and said there was
20 still \$20 bills in the cash register, and he had
21 just left the store right before the murder
22 occurred.

23 This issue came up, I believe, either
24 late the week before the trial or the morning of
25 the trial, it may have been told to me months

1 before and I forgot about it, but know -- I
2 believe it was the morning of the trial, this was
3 told to us by the victim's family, that there was
4 the moneybag and they couldn't determine whether
5 any money was missing or not.

6 And I brought the issue of whether or
7 not we needed to disclose this, and our
8 prosecution team discussed it, and the resolution
9 of that was we did not contend that he took
10 anything else that was in the store except what
11 was in the cash register, because that armed --
12 that part of the case was what the little boy
13 testified to.

14 So that's why it was not disclosed.
15 Supreme Court said it should have been. I would
16 also tell the Committee that this case was hotly
17 contested on appeal. Actually, Judge John Hayes
18 granted relief on a totally different issue.

19 He didn't grant relief in this rape
20 issue, he granted relief on failure of defense
21 counsel to put up certain mitigation efforts.
22 And, on appeal -- or I've been told by Freddie
23 Waters, who was the assistant attorney general who
24 argued it, this moneybag issue was not an issue at
25 all in the oral argument.

1 Subsequent to the oral argument,
2 Solicitor Galley, who was presumably my boss,
3 filed a piece of paper with the Supreme Court that
4 said, Myself, the victims, and the defense
5 attorneys have worked this case out to life in
6 prison, but the attorney general's office won't
7 let us plead it to life in prison.

8 Subsequent to the filing of that
9 piece of paper, the Supreme Court issued the
10 opinion that's referred to; whether that piece of
11 paper had something to do with it, I can't tell
12 you, it is what it is.

13 But it's the only time I know of in
14 the history of this state that I'm aware of that a
15 solicitor cut the legs out from under the attorney
16 general on a capital case while it was on appeal.

17 And, if you read it, it's a very
18 strange opinion. It actually says they had to go
19 back and retry Mr. Simpson on armed robbery, and,
20 if they convicted him of armed robbery, only then
21 could they retry him for the death penalty.

22 Well, that's never been the law in
23 the state. You don't even have to indict the
24 person for armed robbery, you can just try the
25 person and prove the aggravated circumstances in

1 the penalty phase, that's all you need for the
2 death penalty.

3 So it's a very bizarre opinion in
4 light of what occurred. I'd just share those
5 facts with the committee.

6 MS. SHULER: Is there anything that
7 you take away or that you took away after this
8 decision in terms of disclosing exculpatory
9 evidence?

10 MR. MABRY: Well, just be more
11 careful after that, and I'm always now. At the
12 attorney general's office, I just have an open
13 file policy, they can come look at my whole file,
14 they can look at anything I've got, because it's
15 not worth the case being reversed on appeal 10
16 years, 20 years down the line because of some
17 material that a court determines should have been
18 disclosed.

19 MS. SHULER: Mr. Mabry, you also
20 disclosed in your PDQ that you failed to appear at
21 a temporary internal hearing and a court-appointed
22 DSS case sometime between 2003 and 2004 due to a
23 scheduling error.

24 I would say that Mr. Mabry thought
25 that he had been sanctioned or cautioned in that

1 order. Mr. Mabry looked for that order, I looked
2 for that order, I actually talked to the judge who
3 wrote that order; and there was no cautionary
4 language about missing the hearing in that order.

5 But what, if anything, have you
6 learned from missing two court hearings in a
7 court-appointed case?

8 MR. MABRY: I was appointed not as an
9 attorney but a guardian, I think, in family court,
10 guardian for a child. And I actually went to the
11 home and, you know, inspected the home and met
12 with the child and everything.

13 I missed the first hearing because I
14 was, I believe, in a deposition that ran over.
15 The second hearing I missed, the notice from
16 family court got put on my desk instead of going
17 through my secretary so it didn't get put on my
18 calendar. It's my fault, I accept responsibility
19 for it.

20 But I just learned from that that you
21 have to have a scheduling plan for -- every piece
22 of paper that comes into your office has to go
23 through somebody, a secretary, legal assistant, a
24 paralegal or somebody, to schedule the matter, and
25 then you have to look at it a second time and make

1 sure that that's been done.

2 MS. SHULER: Thank you.

3 MR. MABRY: Yes, ma'am.

4 MS. SHULER: I'd like to offer those
5 orders and the two decisions as part of the record
6 as a hearing exhibit.

7 REPRESENTATIVE DELLENEY: Any
8 objection? Without objection, the orders and
9 other attachments are admitted into evidence at
10 this point in the transcript.

11 MS. SHULER: Mr. Chairman, I would
12 ask that we go into executive session to handle
13 one confidential matter.

14 REPRESENTATIVE DELLENEY: We have a
15 motion to go into executive session.

16 REPRESENTATIVE CLEMMONS: Seconded.

17 REPRESENTATIVE DELLENEY: All in
18 favor?

19 (Unanimous vote.)

20 REPRESENTATIVE DELLENEY: We're now
21 in executive session.

22 (The members went into executive
23 session at 2:59 p.m.)

24 * * * * *

25 (The members returned to open session

1 at 3:03 p.m.)

2 MS. SHULER: Mr. Mabry, I have a few
3 final matters to handle with you. Have you sought
4 or received a pledge from any legislator prior to
5 this date?

6 MR. MABRY: No, ma'am.

7 MS. SHULER: Have you sought or have
8 you been offered a conditional pledge of support
9 from any legislator pending the outcome of your
10 screening?

11 MR. MABRY: No, ma'am.

12 MS. SHULER: Have you asked any third
13 parties to contact members of the general assembly
14 on your behalf?

15 MR. MABRY: No, ma'am.

16 MS. SHULER: Have you contacted any
17 members of the Commission, included but not
18 limited to Commissioner Don Sellers?

19 MR. MABRY: No. I haven't had any
20 contact with Mr. Sellers.

21 MS. SHULER: And I understand that
22 your brother, who is an attorney, practices law
23 with Mr. Sellers?

24 MR. MABRY: That's correct.

25 MS. SHULER: Do you understand that

1 you're prohibited from seeking a pledge or
2 commitment until 48 hours after the formal release
3 of the Commission's report?

4 MR. MABRY: Yes, ma'am.

5 MS. SHULER: Have you reviewed the
6 Commission's guidelines on pledging?

7 MR. MABRY: Yes, ma'am.

8 MS. SHULER: Are you aware of the
9 penalties for violating the pledging guidelines?

10 MR. MABRY: Yes, ma'am.

11 MS. SHULER: That is, it is a
12 misdemeanor and, upon conviction, a violator could
13 be fined not more than \$1,000 or in prison not
14 more than 90 days?

15 MR. MABRY: Yes, ma'am.

16 MS. SHULER: I would note that the
17 Upstate Citizens Committee find Mr. Mabry
18 qualified on each of the nine evaluative criteria,
19 constitutional qualifications, ethical fitness,
20 professional and academic ability, character,
21 reputation, physical health, mental stability,
22 experience, and judicial temperament.

23 I would just note for the record that
24 any concerns raised in the investigation of the
25 candidate were addressed in my questioning of the

1 candidate today.

2 Mr. Chairman, I have no further
3 questions for Mr. Mabry.

4 REPRESENTATIVE DELLENEY: Does any
5 member of the Committee have any question?
6 Senator Knotts?

7 SENATOR KNOTTS: Mr. Mabry, you just
8 said that you have not sought or asked anybody or
9 are aware of anyone that contacted any members,
10 but on one of your -- on your questionnaire, you
11 stated here on, I believe, number 44, have you
12 requested a friend or colleague to contact members
13 of the general assembly on your behalf, you said
14 no.

15 Are you aware of any friends or
16 colleagues contacting members of the general
17 assembly on your behalf, you said yes.

18 MR. MABRY: Yes.

19 SENATOR KNOTTS: Can you explain
20 that? Because you just said no.

21 MR. MABRY: No. What I said no to
22 was I have not asked anybody to do that contact,
23 but I know there are people that I know who know
24 I'm running for judge, and they have talked to --

25 SENATOR KNOTTS: How do you know

1 that?

2 MR. MABRY: Because they have told me
3 that they have.

4 SENATOR KNOTTS: What was your
5 response to them at that time?

6 MR. MABRY: You know, my response was
7 basically -- they would say like, I talked to
8 such-and-such, you know, I told them you were a
9 good person. And I said, That's great, I can't --
10 I'm not asking you to do that, I'm not telling you
11 to do that. That's what I'm referring to.

12 SENATOR KNOTTS: Then you went on to
13 say, I am aware that some friends have spoken to
14 members of the general assembly recommending me
15 for this position.

16 MR. MABRY: Correct. That's what I
17 meant by that. They told me they had talked to
18 members of the general assembly and said I would
19 be a good person for the position of a circuit
20 judge, but they did not ask them to vote for me or
21 ask for a pledge or a commitment. That's what
22 they told me. That's what I meant by that,
23 Senator Knotts. I'm sorry.

24 SENATOR KNOTTS: On number 46 on down
25 the page, Judicial Merit Selection Commission

1 about your candidacy or intention to become a
2 candidate, and you said no.

3 But then you explain and make the
4 Commission aware that my brother, Sam Mabry, III,
5 is a law partner with Don Sellers, who's on the
6 Commission, and my brother informed me that he did
7 tell Mr. Sellers I was going to be a candidate for
8 this judicial position, so he decided he wanted to
9 recuse himself with regard to my speaking. And
10 that was the sole purpose of his contact, right?

11 MR. MABRY: Correct.

12 MR. SELLERS: Senator, I'll tell you,
13 his brother did tell me he was running, that was
14 the sole thing he told me, and I already knew it
15 when he told me that.

16 SENATOR KNOTTS: I just wanted to
17 make it clear there was no attempt to contact a
18 member.

19 MR. MABRY: He didn't ask him to
20 favorably screen me or anything like that.

21 SENATOR KNOTTS: It says you've been
22 under investigation by the Wildlife Department for
23 a hunting accident. You don't hunt with Dick
24 Cheney, do you?

25 MR. MABRY: It was my pastor that I

1 shot.

2 SENATOR KNOTTS: Was it on a Sunday
3 afternoon after a bad sermon?

4 MR. MABRY: We were rabbit hunting on
5 a Saturday morning on my brother's farm. I killed
6 the rabbit but I hit him. I drove him to the
7 hospital.

8 SENATOR KNOTTS: It wasn't supposed
9 to be the other way around, was it?

10 MR. MABRY: Told him that I hit what
11 I'm shooting at.

12 MS. MABRY: And we were going to a
13 Sunday school party that night and I said, Nobody
14 will know about it at all, and this was like two
15 hours afterwards, and everybody knew about it.

16 MR. MABRY: We still fish together,
17 we don't hunt together.

18 SENATOR KNOTTS: Thank you,
19 Mr. Chairman. I just wanted to clear that up
20 because it was in the record one way and may be
21 misconstrued.

22 MR. MABRY: I just wanted to make
23 sure I discussed any contact that happened.

24 REPRESENTATIVE DELLENEY: Ms. Shuler?

25 MS. SHULER: When your friends told

1 you they had contacted members of the general
2 assembly, did you explain to them about the
3 48-hour rule and that they have to wait?

4 MR. MABRY: What I remember saying
5 is, I'm not asking you to do anything like that,
6 I'm not asking you to contact anybody. I might
7 have told some of them, you know, they can't
8 commit until after the screening and later on,
9 something to that effect.

10 REPRESENTATIVE DELLENEY: Any further
11 questions? There being none, we would like to
12 thank you for appearing before us today and thank
13 your wife for coming with you.

14 This concludes this portion of your
15 public hearing screening. Of course, any time
16 until we issue the report we can call you back and
17 ask you questions if the need arises, which I
18 don't expect that to happen, but I would just
19 remind you of that.

20 I would also like to remind you of
21 the 48-hour rule. If anyone inquires with you as
22 to whether they could advocate for you, I would
23 ask you to also remind them about the 48-hour
24 rule.

25 MR. MABRY: Yes, sir.

1 REPRESENTATIVE DELLENEY: And I'll
2 just remind you about that. And thank you for
3 offering to serve, and I hope you have a safe trip
4 back home.

5 MR. MABRY: Yes, sir. I've got to go
6 back to work. Good to see y'all.

7 (Candidate excused.)

8 REPRESENTATIVE DELLENEY:
9 Mr. Mackenzie?

10 MR. MACKENZIE: Yes, sir.

11 REPRESENTATIVE DELLENEY: We have
12 before us today Mr. Andrew R. Mackenzie, who seeks
13 the position of Circuit Court, 13th Judicial
14 Circuit, Seat Number Two. If you would, please
15 raise your right hand to be sworn.

16 (Candidate sworn.)

17 REPRESENTATIVE DELLENEY: Thank you,
18 sir. The Judicial Merit Selection Commission has
19 thoroughly investigated your qualifications for
20 the bench.

21 Our inquiry has focused on nine
22 evaluative criteria, which have included a survey
23 of the bench and bar; a thorough study of your
24 application materials; verification of your
25 compliance with State ethics laws; a search of

1 newspaper articles in which your name may have
2 appeared; a study of previous screenings; and a
3 check for any economic conflicts of interest.

4 We have received no affidavits filed
5 in opposition to your election, nor are there any
6 witnesses to testify.

7 Do you have a brief opening statement
8 that you'd like to make at this time?

9 MR. MACKENZIE: I just want to thank
10 you for the opportunity of appearing in front of
11 you today. This is the first time I've gone
12 through screening. I've been very impressed with
13 the thoroughness of the process and appreciate all
14 the time that y'all take to do that and I
15 appreciate the opportunity to be here today.
16 Thank you.

17 REPRESENTATIVE DELLENEY: If you
18 would at this time answer any questions Ms. Benson
19 might have for you.

20 MS. BENSON: Mr. Chairman and members
21 of the Commission, I have a few procedural matters
22 to take care of with regard to this candidate.

23 Mr. Mackenzie, you have before you
24 the personal data questionnaire you submitted as
25 part of your application.

1 Are there any amendments you'd like
2 to make at this time to your PDQ?

3 MR. MACKENZIE: No, ma'am.

4 MS. BENSON: Mr. Chairman, I'd ask
5 that Mr. Mackenzie's personal data questionnaire
6 and any amendments be entered as an exhibit into
7 the hearing at this time.

8 REPRESENTATIVE DELLENEY: It will be
9 done so at this point in the transcript without
10 objection.

11 MS. BENSON: Mr. Mackenzie, you have
12 before you also the sworn statement that you
13 provided with detailed answers to over 30
14 questions regarding judicial conduct, statutory
15 qualifications, office administration, and
16 temperament.

17 Do you have any amendments to this
18 statement?

19 MR. MACKENZIE: No, I don't

20 MS. BENSON: Mr. Chairman, I'd ask
21 that Mr. Mackenzie's sworn statement be entered as
22 an exhibit into the hearing report.

23 REPRESENTATIVE DELLENEY: Without
24 objection, it is admitted into the transcript.

25 (EXH. 17, Andrew Ross Mackenzie's

1 Personal Data Questionnaire and Sworn Statement,
2 was admitted.)

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

10 Mr. Mackenzie, please state for the
11 record the city and judicial circuit in which you
12 reside.

13 MR. MACKENZIE: I live in Greenville,
14 which is in the 13th Circuit.

15 MS. BENSON: Thank you. Why do you
16 want to serve as judge?

17 MR. MACKENZIE: I want -- to me, it's
18 about service. I want to serve the community, the
19 state. I feel like I am well-qualified for this
20 position, I'm well-suited to it, and I feel like I
21 could do a good job and give good service to the
22 state.

23 I've been blessed with a lot of
24 advantages in life. I've been blessed with a nice
25 family, good education, and a lot of other things,

1 and I would like to use that in service to the
2 state.

3 MS. BENSON: Thank you. Could you
4 explain how your legal and professional experience
5 would assist you in being an effective judge?

6 MR. MACKENZIE: I have a wealth of
7 experience in Circuit Court. I worked as an
8 assistant solicitor for five years, I practiced
9 criminal defense in general sessions ever since
10 then. I've been involved in numerous jury
11 trials.

12 I spent a lot of time in trial in
13 court, in general sessions court. When I worked
14 at the solicitor's office, I was also in charge of
15 the docket. As you know, the criminal docket is
16 run by the solicitor's office, and I was the
17 appointed person by the solicitor to run that for
18 him.

19 So I have a lot of experience with
20 scheduling cases and things like that and keeping
21 the docket running. I do not have as much
22 experience in the Court of Common Pleas. I do --
23 I have handled several cases in common pleas, such
24 as sexually violent predator cases, TPR cases.

25 I appeared once or twice in front of

1 the Mater-In-Equity on a foreclosure action that
2 was related to a family court case that I had.
3 But I do have a lot of experience with civil cases
4 in family court. Family court is approximately
5 about 50 percent of what I do now.

6 And, in family court, you know, the
7 same rules of civil procedure and evidence apply.
8 So I do have a lot of experience in civil type
9 cases, although not specifically in the Court of
10 Common Pleas.

11 But I have spent a lot of time in
12 court in the actual trial of cases before a jury
13 and before a judge, I've done that on both sides
14 of the aisle. So I feel like I'm well-qualified
15 for this position.

16 MS. BENSON: Mr. Mackenzie, let me
17 ask you about a few things that were in your
18 personal data questionnaire. You listed one case
19 in which you had been sued.

20 Could you tell the Commission a
21 little bit about that case?

22 MR. MACKENZIE: Yes. That was a case
23 where I represented a lady named Sharon Dalton in
24 her divorce in a family court case. Her husband's
25 name was George -- I believe it was George Dalton.

1 And, as part of that case, we
2 obtained a judgment against Mr. Dalton for
3 attorneys' fees and costs, for my clients
4 attorneys' fees and costs.

5 And those type of judgments are
6 automatically recorded in the registrar of deeds
7 office as a lien against the person's property if
8 he doesn't pay it. So then, some years after the
9 divorce case, Mr. Dalton apparently defaulted on
10 his mortgage and was sued in a foreclosure case.

11 And, because of that prior judgment
12 where my client was awarded attorneys' fees and
13 costs, I was named as a defendant in the case. It
14 had nothing to do with my mortgage or any property
15 that I owned, it was simply because of that one
16 case that I was involved in.

17 MS. BENSON: The matter has been
18 resolved now?

19 MR. MACKENZIE: Yes, ma'am.

20 MS. BENSON: Mr. Mackenzie, you
21 mentioned two situations where you received
22 tickets for violation of the open container law.

23 Would you tell the Commission a
24 little bit about those two instances?

25 MR. MACKENZIE: Yes. That occurred

1 back when I was in college. The one incident
2 occurred when I was in Chapel -- I didn't go to
3 school in North Carolina, but I was visiting
4 people in Chapel Hill at University of North
5 Carolina.

6 I was at a fraternity house, this was
7 during the daytime, and I was drinking a beer in
8 the front yard of the fraternity house with some
9 other people. And I stepped off of the yard on
10 the sidewalk for a second not realizing that, as
11 soon as I did that, that was public possession of
12 alcohol. There was a police officer standing
13 nearby, and she immediately wrote me a ticket for
14 doing that.

15 And then the other one was -- that
16 occurred in Lexington, Virginia, where I went to
17 college. I was at a public park, it was called
18 Gauchen Pass along the Gauchen River in Virginia.
19 And I was drinking a beer there in that public
20 park.

21 I did not realize that was illegal.
22 At the time, that was a place where alcohol was
23 prohibited and, I'm sorry, I did not know that
24 that was against the rules, and, again, I was
25 written a ticket.

1 MS. BENSON: You also listed one
2 charge with DUI and driving in the wrong lane that
3 took place in Alabama.

4 MR. MACKENZIE: That occurred when I
5 was in law school in Birmingham. It was the night
6 after my first law school exam. You know, I'm not
7 going to mince words about it.

8 I had too much to drink that night
9 and I made a terrible mistake and got behind the
10 wheel to drive home. I was pulled over for
11 driving under the influence. And, when I went to
12 court, the DUI charge was dismissed, I was not
13 convicted of it.

14 The other charge was amended to
15 reckless driving, to which I pled guilty and paid
16 a fine. It's a mistake that I made, and I regret
17 that it happened. I'm not going to try to deny
18 it. It's just something I have to live with, it's
19 a mistake I made that I regret.

20 MS. BENSON: One other question about
21 your PDQ. You had listed that you were a member
22 of the St. Andrews Society of Upper South
23 Carolina. And, as I understand, this is a society
24 that's restricted in membership to male members
25 only.

1 Could you tell the Commission how you
2 feel that being a member of this society would not
3 be a violation of the codes of judicial conduct
4 and what you might do if you found out that it was
5 a violation?

6 MR. MACKENZIE: I don't believe it's
7 a violation of the code because it's not an
8 organization that practices invidious
9 discrimination. It does discriminate against
10 women, only men can be members, but it's also a
11 cultural -- it's an organization that celebrates
12 cultural values of Scottish heritage and things
13 like that.

14 And it also had some charitable works
15 that they do, they offer a scholarship for people
16 who play the bag pipes, I don't recall the
17 scholarship, and I contribute to that too.

18 If it was determined that this was a
19 violation of the code, well, then I think the
20 first step I would take would be to go to the
21 organization to see what I could do to cure
22 whatever is causing it to be a violation of the
23 code, and, if that doesn't work within the span of
24 a year or so, then I would resign from that club.

25 MS. BENSON: Mr. Chairman, there was

1 one matter that needed to be taken up in executive
2 session.

3 REPRESENTATIVE DELLENEY: Do I hear a
4 motion?

5 SENATOR NICHOLSON: So moved.

6 REPRESENTATIVE DELLENEY: All in
7 favor?

8 (Unanimous vote.)

9 REPRESENTATIVE DELLENEY: We are now
10 in executive session.

11 (The members went into executive
12 session at 3:23 p.m.)

13 * * * * *

14 (The members returned to open session
15 at 3:28 p.m.)

16 MS. BENSON: Mr. Chairman, I have a
17 few housekeeping issues. Have you sought or
18 received a pledge from any legislator prior to
19 this date?

20 MR. MACKENZIE: No, ma'am.

21 MS. BENSON: Have you sought or have
22 you been offered a conditional pledge of support
23 from any legislator pending the outcome of your
24 screening?

25 MR. MACKENZIE: No, ma'am.

1 MS. BENSON: Have you asked any third
2 parties to contact members of the general assembly
3 on your behalf?

4 MR. MACKENZIE: No, ma'am.

5 MS. BENSON: Have you contacted any
6 members of the Commission?

7 MR. MACKENZIE: No, ma'am.

8 MS. BENSON: Do you understand that
9 you're prohibited from seeking a pledge or
10 commitment until 48 hours after the formal release
11 of the Commission's report?

12 MR. MACKENZIE: Yes, I understand.

13 MS. BENSON: Have you received the
14 Commission's guidelines on pledging?

15 MR. MACKENZIE: Yes, I have.

16 MS. BENSON: As a follow-up, are you
17 aware of the penalties for violating the pledging
18 rules; that is, it is a misdemeanor and, upon
19 conviction, a violator could be fined not more
20 than \$1,000 or in prison not more than 90 days?

21 MR. MACKENZIE: Yes, I understand
22 that.

23 MS. BENSON: Mr. Chairman, I would
24 note that the Upstate Citizens Committee found
25 Mr. Mackenzie qualified for each of the nine

1 evaluative criteria. I would also note that any
2 concerns raised during the investigation regarding
3 this candidate have been incorporated into the
4 questions today.

5 Mr. Chairman, I have no further
6 questions.

7 REPRESENTATIVE DELLENEY: Does any
8 member of the Commission have any further
9 questions of Mr. Mackenzie? Representative
10 Clemmons?

11 REPRESENTATIVE CLEMMONS:
12 Mr. Mackenzie, I'd like to ask a question
13 regarding temperament. Have you ever had occasion
14 or occasions to denigrate a fellow officer of the
15 court either in person or by letter?

16 MR. MACKENZIE: I don't believe so.

17 REPRESENTATIVE CLEMMONS: Thank you.

18 REPRESENTATIVE DELLENEY: Any other
19 questions? There being no other questions,
20 Mr. Mackenzie, we thank you so much for appearing
21 before us today.

22 This concludes this portion of your
23 public hearing screening. Of course, any time
24 until we issue the report we can call you back and
25 ask you questions if the need arises, which I

1 don't expect that to happen, but I would just
2 remind you of that.

3 I would also like to remind you of
4 the 48-hour rule. If anyone inquires with you as
5 to whether they could advocate for you, I would
6 ask you to also remind them about the 48-hour
7 rule. And, with that, we thank you for offering
8 to serve and wish you a safe trip home.

9 MR. MACKENZIE: Thank you.

10 (Candidate excused.)

11 REPRESENTATIVE DELLENEY: Judge
12 Verdin?

13 MS. VERDIN: Good afternoon.

14 REPRESENTATIVE DELLENEY: We have
15 before us today the Honorable Letitia H. Verdin,
16 who seeks a seat on the Circuit Court, 13th
17 Judicial Circuit, Seat Number Two. If you would
18 at this time please raise your right hand to be
19 sworn.

20 (Candidate sworn.)

21 REPRESENTATIVE DELLENEY: Thank you.
22 The Judicial Merit Selection Commission has
23 thoroughly investigated your qualifications for
24 the bench.

25 Our inquiry has focused on nine

1 evaluative criteria, which have included a survey
2 of the bench and bar; a thorough study of your
3 application materials; verification of your
4 compliance with State ethics laws; a search of
5 newspaper articles in which your name may have
6 appeared; a study of previous screenings; and a
7 check for any economic conflicts of interest.

8 We have received no affidavits filed
9 in opposition to your election, nor are there any
10 witnesses to testify.

11 Do you have a brief opening statement
12 that you'd like to make at this time?

13 MS. VERDIN: Just thank you for
14 allowing me to be here.

15 REPRESENTATIVE DELLENEY: Thank you.
16 Ma'am, if you would, answer any questions
17 Ms. Anzelmo might have for you.

18 MS. ANZELMO: Thank you.

19 Mr. Chairman and members of the Commission, I have
20 a few procedural matters to take care of with
21 regard to this candidate.

22 Judge Verdin, you have before you the
23 personal data questionnaire and the amendment you
24 submitted as part of your application.

25 Are there any additional amendments

1 you'd like to make at this time to your PDQ?

2 MS. VERDIN: No.

3 MS. ANZELMO: Mr. Chairman, I'd ask
4 that Judge Verdin's personal data questionnaire
5 and amendment be entered as an exhibit into the
6 hearing at this time.

7 REPRESENTATIVE DELLENEY: It will be
8 done so at this point in the transcript without
9 objection.

10 MS. ANZELMO: Ms. Verdin, you have
11 before you also the sworn statement that you
12 provided with detailed answers to over 30
13 questions regarding judicial conduct, statutory
14 qualifications, office administration, and
15 temperament.

16 Do you have any amendments to this
17 statement?

18 MS. VERDIN: No, ma'am.

19 MS. ANZELMO: Mr. Chairman, I'd ask
20 that Ms. Verdin's sworn statement be entered as an
21 exhibit into the hearing report.

22 REPRESENTATIVE DELLENEY: Without
23 objection, it is admitted into the transcript.

24 (EXH. 18, Letitia H. Verdin's
25 Personal Data Questionnaire, Amendment, and Sworn

1 Statement, was admitted.)

2 MS. ANZELMO: One final procedural
3 matter. I note for the record based on the
4 testimony contained in the candidate's PDQ, which
5 has been included in the record with the
6 candidate's consent, Judge Verdin meets the
7 statutory requirements for this position regarding
8 age, residence, and years of practice.

9 Judge Verdin, please state for the
10 record the city and judicial circuit in which you
11 reside.

12 MS. VERDIN: I reside in Greenville,
13 South Carolina in the 13th Judicial Circuit.

14 MS. ANZELMO: Thank you. Judge
15 Verdin, after practicing law and serving as a
16 family court judge, why do you now want to serve
17 as Circuit Court judge?

18 MS. VERDIN: Well, I've very much
19 enjoyed my service in Circuit Court. I feel like
20 my experience and my background, especially in my
21 practice of law, is well-suited for that.

22 As I said, I've very much enjoyed
23 family court and like it very much; however, I do
24 in some ways miss some of the work that I used to
25 do in private practice. My practice was evenly

1 split between a civil practice and criminal
2 practice, just divided by years.

3 I was in a defense firm, a small
4 defense firm, for about five years and I was a
5 prosecutor for about five years.

6 MS. ANZELMO: Thank you. Are there
7 any areas of the law that you would need to
8 additionally prepare for in order to serve as a
9 Circuit Court judge, and, if so, how would you
10 handle that preparation?

11 MS. VERDIN: Well, I can't say that
12 there are certainly not areas. I would say I have
13 a very broad base. I did some real estate work, I
14 did some criminal defense work, I did family court
15 work, and I did probate work, in addition to
16 general civil liability.

17 I think I would need to -- of course,
18 I've been away from it for a period of time, and I
19 think I would definitely need to acquaint myself
20 with the changes in the law, although I've tried
21 to keep up with that.

22 As far as any particular area of the
23 law, I think probably real estate, that sort of
24 thing. I did do that, but not extensively, and
25 probate, that would probably be my weakest area.

1 And I would brush up or study any area of the law
2 much the way I did when I went on the family court
3 bench. I had some areas that I needed to become
4 more familiar with and I did, I applied myself to
5 do that.

6 MS. ANZELMO: Thank you. Would you
7 please explain to the members of the Commission
8 what you think is the appropriate demeanor for a
9 judge?

10 MS. VERDIN: I think a judge should
11 be courteous, I think a judge should be prompt, I
12 think a judge should be resolute, I think a judge
13 should be careful. As someone told me when I
14 first took the bench, they told me, You need to
15 consider your decisions carefully before you make
16 them and then be able to forget about them and
17 move on at that point.

18 And I think a judge should be
19 resolute and be able to do that but, at all times,
20 be courteous and kind to people in the courtroom.

21 MS. ANZELMO: What suggestions, if
22 any, would you offer for improving the backlog of
23 cases on the docket in the Circuit Court?

24 MS. VERDIN: Well, for one, I would
25 apply my time and be available to hear cases and

1 assist in moving them. I think pretrying cases
2 and status conferences, meaningful status
3 conferences, are very helpful in the civil
4 docket.

5 I also think that accountability for
6 the solicitor in that circuit and the public
7 defender moving cases in the criminal area. I
8 will tell you, I anticipated that question, I
9 thought back to my answer when I was running for
10 the family court bench.

11 And I would tell you that I have, as
12 the administrative judge this past year, made a
13 lot of changes in Greenville that I think have
14 been productive. They were not my ideas, they
15 were ideas that I got from meeting with all the
16 other agencies and folks involved in family
17 court.

18 So I would anticipate, if I was
19 elected to Circuit Court, that I would do the same
20 thing and I would -- I don't want to say take
21 their ideas, but I would say rely on ideas from
22 other folks and try to comprehensively look at the
23 system and try to find things to make it run more
24 smoothly.

25 MS. ANZELMO: Thank you, Judge

1 Verdin. Have you sought or received a pledge from
2 any legislator prior to this date?

3 MS. VERDIN: I have not.

4 MS. ANZELMO: Have you sought or have
5 you been offered a conditional pledge of support
6 from any legislator pending the outcome of your
7 screening?

8 MS. VERDIN: No.

9 MS. ANZELMO: Have you asked any
10 third parties to contact members of the general
11 assembly on your behalf?

12 MS. VERDIN: No.

13 MS. ANZELMO: Have you contacted any
14 members of the Commission?

15 MS. VERDIN: No.

16 MS. ANZELMO: Do you understand that
17 you're prohibited from seeking a pledge or
18 commitment until 48 hours after the formal release
19 of the Commission's report?

20 MS. VERDIN: I do.

21 MS. ANZELMO: Have you reviewed the
22 Commission's guidelines on pledging?

23 MS. VERDIN: I have.

24 MS. ANZELMO: As a follow-up, are you
25 aware of the penalties for violating the pledging

1 rules; that is, it is a misdemeanor and, upon
2 conviction, a violator could be fined not more
3 than \$1,000 or in prison not more than 90 days?

4 MS. VERDIN: Yes.

5 MS. ANZELMO: I would note that the
6 Upstate Citizens Committee found Judge Verdin
7 qualified for each of the nine evaluative
8 criteria, those being constitutional
9 qualifications, ethical fitness, professional and
10 academic ability, character, reputation, physical
11 health, mental stability, experience, and judicial
12 temperament.

13 I would also note that Judge Verdin
14 achieved the highest score on the judicial test of
15 all the candidates who filed for Circuit Court
16 seats during this screening term.

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

19 REPRESENTATIVE DELLENEY: Does
20 anybody on the Commission have any questions?
21 Senator Knotts?

22 SENATOR KNOTTS: Judge Verdin, when
23 you ran in 2008 for the family court, I believe
24 your platform was that you were first in family
25 court, that was your field of expertise and that

1 was your goal, was to be a family court judge.

2 What now has changed and where do you
3 foresee yourself to be if a seat opens in two
4 years or three years down the road?

5 MS. VERDIN: Well, I will tell you
6 first that my practice, my practice prior to being
7 elected to the family court, though I had a great
8 deal of experience with children's issues, I did
9 not have an extensive family court private
10 practice.

11 I had done juvenile prosecution and I
12 had been involved in abuse and neglect cases, but
13 from the standpoint of being a prosecutor in those
14 cases. I am very committed to children's issues
15 and have enjoyed working in that area.

16 I will say that nothing has changed
17 for me except to say that this opportunity came
18 open in the Circuit Court and, as I said, I think
19 my experience is well-suited for it.

20 So far as where I would see myself,
21 are you asking if I were elected to the Circuit
22 Court and then another seat came open? I'm sorry.
23 I didn't quite understand the very last of your
24 question.

25 SENATOR KNOTTS: I believe, whenever

1 you ran the last time, what you told people was
2 that you had practiced in private practice with
3 family court matters and in the solicitor's
4 office, that your main goal was children's issues
5 and family court matters and prosecution of
6 juvenile crimes and that you had said, if I
7 remember correctly in speaking with you, you said
8 you did very little criminal work with adults
9 compared to your caseload in juvenile in the
10 solicitor's office.

11 MS. VERDIN: And I apologize if --
12 when I spoke with you in this hearing two and a
13 half years ago, I apologize if I misled you. I
14 did not have a private practice in family law,
15 just to be clear, and I was an adult prosecutor --
16 I was a juvenile prosecutor for many years and I
17 was an adult prosecutor for four years, but I
18 prosecuted child abuse and neglect cases and
19 domestic violence cases, those were the focus of
20 my prosecution.

21 I would say that my commitment to
22 those children's issues, those issues, would not
23 change, and I would anticipate, you know -- I
24 anticipate, if I were elected to the Circuit
25 Court, that I would still have a keen interest in

1 those areas, the same ones I prosecuted in, in
2 addition. But I apologize if I misled you in any
3 way.

4 SENATOR KNOTTS: I don't think you
5 misled me, I might have taken it out of context
6 that basically your job in the solicitor's office
7 was basically geared around juvenile crime and
8 juvenile law and family law, and most of that is
9 usually in the family court.

10 MS. VERDIN: And I would say -- I'm
11 sorry.

12 SENATOR KNOTTS: Go ahead.

13 MS. VERDIN: And I was going to say,
14 and I will acknowledge that my experience with
15 children's issues for family court was a bit
16 different. It came from adult prosecution. But I
17 was, by and large, a general sessions prosecutor.
18 But the bulk of my cases focused on children.

19 SENATOR KNOTTS: What would you say
20 your percentage of adult crime other than family
21 matters in the solicitor's office was, percentage-
22 wise, to family court? Would it be more family
23 court oriented or juvenile?

24 MS. VERDIN: The large -- if you're
25 saying a case where a child was involved as the

1 victim?

2 SENATOR KNOTTS: Practice in the
3 general sessions court involving juvenile cases
4 mostly or would it be other crimes like rape,
5 murder, robbery, where it wasn't involving --

6 MS. VERDIN: I prosecuted all those
7 types of cases. I prosecuted a death penalty
8 case. However, I would say the cases that did not
9 focus on either family violence in a domestic
10 violence setting or children, I would say that
11 those cases probably took up 60 to 70 percent of
12 my caseload at the solicitor's office, and then
13 the other 30 to 35 percent were general crimes,
14 drugs, prostitution, drug cases.

15 SENATOR KNOTTS: 60, 65 family
16 matters and 30, 35 hard criminal adult crimes?

17 MS. VERDIN: Yes, as general sessions
18 prosecutor. And one year in addition I did do --
19 and one year in addition, as I said, I was a
20 juvenile prosecutor.

21 SENATOR KNOTTS: Thank you.

22 REPRESENTATIVE DELLENEY:

23 Mr. Sellers?

24 MR. SELLERS: I think what Senator
25 Knotts is remembering, and certainly I remember

1 too from last time, you've been on the bench now
2 for about two years?

3 MS. VERDIN: Yeah, about two and a
4 half, yes, sir.

5 MR. SELLERS: And the last time you
6 were here, my impression was that that was sort of
7 a goal for you, to be a family court judge. And
8 you've been on the bench now for about two years
9 and you've been successful and you've got a good
10 reputation on that bench, and that's a very
11 important court in this state.

12 And I guess my question is: Why,
13 after just two years, do you now want to take
14 another step and go to the Circuit bench? And I
15 think what Senator Knotts was asking, are we going
16 to see you two years from now going to the
17 Appellate Court bench? I mean, do you have a goal
18 in mind?

19 MS. VERDIN: No, sir, I don't. And I
20 think that's a very fair question. I would say,
21 timing-wise, this might not have been, you know,
22 exactly time wise I would have picked. But this
23 opportunity came available. And I would say that
24 there are some folks, attorneys that I know,
25 encouraged me very strongly to do it.

1 I had to really think about my
2 decision to do it and really consider it deeply.
3 I would say one thing, I do miss some of the areas
4 of law that I worked in in the general sessions
5 and in common pleas. I also -- as I said, it just
6 -- I think, timing-wise, this position came open
7 and it's just something I've been very interested
8 in.

9 It was not something I was interested
10 in when I ran for family court, and I will be
11 frank with you about that. There were Circuit
12 seats around that time that I could have run for,
13 and I had no interest in doing so at that time.

14 But, to tell you that I have any
15 other ambition, I do not. And I know that that's
16 -- people tell you never to close yourself off to
17 do anything in the future, but, as I stand here
18 today, I can tell you I do not have any ambition
19 to do that whatsoever.

20 REPRESENTATIVE DELLENEY: Senator
21 Knotts?

22 SENATOR KNOTTS: Let me just ask you
23 where the rubber meets. Convince me why I should
24 try to replace a perfectly good, knowledgeable,
25 well-experienced, capable family court judge by

1 moving them to a possible on-the-job training
2 Circuit Court judge.

3 MS. VERDIN: I'll say, first of all,
4 if I've been a capable family court judge, and I
5 appreciate the implication that I might have
6 been --

7 SENATOR KNOTTS: And you've done a
8 great job.

9 MS. VERDIN: I appreciate that. I
10 would take those same skills and my same desire to
11 do a good job on the Circuit Court. I also feel
12 as though my background is unique in one way, and
13 that is that, for the Circuit Court bench, I have
14 half criminal, have civil -- half civil for -- I
15 guess, to paint with a broad brush there, half
16 civil, and then I have judicial experience as
17 well.

18 I think that I could be -- I would
19 commit myself to being the very best Circuit Court
20 judge that I could be, and I am -- I would put
21 every bit of effort that I have put into family
22 court in doing that.

23 And, admittedly, when I was before
24 you two and a half years ago, three years ago and
25 running for a family court seat, I admitted at

1 that time there was a lot I had to learn about
2 family court and I had to really push myself to do
3 that, and I did.

4 My experience was a little bit
5 different for the family court bench, but it is
6 exactly the experience that's necessary for a
7 Circuit Court judge, I believe. And I can tell
8 you, if you all saw fit to nominate me for it, I
9 would give it everything I had.

10 REPRESENTATIVE DELLENEY: Does anyone
11 else have any questions? There being no further
12 questions, Judge Verdin, we would like to thank
13 you for being here with us this afternoon.

14 This concludes this portion of your
15 public hearing screening. Of course, any time
16 until we issue the report we can call you back and
17 ask you questions if the need arises, which I
18 don't expect that to happen, but I would just
19 remind you of that.

20 I would also like to remind you of
21 the 48-hour rule. If anyone inquires with you as
22 to whether they could advocate for you, I would
23 ask you to also remind them about the 48-hour
24 rule.

25 With that, we appreciate you offering

1 service and appreciate everything you've done for
2 our state so far.

3 MS. VERDIN: Thank you very much.

4 SENATOR KNOTTS: Judge Verdin, I
5 appreciate your work ethic. You lived up to your
6 word.

7 MS. VERDIN: Thank you. I appreciate
8 that.

9 (Candidate excused.)

10 REPRESENTATIVE DELLENEY: Is there a
11 motion we go into executive session?

12 (Unanimous vote.)

13 REPRESENTATIVE DELLENEY: We are now
14 in executive session.

15 (The members went into executive
16 session at 3:51 p.m.)

17 * * * * *

18 (The members returned to open session
19 at 3:55 p.m.)

20 REPRESENTATIVE DELLENEY: We're now
21 back on the record. And, at this time,
22 Mr. Sellers --

23 MR. SELLERS: Mr. Chairman, in view
24 of the fact that one of the candidate's brother
25 and I are law partners, I'm going to recuse myself

1 from the deliberation and voting in the race and
2 ask to be excused while you guys take up the
3 counts.

4 REPRESENTATIVE DELLENEY: Thank you,
5 sir. Do I have a motion that we go back in
6 executive session?

7 (Unanimous vote.)

8 REPRESENTATIVE DELLENEY: We are now
9 back in executive session.

10 (The members went into executive
11 session at 3:56 p.m.)

12 * * * * *

13 (The members returned to open session
14 at 4:05 p.m.)

15 REPRESENTATIVE DELLENEY: So we will
16 vote on --

17 SENATOR KNOTTS: Mr. Chairman?

18 REPRESENTATIVE DELLENEY: Yes.

19 SENATOR KNOTTS: I would move that
20 all candidates are qualified, Eric Englehardt,
21 Anthony Mabry, Andrew Mackenzie, and Letitia
22 Verdin, are qualified.

23 SENATOR NICHOLSON: Second.

24 REPRESENTATIVE DELLENEY: All in
25 favor?

1 (Unanimous vote.)

2 REPRESENTATIVE DELLENEY: Okay.

3 They're all qualified.

4 SENATOR KNOTTS: Eight.

5 REPRESENTATIVE DELLENEY: Next we
6 will move on to the next part of the nomination
7 process, which is to find Eric Englebardt
8 qualified and nominated.

9 All in favor raise your hand.

10 MS. SHULER: Eight.

11 REPRESENTATIVE DELLENEY: Next we
12 have whether or not to find Mr. J. Anthony Mabry
13 qualified and nominated. All in favor of finding
14 J. Anthony Mabry qualified raise your hand.

15 MS. SHULER: Zero.

16 REPRESENTATIVE DELLENEY: Next we
17 have the question of Andrew H. Mackenzie, as to
18 whether he is qualified and nominated. All in
19 favor raise your hand.

20 MS. SHULER: Six.

21 REPRESENTATIVE DELLENEY: And then we
22 have Letitia Verdin. All those in favor of
23 finding her qualified, raise your hand.

24 MS. SHULER: Eight.

25 So it's Eric Englebardt, Andrew

1 Mackenzie, and Letitia Verdin.

2 MS. SHULER: Let's take a break.

3 (A recess transpired.)

4 REPRESENTATIVE DELLENEY: We have
5 before us today Mr. Ben F. Mack, who seeks a
6 position for the Family Court, Ninth Judicial
7 Circuit, Seat Number One.

8 Mr. Mack, before we get started, do
9 you have anybody you'd like to introduce to us?

10 MR. MACK: I do, sir. My wife is
11 with me, Angela Mack.

12 REPRESENTATIVE DELLENEY: Nice to
13 meet you, Ms. Mack. We're glad to have you with
14 us today. If you would, Mr. Mack, raise your
15 right hand to be sworn.

16 (Candidate sworn.)

17 REPRESENTATIVE DELLENEY: Thank you,
18 Mr. Mack. The Judicial Merit Selection Commission
19 has thoroughly investigated your qualifications
20 for the bench.

21 Our inquiry has focused on nine
22 evaluative criteria, which have included a survey
23 of the bench and bar; a thorough study of your
24 application materials; verification of your
25 compliance with State ethics laws; a search of

1 newspaper articles in which your name may have
2 appeared; a study of previous screenings; and a
3 check for any economic conflicts of interest.

4 We have received no affidavits filed
5 in opposition to your election, nor are there any
6 witnesses to testify.

7 Do you have a brief opening statement
8 that you'd like to make at this time?

9 MR. MACK: I would. I'm here
10 applying for this position based upon 30 years of
11 experience in the family court. I've held
12 practically every position available in the family
13 court, starting out as a public defender in the
14 early 1980s, then assistant solicitor and DSS
15 attorney.

16 And I have been actively involved in
17 family court representation and litigation since
18 1980, since I was admitted to the bar and was a
19 young solicitor in the solicitor's office in
20 Charleston. So I think I offer a broad breadth of
21 experience in the family court.

22 I've been litigating in private
23 practice since 1984 in Charleston, Berkeley, and
24 Dorchester Counties. So those are the reasons
25 that I offer as a candidate.

1 REPRESENTATIVE DELLENEY: Thank you,
2 sir. At this time, would you answer any questions
3 our able counsel, Ms. Shuler, might have for you?

4 MR. MACK: Yes, sir.

5 MS. SHULER: Mr. Mack, good
6 afternoon.

7 MR. MACK: Hi.

8 MS. SHULER: Mr. Chairman and members
9 of the Commission, I have a few procedural matters
10 to take care of with regard to this candidate.

11 Mr. Mack, you have before you the
12 personal data questionnaire and an amendment you
13 submitted as part of your application.

14 Are there any additional amendments
15 you'd like to make at this time to your PDQ?

16 MR. MACK: No, ma'am.

17 MS. SHULER: Thank you.

18 Mr. Chairman, I would offer that Mr. Mack's PDQ
19 and amendment be entered into the record as an
20 exhibit.

21 REPRESENTATIVE DELLENEY: Those
22 documents will be included and admitted into the
23 record at this point without objection.

24 (EXH. 19, Bernard Frank Mack's
25 Personal Data Questionnaire, Amendment, and Sworn

1 Statement, was admitted.)

2 MS. SHULER: Mr. Mack, you have
3 before you also the sworn statement that you
4 provided with detailed answers to over 30
5 questions regarding judicial conduct, statutory
6 qualifications, office administration, and
7 temperament.

8 Do you have any additional amendments
9 that you would like to make at this time to your
10 sworn statement?

11 MR. MACK: No, ma'am.

12 MS. SHULER: Mr. Chairman, I would
13 ask that Mr. Mack's sworn statement be entered
14 into the record as an exhibit.

15 REPRESENTATIVE DELLENEY: The sworn
16 statement will be admitted into the transcript
17 without objection.

18 MS. SHULER: One final procedural
19 matter. I note for the record based on the
20 testimony contained in the candidate's PDQ, which
21 has been included in the record with the
22 candidate's consent, Mr. Mack meets the statutory
23 requirements for this position regarding age,
24 residence, and years of practice.

25 Mr. Mack, please state for the record

1 the city and judicial circuit in which you reside.

2 MR. MACK: Charleston, South
3 Carolina, Ninth Judicial Circuit.

4 MS. SHULER: Thank you. Mr. Mack,
5 after practicing law for 30 years, why do you now
6 want to serve as a family court judge?

7 MR. MACK: Well, it's really a
8 culmination of a career practicing in family court
9 for the past 30 years. I see it as the next step
10 in terms of my career development and the
11 challenge that it affords to be a family court
12 judge.

13 Additionally, it's my intent to give
14 back to the community and serve after many years
15 of practice in the family court and in the Ninth
16 Circuit in Charleston.

17 MS. SHULER: Mr. Mack, can you
18 explain to the Commission how you feel your legal
19 and professional experience thus far will assist
20 you in serving as an effective Circuit Court
21 judge?

22 MR. MACK: As I started in my opening
23 statement really, I've had a broad breadth of
24 experience in the family court in Charleston,
25 Berkeley, and Dorchester Counties. In all three

1 of those -- I started out in the 1980s in
2 Charleston back in the days when the solicitors
3 represented the Department of Social Services.

4 I was a young attorney working on
5 abuse and neglect cases. After that, I worked for
6 a period of time as a public defender in
7 Charleston in family court, moved on to work in
8 the solicitor's office as a prosecutor in
9 Charleston County, after that went into private
10 practice.

11 I've been involved in numerous family
12 court litigations in Charleston, appellate work
13 for the Court of the Appeals, very much involved
14 in the mediation practice in Charleston at the
15 present time. So I have a broad breadth of
16 experience in all of these areas.

17 MS. SHULER: Mr. Mack, are there any
18 areas of the law that you would need to
19 additionally prepare for, and, if so, how would
20 you handle that preparation?

21 MR. MACK: I don't think there are.
22 I mean, I've pretty much practiced in every area,
23 juvenile as well as DSS and family court
24 litigation.

25 MS. SHULER: Thank you. Mr. Mack,

1 could you explain to the Commission what you
2 believe to be the appropriate demeanor for a
3 judge?

4 MR. MACK: Well, I think it's a
5 demeanor of restraint and of respect for
6 individuals in the community, people who come
7 before the bar honoring the law, the disposition
8 of the law, and making sure citizens are dealt
9 with courteously and promptly as well as attorneys
10 before the bar.

11 MS. SHULER: Thank you, Mr. Mack. Do
12 you have any suggestions you would like to offer
13 for improving the backlog of the docket in family
14 court?

15 MR. MACK: I think the biggest
16 improvement, we've seen a remarkable change in
17 mediation and success that mediation has brought.
18 One thing we're doing in Charleston starting in
19 Horry County was DSS mediation, and I, for one,
20 was very skeptical about that process.

21 Even mediations with the Department
22 of Social Services cases have been extremely
23 successful. And I recommend to the Committee that
24 the legislature continue to promote that. I saw
25 today that there were expansions of mediation into

1 the 14th Judicial Circuit for family court cases
2 recently by the Chief Justice's order.

3 But I think that's the biggest change
4 that's taken place. I would say 85 to 90 percent
5 of cases are settled in mediation, and it's really
6 alleviating much of the backlog in family court.

7 MS. SHULER: Thank you, Mr. Mack.
8 Mr. Mack, you received one bar survey out of a
9 total of two surveys. One of those surveys
10 indicated concerns in two areas.

11 The first concern dealt with your
12 professional experience, weakness in follow-up
13 communication, that it is not always easy to get
14 responses from you.

15 What response would you offer to the
16 concern that perhaps there is a weakness in your
17 follow-up in communicating with other parties,
18 other attorneys, and it's not always easy to get
19 responses from you?

20 MR. MACK: I simply don't think
21 that's the case. As you indicated, that came from
22 one individual. There was a broad survey of the
23 bar, and, as a result of that, I was found well-
24 qualified by the bar committee as well as the
25 citizens committee.

1 So I think that might have been one
2 isolated case. But I don't think that's the
3 nature of my practice at all over the years, as
4 indicated by the responses from the bar at large.

5 MS. SHULER: Thank you. The second
6 concern dealt with your diligence in industry and
7 it indicated that the surveyor was unsure if you
8 would be interested in working long hours.

9 What response would you offer to
10 that?

11 MR. MACK: Well, I think that I am.
12 This is the third time I've run for family court,
13 so it's a position I've sought on multiple
14 occasions. And I think I have the work ethic to
15 do what's necessary in the family court.

16 MS. SHULER: Can you explain what
17 your current work ethic consists of?

18 MR. MACK: Well, I'm in the office
19 every day all day five days a week, and I have had
20 a really prosperous family court practice over
21 many years, and I think that's evidence of what my
22 work ethic has been.

23 MS. SHULER: Thank you.
24 Mr. Chairman, I have a matter I would like to take
25 up with this candidate in executive session.

1 REPRESENTATIVE DELLENEY: Okay.

2 Counsel advises us we need to go into executive
3 session to take up a matter.

4 SENATOR NICHOLSON: So moved.

5 SENATOR KNOTTS: Second.

6 REPRESENTATIVE DELLENEY: All in
7 favor say aye.

8 (Unanimous vote.)

9 REPRESENTATIVE DELLENEY: We're now
10 in executive session.

11 (The members went into executive
12 session at 4:33 p.m.)

13 * * * * *

14 (The members returned to open session
15 at 4:39 p.m.)

16 REPRESENTATIVE DELLENEY: We are back
17 on the public record.

18 MS. SHULER: Mr. Mack, a few closing
19 questions for you. Have you sought or received
20 the pledge of any legislator prior to this date?

21 MR. MACK: No, ma'am.

22 MS. SHULER: Have you sought or have
23 you been offered a conditional pledge of support
24 from any legislator pending the outcome of your
25 screening?

1 MR. MACK: No, ma'am.

2 MS. SHULER: Have you asked any third
3 parties to contact members of the general assembly
4 on your behalf?

5 MR. MACK: No, ma'am.

6 MS. SHULER: Have you contacted any
7 member of the Commission?

8 MR. MACK: No, ma'am.

9 MS. SHULER: Do you understand that
10 you're prohibited from seeking a pledge or
11 commitment until 48 hours after the formal release
12 of the Commission's report?

13 MR. MACK: Yes, ma'am.

14 MS. SHULER: Have you received the
15 Commission's guidelines on pledging?

16 MR. MACK: Yes, ma'am.

17 MS. SHULER: As a follow-up, are you
18 aware of the penalties for violating the pledging
19 rules; that is, it is a misdemeanor and, upon
20 conviction, a violator could be fined not more
21 than \$1,000 or in prison not more than 90 days?

22 MR. MACK: Yes, ma'am.

23 MS. SHULER: I would note that the
24 Low Country Citizens Committee found Mr. Mack
25 well-qualified in each of the nine evaluative

1 criteria, constitutional qualifications, ethical
2 fitness, professional and academic ability,
3 character, reputation, physical health, mental
4 stability, experience, and judicial temperament.

5 I would also note that any concerns
6 raised during the investigation have been
7 incorporated into the questioning of the candidate
8 today.

9 Thank you, Mr. Mack, and I have no
10 further questions.

11 REPRESENTATIVE DELLENEY: Does any
12 member of the Commission have any further
13 questions for Mr. Mack? There being none,
14 Mr. Mack, we'd like to thank you for appearing
15 before us today, thank you for bringing your wife
16 up here today.

17 This concludes this portion of your
18 public hearing screening. Of course, any time
19 until we issue the report we can call you back and
20 ask you questions if the need arises, which I
21 don't expect that to happen, but I would just
22 remind you of that.

23 I would also like to remind you of
24 the 48-hour rule. If anyone inquires with you as
25 to whether they could advocate for you, I would

1 ask you to also remind them about the 48-hour
2 rule. And we would thank you for appearing before
3 us today and hope you have a safe trip back home.

4 MR. MACK: Thank you. Thank you,
5 sir. Thank you, Mr. Chairman and Committee.

6 (Candidate excused.)

7 REPRESENTATIVE DELLENEY: Good
8 afternoon, Mr. Martin.

9 MR. MARTIN: Good afternoon.

10 REPRESENTATIVE DELLENEY: We have
11 before us today, this afternoon, Mr. Daniel E.
12 Martin, Jr., who seeks a position for the Family
13 Court of the Ninth Circuit, Seat Number One. If
14 you would at this time please raise your right
15 hand to be sworn.

16 (Candidate sworn.)

17 REPRESENTATIVE DELLENEY: Thank you,
18 sir. the Judicial Merit Selection Commission has
19 thoroughly investigated your qualifications for
20 the bench.

21 Our inquiry has focused on nine
22 evaluative criteria, which have included a survey
23 of the bench and bar; a thorough study of your
24 application materials; verification of your
25 compliance with State ethics laws; a search of

1 newspaper articles in which your name may have
2 appeared; a study of previous screenings; and a
3 check for any economic conflicts of interest.

4 We have received no affidavits filed
5 in opposition to your election, nor are there any
6 witnesses to testify.

7 Do you have a brief opening statement
8 that you'd like to make at this time?

9 MR. MARTIN: No, I don't.

10 REPRESENTATIVE DELLENEY: Thank you,
11 sir. Please answer any questions our counsel,
12 Ms. Benson, might have for you.

13 MS. BENSON: Mr. Chairman and members
14 of the Commission, I have a few procedural matters
15 to take care of with regard to this candidate.

16 Mr. Martin, you have before you the
17 personal data questionnaire you submitted as part
18 of your application and your amendment to question
19 number 35.

20 Are there any additional amendments
21 that you would like to make at this time to your
22 PDQ?

23 MR. MARTIN: No, there aren't.

24 MS. BENSON: Thank you.

25 Mr. Chairman, I would like to ask that

1 Mr. Martin's PDQ and amendment be entered as an
2 exhibit into the hearing record.

3 REPRESENTATIVE DELLENEY: The
4 documents will be admitted and made an exhibit at
5 this point in the transcript without objection.

6 (EXH. 20, Daniel E. Martin's Personal
7 Data Questionnaire, Amendment, and Sworn
8 Statement, was admitted.)

9 MS. BENSON: Mr. Martin, you have
10 before you also the sworn statement that you
11 provided with detailed answers to over 30
12 questions regarding judicial conduct, statutory
13 qualifications, office administration, and
14 temperament.

15 Are there any additional amendments
16 that you might have to make at this time to that
17 sworn statement?

18 MR. MARTIN: No, I don't have any.

19 MS. BENSON: Thank you. At this
20 time, Mr. Chairman, I'd like to ask that
21 Mr. Martin's sworn statement be entered as an
22 exhibit into the hearing record.

23 REPRESENTATIVE DELLENEY: Without
24 objection, it will be admitted as an exhibit at
25 this time.

1 MS. BENSON: One final procedural
2 matter. I note for the record based on the
3 testimony contained in the candidate's PDQ, which
4 has been included in the record with the
5 candidate's consent, Mr. Martin meets the
6 statutory requirements for this position regarding
7 age, residence, and years of practice.

8 Mr. Martin, please state for the
9 record the city and judicial circuit in which you
10 reside.

11 MR. MARTIN: I reside in Charleston,
12 South Carolina, that would be the Ninth Judicial
13 Circuit.

14 MS. BENSON: Mr. Martin, why do you
15 want to serve as a family court judge?

16 MR. MARTIN: Well, it's my belief
17 that if you're going to be of service to your
18 community, you should seek to do the best that you
19 can do within your profession.

20 I have seen the position of family
21 court judge as being one that is a necessary
22 position for the Charleston community. It is
23 probably the most heavily traveled court, and I
24 think it requires a person who has a certain
25 temperament, intellect, understanding, and

1 patience to preside over cases, and I think I
2 possess those characteristics, and I believe that
3 I would be a good candidate for that position.

4 MS. BENSON: Is there any area that
5 you feel like you might need further experience
6 in, and, if so, how might you acquire that
7 additional experience?

8 MR. MARTIN: Well, of course, as
9 lawyers and members of the judiciary, there's also
10 continuing legal education. I feel like I try to
11 stay abreast of the law, study the advance sheets,
12 read case law.

13 There will always be changes in the
14 law; it will, of course, be my responsibility to
15 keep up with those changes. But I don't think
16 there's any one particular area that I'm weak in.
17 So I think I'm qualified that I would be able to
18 meet the requirements.

19 MS. BENSON: Would you explain for
20 the Commission what you think is the appropriate
21 demeanor for a judge?

22 MR. MARTIN: Well, I think a judge
23 needs to be very observant of what's going on in
24 the courtroom, courteous and kind to a degree,
25 obviously, to all of the litigants and the

1 attorneys, but to be firm and to be assured of his
2 or her understanding of the law, but I don't think
3 the judge should be overbearing and intimidating.

4 Fortunately, in Charleston, we don't
5 have that problem, most judges are not that way,
6 intimidating, and they seem to do a very good job
7 of making the litigants feel like the court is not
8 being hostile towards them.

9 MS. BENSON: What would you recommend
10 to help alleviate the backlog in the family court?

11 MR. MARTIN: Well, in Charleston
12 we're very busy, and, of course, the fact that
13 there's not a judge on the bench right now is
14 making things a little bit even more difficult.

15 But one thing that I thought about is
16 perhaps, when cases initially get started, to see
17 whether or not the parties would agree through
18 their legal counsel to submit to a scheduling
19 order earlier in a lot of these cases.

20 Most cases get started with motions
21 for temporary relief. Within 30 or 45 days of
22 filing a new action, most of those hearings will
23 be held. And think it would be a good idea to try
24 to encourage the lawyers to voluntarily come up
25 with a way of doing a scheduling order so that the

1 parties can kind of move the cases along a lot
2 quicker than they are.

3 A lot of cases that aren't contested
4 or may not have real complicated issues may sit on
5 the docket for six months, eight months. And,
6 really, sometimes it's the lawyers not pushing
7 those cases, they're just waiting for their time
8 to come up, and there's no need to really do that
9 if the parties kind of know where they need to go
10 earlier in the case.

11 So, if we had a scheduling order in
12 place early enough, I think you could probably
13 move some cases a lot quicker.

14 MS. BENSON: Mr. Martin, I'd like to
15 ask you a couple of questions about your PDQ. You
16 have listed and whenever the case check came back,
17 you were listed in a number of cases where you
18 were named as a party in the case, and I wonder if
19 you could tell the Commission about those cases
20 and how some of them came up that had -- and to
21 have your name but it was not you and your
22 involvement in some of those cases.

23 MR. MARTIN: Certainly. Do you want
24 me to list them?

25 MS. BENSON: Please.

1 MR. MARTIN: In the matter of
2 Homecoming Financial Network versus Joseph K.
3 Meyers, I had a judgment against Mr. Meyers.
4 Mr. Meyers was a co-counsel of mine who was
5 supposed to pay off a lien, which he did not. I
6 paid off the lien because he did not, and he
7 promised to reimburse me and he did not.

8 Unfortunately, he had an unexpected
9 demise, so I filed a claim against the estate.
10 And, because I have a creditor's claim against the
11 estate, I was named as a defendant when it
12 actually was brought against him. So, in that
13 particular case, I guess I would be considered a
14 creditor defendant.

15 And there was at least one other
16 matter like that. Lauren Smith is a gentleman,
17 former client of mine, who we went to trial and I
18 got him a pretty favorable outcome in Circuit
19 Court, and he decided he was not going to pay any
20 attorneys' fees, so I had a judgment against him.

21 And I believe there was an action,
22 Palmetto Mortgage Corporation versus Lauren Smith,
23 and I was named in a foreclosure action because I
24 had a judgment against him.

25 And there was another case involving

1 Mr. Desateur, who is a decedent. Judge Condin,
2 Irvin Condin, who's a probate court judge in
3 Charleston County, and, from time to time, he
4 appoints me to act as special administrator in
5 cases, and Bernard Fielding, of Fielding Funeral
6 Homes, asked that I be appointed as the special
7 administrator because Mr. Desateur died leaving
8 some unpaid bills, a funeral bill in particular.

9 So the judge appointed me as special
10 administrator so that Mr. Fielding could file an
11 action in Circuit Court to try to recover his
12 funeral bills or the expenses that he occurred in
13 funerallizing Mr. Desateur. That actually was
14 filed in Court of Common Pleas. Unfortunately,
15 there was not any money in the estate. But I was
16 named as a defendant as special administrator for
17 the estate of Bruce Desateur.

18 There was one claim filed that was
19 certainly a legitimate claim, and that was the
20 matter of Jerry Dodson and Maxine Dodson versus
21 Ben Smith and myself. I was named as a
22 codefendant. I had drafted a deed. That deed was
23 in a real estate transaction.

24 Mr. Smith was a client of mine. In
25 that deed, there was a sriptor's error in the

1 deed whereby one lot that shouldn't have been
2 conveyed was, in fact, conveyed. When that was
3 discovered, Mr. Smith did not want to voluntarily
4 correct the problem by conveying the property back
5 to the seller, so it actually was filed against
6 me. And that actually was resolved.

7 I don't know if it was an actual
8 judgment in that matter, but I know we resolved
9 the matter outside of court as far as my
10 involvement was concerned.

11 MS. BENSON: And the other cases that
12 came back in the criminal check, those either
13 involved your father or another person that had a
14 similar name; is that right?

15 MR. MARTIN: That's correct,
16 Ms. Benson. I believe you had given me the name
17 of another matter; that was not me, and I think
18 we've provided you some information on that.

19 My father was the defendant in that
20 action, and that was resolved. I think I was
21 either in law school or had gotten out of law
22 school the year before. But that involved a
23 Ms. Shultz, I think you told me was the plaintiff,
24 in that matter.

25 Then there was also a CJ Shea Realty

1 Company, it was a conviction action against a
2 Daniel E. Martin who lived at 1728 Pinkly Park
3 Road. That was not me.

4 And I think you mentioned that there
5 was some other action that I never got served a
6 copy of. But those are the only ones that I know
7 about.

8 MS. BENSON: Thank you. Mr. Martin,
9 you received two bench and bar surveys, and one of
10 the two had some negative comments that indicated
11 that perhaps you did not have a lot of family
12 court experience.

13 Could you please respond to that
14 comment?

15 MR. MARTIN: Certainly. I've been
16 practicing family court for 20 years. The bulk of
17 my practice has been Charleston, Berkeley, and
18 Dorchester County. I've handled cases in Horry
19 County, Colleton County, Beaufort County.

20 I would say probably 50 percent of my
21 practice is family law. If you look at my
22 calendar any day of the week, probably every day
23 or every other day I'm in family court, and that's
24 been pretty consistent.

25 I have handled hundreds, I'm sure

1 well over a thousand, actions for divorce, child
2 custody, annulment, anything in family court,
3 paternity actions. So I don't know why the
4 document would say that I don't have family court
5 experience.

6 I think if you would ask any member
7 of the bar in Charleston County they would
8 probably tell you they see me down there almost
9 every day.

10 MS. BENSON: Thank you, Mr. Martin.
11 There is one matter which would require executive
12 session.

13 REPRESENTATIVE DELLENEY: I have a
14 motion that we go in executive session.

15 PROFESSOR FREEMAN: So moved.

16 REPRESENTATIVE DELLENEY: All in
17 favor say aye.

18 (Unanimous vote.)

19 REPRESENTATIVE DELLENEY: We are now
20 in executive session.

21 (The members went into executive
22 session at 4:57 p.m.)

23 * * * * *

24 (The members returned to open session
25 at 5:01 p.m.)

1 MS. BENSON: Mr. Chairman, a few
2 housekeeping issues. Have you sought or received
3 a pledge from any legislator prior to this date?

4 MR. MARTIN: I have not.

5 MS. BENSON: Have you sought or have
6 you been offered a conditional pledge of support
7 from any legislator pending the outcome of your
8 screening?

9 MR. MARTIN: No, I haven't.

10 MS. BENSON: Have you asked any third
11 parties to contact members of the general assembly
12 on your behalf?

13 MR. MARTIN: No, I have not.

14 MS. BENSON: Have you contacted any
15 members of the Commission?

16 MR. MARTIN: No, I haven't.

17 MS. BENSON: Do you understand that
18 you're prohibited from seeking a pledge or
19 commitment until 48 hours after the formal release
20 of the Commission's report?

21 MR. MARTIN: I do understand that.

22 MS. BENSON: Have you reviewed the
23 Commission's guidelines on pledging?

24 MR. MARTIN: Yes, I have.

25 MS. BENSON: As a follow-up, are you

1 aware of the penalties for violating the pledging
2 rules; that is, it is a misdemeanor and, upon
3 conviction, a violator could be fined not more
4 than \$1,000 or in prison not more than 90 days?

5 MR. MARTIN: I understand that.

6 MS. BENSON: Mr. Chairman, I would
7 note that the Low Country Citizens Committee has
8 found Mr. Martin well-qualified for each of the
9 nine evaluative criteria.

10 I would also note for the record that
11 any concerns raised during the investigation
12 regarding the candidate were incorporated into the
13 questioning today.

14 Mr. Chairman, I have no further
15 questions.

16 REPRESENTATIVE DELLENEY: Thank you,
17 Ms. Benson. Does any member of the committee have
18 any questions of Mr. Martin? There being no
19 further questions, Mr. Martin, we thank you for
20 appearing before us here today.

21 This concludes this portion of your
22 public hearing screening. Of course, any time
23 until we issue the report we can call you back and
24 ask you questions if the need arises, which I
25 don't expect that to happen, but I would just

1 remind you of that.

2 I would also like to remind you of
3 the 48-hour rule. If anyone inquires with you as
4 to whether they could advocate for you, I would
5 ask you to also remind them about the 48-hour
6 rule.

7 And, with that, we thank you for
8 appearing before us today and we hope you have a
9 safe trip back home.

10 MR. MARTIN: It's been my pleasure.
11 Thank you very much.

12 (Candidate excused.)

13 REPRESENTATIVE DELLENEY: Good
14 afternoon, Ms. Roache.

15 MS. ROACHE: Good afternoon, sir.

16 MS. BENSON: We have before us today
17 Ms. Rita J. Roache, who seeks position in the
18 Family Court For the Ninth Judicial Circuit, Seat
19 Number One. If you would, Ms. Roache, please
20 raise your right hand to be sworn.

21 (Candidate sworn.)

22 REPRESENTATIVE DELLENEY: Thank you,
23 ma'am. The Judicial Merit Selection Commission
24 has thoroughly investigated your qualifications
25 for the bench.

1 Our inquiry has focused on nine
2 evaluative criteria, which have included a survey
3 of the bench and bar; a thorough study of your
4 application materials; verification of your
5 compliance with State ethics laws; a search of
6 newspaper articles in which your name may have
7 appeared; a study of previous screenings; and a
8 check for any economic conflicts of interest.

9 We have received no affidavits filed
10 in opposition to your election, nor are there any
11 witnesses to testify.

12 Do you have a brief opening statement
13 that you'd like to make at this time?

14 MS. ROACHE: Yes, sir, I would like
15 to make a very brief opening statement, and it
16 will probably encompass some of the other
17 questions you have.

18 But I'm glad to be here today and
19 glad to answer any questions that you have and
20 ready and willing to discuss my qualifications
21 with you today. And I thank you all for your time
22 and your service in this endeavor.

23 REPRESENTATIVE DELLENEY: Thank you,
24 ma'am, if you would at this time answer any
25 questions Mr. Gentry may have for you.

1 MR. GENTRY: Mr. Chairman and members
2 of the Commission, I have a few procedural matters
3 to take care of with regard to this candidate.

4 Ms. Roache, you have before you the
5 personal data questionnaire and the amendment you
6 submitted as part of your application.

7 Are there any additional amendments
8 that you would like to make at this time to your
9 PDQ?

10 MS. ROACHE: To my PDQ, there is one
11 addition. I had asked you to list the appeals and
12 the outcome of the appeals. I represent a mother
13 in Low Number One and Low Number Two versus
14 Mother, Father, and Berkeley County Department of
15 Social Services.

16 I won at the Court of Appeals, the
17 matter was remanded and reversed, and the opposing
18 attorney filed a petition for writ of certinary,
19 and that was denied by the Supreme Court. And I
20 did not make that addition because it happened
21 after the time to file any additions or
22 amendments. That would be the only one I have.

23 MR. GENTRY: Mr. Chairman, I would
24 ask that Ms. Roache's personal data questionnaire
25 and amendment be entered as an exhibit into the

1 hearing record.

2 REPRESENTATIVE DELLENEY: Those
3 documents will be admitted as an exhibit at this
4 point in the transcript without objection.

5 (EXH. 21, Rita J. Roache's Personal
6 Data Questionnaire, Amendment, and Sworn
7 Statement, was admitted.)

8 MR. GENTRY: Ms. Roache, you also
9 have before you also the sworn statement that you
10 provided with detailed answers to over 30
11 questions regarding judicial conduct, statutory
12 qualifications, office administration, and
13 temperament.

14 Do you have any amendments to this
15 statement?

16 MS. ROACHE: There are no amendments
17 I'd like to make at this time.

18 MR. GENTRY: Mr. Chairman, I would
19 ask that Ms. Roache's sworn statement be entered
20 as an exhibit into the hearing record.

21 REPRESENTATIVE DELLENEY: That
22 document will be admitted as an exhibit into the
23 hearing record at this point in the transcript
24 without any objections.

25 MR. GENTRY: One final procedural

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

7 Ms. Roache, please state for the
8 record the city and judicial circuit in which you
9 reside.

10 MS. ROACHE: I reside in Mount
11 Pleasant, South Carolina, and that is in the Ninth
12 Judicial Circuit.

13 MR. GENTRY: Why do you want to serve
14 as a family court judge?

15 MS. ROACHE: In my profession as an
16 attorney, I believe that serving as a judge is the
17 highest calling. And I have practiced for more
18 than 22 years almost exclusively in the family
19 court.

20 I've handled almost every kind of
21 case -- not almost, every kind of case that has
22 come before the family court. I have gained a
23 great deal of experience in my practice as a state
24 attorney, as a private practitioner, and now as an
25 attorney with legal services.

1 And I believe that the knowledge that
2 I've gained, in addition to my temperament and my
3 empathy and the wide diversity in the matters that
4 I've handled and also the wide diversity in the
5 kind of clients that I've presented, would prepare
6 me well to serve as a family court judge.

7 MR. GENTRY: Can you explain to the
8 Commission in addition to the information you've
9 provided how you feel your specific legal and
10 special experience thus far will assist you in
11 being an effective judge?

12 MS. ROACHE: Again, I've handled
13 every kind of case in the family court from the
14 name change to the seven-day trial of a
15 termination of parental rights and adoption
16 matter; that was the case I was speaking on that
17 was overturned and the petition for certinary was
18 denied.

19 I have represented clients that I do
20 now, some who are indigent, but I have also worked
21 under grants that have allowed me to serve clients
22 who are not indigent but people who really need
23 assets to be divided by the family court. I've
24 handled some juvenile matters, several adoptions,
25 all the kinds of cases that would come before a

1 family court judge.

2 I have handled, either as chief
3 counsel or co-counsel on those matters, and I also
4 have -- was qualified as Circuit Court arbitrator
5 many, many years ago. We rarely have the
6 arbitration anymore, but that gave me the
7 opportunity to handle matters and make decisions
8 in some matters.

9 I was also an arbitrator for the
10 National Association of Securities Dealers, and
11 that was another chance to actually make
12 decisions, listen to everyone's side, take in all
13 the information, and make decisions in matters.

14 I feel that I have good judgment, I
15 am an excellent student of the law, I'm an
16 empathetic and compassionate person, and I think
17 that all those would serve me well in the family
18 court.

19 MR. GENTRY: The Commission received
20 one bench and bar survey in regards to your
21 candidacy in which the person stated, quote,
22 Having practiced exclusively family law for five
23 years in Charleston, I have never heard of
24 Ms. Roache, end quote.

25 How long have you been practicing

1 family law in the Charleston area?

2 MS. ROACHE: I have been practicing
3 family law 22 years in the Charleston area.

4 MR. GENTRY: And how often do you
5 think you appear in family court in the Charleston
6 area?

7 MS. ROACHE: I appear in the family
8 court in Charleston and Berkeley County, say --
9 for example, yesterday I had a case, I started at
10 9 o'clock in Berkeley County, I went on to
11 Dorchester at 11 o'clock, and I had a 2 o'clock
12 hearing in Charleston County.

13 So I handle matters sometimes two,
14 three, five times a week in Charleston County,
15 then there may be a lull where I don't have any
16 cases. I also work in Berkeley -- I'm sorry,
17 Beaufort, Jasper, Hampton, Allendale Counties
18 sometimes as well, because that's the service area
19 handled by my job, but I primarily work in
20 Charleston, Berkeley, and Dorchester Counties.

21 MR. GENTRY: Are there any areas,
22 including subjective areas of the law, that you
23 would need to additionally prepare for in order to
24 serve as a judge, and, if so, how would you go
25 about that additional preparation?

1 MS. ROACHE: The only area where I
2 think I need some further preparation would be in
3 the area of juvenile law, since there are not that
4 many cases that I have done in that area.

5 And, in preparation for the test and
6 other things, I met with the solicitors in
7 Charleston and also Dorchester County to help me
8 become more familiar with the juvenile practice
9 and with the law in that area.

10 I would also attend CLEs in that
11 area, go to the judicial CLEs, and seek other
12 training that would be available to judges in the
13 area of juvenile law, but that's the only area.

14 MR. GENTRY: Although you address
15 this in your sworn affidavit, could you please
16 explain to the members of the Commission what you
17 think is the appropriate demeanor for a judge?

18 MS. ROACHE: I think that, above all,
19 a judge needs to be empathetic and courteous to
20 litigants. Quite often, the family court can be a
21 very stressful place, and I think litigants need
22 to be put at ease when they come without having
23 someone who does not give them proper respect and
24 proper deference.

25 I think all of those are very

1 important for a judge. I think it's far more
2 important for a judge to listen to what litigants
3 and attorneys are saying as opposed to giving what
4 they feel or think until it's actually time to
5 rule.

6 I believe that a judge should be
7 appropriate at all times, not only in the
8 courtroom but also outside of the courtroom. And
9 I think that a judge should be humble as well,
10 because it is a position of service.

11 MR. GENTRY: What suggestions, if
12 any, would you offer for improving the backlog of
13 cases in family court?

14 MS. ROACHE: Practicing in one of the
15 counties that has the biggest backlog -- well,
16 actually two of the counties, Charleston and
17 Berkeley Counties -- it takes us quite a while to
18 get a hearing, and I don't know that there's a lot
19 that a judge can do about it.

20 Mediation. One thing I would do is,
21 at the start of a case, I would have a schedule
22 for mediation to be started. Because so often
23 mediation comes along two years after the matter
24 has already been pending and it's already been
25 stricken by the 365-day rule.

1 So I would try to encourage mediation
2 much earlier in cases, but I don't know that there
3 is a lot that a judge can necessarily do to
4 decrease the backlog of cases we have in
5 Charleston and Berkeley.

6 MR. GENTRY: In your amended PDQ you
7 indicated that in 1997 you were named as a
8 defendant in a foreclosure action regarding an
9 estate for which you had been appointed as
10 personal representative.

11 What was the outcome of that case,
12 and were any judgments rendered against you
13 individually or in your capacity as the personal
14 representative?

15 MS. ROACHE: The outcome was that the
16 matter eventually was settled between the
17 parties. It was a case where the wife and her
18 children and the children of the first marriage
19 could not meet all the debts of the estate, and,
20 finally, the home was relinquished. No judgment
21 was rendered against me personally or in my
22 capacity as the personal representative.

23 MR. GENTRY: Thank you.
24 Mr. Chairman, at this time, I'd request that the
25 Commission go into executive session.

1 REPRESENTATIVE DELLENEY: All in
2 favor?

3 (Unanimous vote.)

4 REPRESENTATIVE DELLENEY: We're now
5 in executive session.

6 (The members went into executive
7 session at 5:16 p.m.)

8 * * * * *

9 (The members returned to open session
10 at 5:21 p.m.)

11 REPRESENTATIVE DELLENEY: We're back
12 in open session.

13 MR. GENTRY: A few housekeeping
14 issues. Have you sought or received a pledge from
15 any legislator prior to this date?

16 MS. ROACHE: No, I have not.

17 MR. GENTRY: Have you sought or have
18 you been offered a conditional pledge of support
19 from any legislator pending the outcome of your
20 screening?

21 MS. ROACHE: No, I have not.

22 MR. GENTRY: Have you asked any third
23 parties to contact members of the general assembly
24 on your behalf?

25 MS. ROACHE: No, I have not.

1 MR. GENTRY: Have you contacted any
2 members of the Commission?

3 MS. ROACHE: No, I have not.

4 MR. GENTRY: Do you understand that
5 you're prohibited from seeking a pledge or
6 commitment until 48 hours after the formal release
7 of the Commission's report?

8 MS. ROACHE: Yes, I do understand
9 that.

10 MR. GENTRY: Have you reviewed the
11 Commission's guidelines on pledging?

12 MS. ROACHE: Yes, I have.

13 MR. GENTRY: As a follow-up, are you
14 aware of the penalties for violating the pledging
15 rules; that is, it is a misdemeanor and, upon
16 conviction, a violator could be fined not more
17 than \$1,000 or in prison not more than 90 days?

18 MS. ROACHE: Yes, I am aware of that.

19 MR. GENTRY: I would note that the
20 Low Country Citizens Committee found Ms. Roache
21 well-qualified for seven of the nine criteria,
22 constitutional qualifications, ethical fitness,
23 character, reputation, physical health, mental
24 stability, and experience. She was found
25 qualified for professional and academic ability

1 and judicial temperament.

2 I would just note for the record that
3 any concerns raised during the investigation
4 regarding the candidate were incorporated into the
5 questioning today.

6 Mr. Chairman, I have no further
7 questions.

8 REPRESENTATIVE DELLENEY: Does any
9 member of the -- Senator Knotts?

10 SENATOR KNOTTS: Thank you. Do you
11 represent clients where it's basically a husband
12 and a wife, both of them have agreed to settlement
13 in their divorce and all they need -- it's a
14 simple thing to get before a judge and say, Judge,
15 my client and her husband have come to an
16 agreement and he's represented by a certain
17 attorney and we need a date just simply for you to
18 hear the settlement and sign off on the divorce?

19 MS. ROACHE: Senator Knotts, are you
20 asking if that's all my clients or if I've had --

21 SENATOR KNOTTS: No. Have you had
22 occasion to represent people like that?

23 MS. ROACHE: I don't ever represent
24 both parties.

25 SENATOR KNOTTS: I didn't ask you

1 that. Do you have clients of yours that you
2 represent, say, a lady, and her husband is
3 represented by another attorney and y'all have
4 reached an agreement on settlement, it's just a
5 simple, I want out, I want out, let's go to a
6 judge and you can have it all if you want to,
7 whatever, we just need a paper saying we're
8 divorced; do you represent anybody like that?

9 MS. ROACHE: Yes, sir, I have.

10 SENATOR KNOTTS: Do you find it -- I
11 know we have a lot of them in our county and I'm
12 sure they're all over the state. Just simply all
13 they need to get off the backlog, which you say
14 your county has the biggest backlog and I'm sure
15 we're pushing you even further, that all they
16 would need is a simple five-minute hearing to say,
17 Judge, they both want out, and would you please
18 agree with the settlement and here's the
19 settlement and let him or her look at it and they
20 sign it; don't you think that would be something
21 that could help clear your backlog?

22 MS. ROACHE: Absolutely, I do. And I
23 find that many of our --

24 SENATOR KNOTTS: How would you
25 address it if you were a family court judge?

1 MS. ROACHE: I would address it the
2 same way any of our judges do, which is to tell
3 people who come in -- or they tell people who come
4 in for pretrial conferences that, if you have a
5 settlement, contact my office and I'll be happy to
6 work you in at any time.

7 I would be open to doing that as
8 well. If people can settle their cases, I would
9 not make them wait for a date if I have open
10 time. I would let them know, You're free to call
11 and we'll try to work you in even if it's during
12 my lunch time.

13 SENATOR KNOTTS: You are aware that
14 throughout this state the process is, We'll work
15 you in, it's going to be a last-minute call and
16 you have to be available, both sides, and, if one
17 side is not available, then it's put off again for
18 another three, four, five months; are you aware of
19 that?

20 MS. ROACHE: That happens sometimes.
21 But I think that most of my cases where we've got
22 it settled, everybody can make themselves
23 available generally.

24 It's rarely after we get a settlement
25 and a judge says they'll work us in that we aren't

1 able to go. But, yes, that does happen sometimes.

2 SENATOR KNOTTS: I've looked at your
3 work ethic, and you seem to have a great work
4 ethic. You know, you're a private attorney now.
5 Sometimes, when people get on the bench, you get
6 that thing called robitis, and you begin coming in
7 at different hours of the day and different days
8 of the week and scheduling this case and that case
9 and scheduling a couple hours to go play golf; of
10 course, I'm sure you probably wouldn't do that,
11 but some judges do.

12 Don't you think that setting aside
13 some time, like on Friday afternoon, for those
14 cases whenever it's -- that notion to go cut the
15 weekend short, set up those five-minute cases to
16 get rid of a lot of cases, would that possibly
17 help?

18 MS. ROACHE: That could. And that's
19 what we do in Charleston. Somebody sets aside a
20 Friday for --

21 SENATOR KNOTTS: I understand they do
22 that now.

23 MS. ROACHE: -- 15-minute cases. So
24 I think that's a good time to try to handle it.

25 SENATOR KNOTTS: I understand that

1 they do that now, and I'm glad they do. I wrote
2 down what you said, I don't feel there is anything
3 a judge can do to relieve the backlog. Explain
4 that to me.

5 MS. ROACHE: It's because cases are
6 driven by litigants, and, if a litigant has
7 decided that they need 200 depositions in the
8 matter, there's not a lot a judge can do other
9 than to give them guidelines in terms of a
10 scheduling order to say, All right, I want your
11 depositions finished by this time, do discovery in
12 90 days, come back for another pretrial.

13 So those are things that I think a
14 judge can do in terms of making certain that
15 litigants follow the scheduling orders and have
16 everything done and come back for a second
17 pretrial and then get more orders.

18 But, quite often, litigants have
19 become used to dragging things out, and, because
20 they are working within our systems, sometimes a
21 judge is powerless to stop the matter from
22 spilling over another four or five months when
23 they have a proper motion before the court about
24 why they need 200 more depositions and why it's
25 going to take longer to handle the case although

1 we may be ready to bring it to trial, but we can't
2 cut off their rights and their client's rights.

3 SENATOR KNOTTS: I agree with you
4 that the cases are developed by litigants and the
5 schedule, you know, taken up by the lawyer's abuse
6 of the system and stuff like that; but I also
7 believe that judges can stop that by scheduling,
8 and then you have a date certain, and that
9 litigant knows that I'm going to court and I'd
10 better have it settled or I better have a pretty
11 good explanation of how it will be settled because
12 the judge is going to settle it, and not just
13 passing off the scheduling to let them abuse the
14 system.

15 So you can blame the lawyers for
16 abusing the system, but the only reason they abuse
17 the system is because we have judges that won't
18 schedule and stick to it and make them come to
19 court. And I would hope that, as a judge, you
20 would consider that very strongly and be tough on
21 it.

22 MS. ROACHE: Oh, yes, sir. It's hard
23 to come by dates, so they would need to appear.
24 If they have a date certain, there would need to
25 be a trial because it would be past the time for

1 continuances unless there were some extremely
2 extenuating circumstances.

3 SENATOR KNOTTS: Thank you.

4 MS. ROACHE: Certainly. Thank you.

5 REPRESENTATIVE DELLENEY: Do we have
6 any more questions of Ms. Roache? There being
7 none, Ms. Roache, we thank you so much for
8 appearing before us today.

9 This concludes this portion of your
10 public hearing screening. Of course, any time
11 until we issue the report we can call you back and
12 ask you questions if the need arises, which I
13 don't expect that to happen, but I would just
14 remind you of that.

15 I would also like to remind you of
16 the 48-hour rule. If anyone inquires with you as
17 to whether they could advocate for you, I would
18 ask you to also remind them about the 48-hour
19 rule. With that, we hope you have a safe trip
20 back home.

21 MS. ROACHE: Thank you, Mr. Chairman
22 and the Commission. I appreciate it.

23 (Candidate excused.)

24 MR. TURNER: Good evening, I guess I
25 should say, not afternoon. How is everyone?

1 REPRESENTATIVE DELLENEY: We have
2 before us today the Honorable James A. Turner, who
3 seeks a position in Family Court, Ninth Judicial
4 Circuit, Seat Number One. If you would, Judge
5 Turner, raise your right hand to be sworn.

6 (Candidate sworn.)

7 REPRESENTATIVE DELLENEY: Thank you,
8 sir. The Judicial Merit Selection Commission has
9 thoroughly investigated your qualifications for
10 the bench.

11 Our inquiry has focused on nine
12 evaluative criteria, which have included a survey
13 of the bench and bar; a thorough study of your
14 application materials; verification of your
15 compliance with State ethics laws; a search of
16 newspaper articles in which your name may have
17 appeared; a study of previous screenings; and a
18 check for any economic conflicts of interest.

19 We have received no affidavits filed
20 in opposition to your election, nor are there any
21 witnesses to testify.

22 Do you have a brief opening statement
23 that you'd like to make at this time?

24 MR. TURNER: I notice that you did
25 emphasize brief, and I know that y'all have been

1 here for a while, so I will be brief.

2 I simply want to, first of all, thank
3 the Committee for considering my candidacy in the
4 race today. I want to thank Professor Freeman,
5 who I see is here, and who I've been able to have
6 the pleasure to consult with on a few occasions on
7 some judicial ethical matters, and I appreciate
8 his being willing on the spur of the moment,
9 sometimes even in the middle of a case, when I
10 have to call him to be available, and I do
11 appreciate that.

12 I thank you for being available to me
13 and the rest of the judiciary. And I want to
14 thank you for your consideration and just say,
15 just briefly, that among my friends who are in the
16 race, and we've all had a nice time kind of
17 chatting in the room in there, some of them I knew
18 before, I just wanted to emphasize to you that I
19 feel like I'm the person who has judicial
20 experience, over 18 years, and hopefully that will
21 be an important consideration for you. But I'll
22 stop there.

23 REPRESENTATIVE DELLENEY: Thank you,
24 sir. Answer any questions Mr. Dennis might have
25 for you.

1 MR. TURNER: Yes, sir.

2 MR. DENNIS: You have before you your
3 personal data questionnaire that you submitted as
4 part of your application.

5 MR. TURNER: Yes, sir.

6 MR. DENNIS: Are there any amendments
7 that you would like to make to your PDQ at this
8 time?

9 MR. TURNER: The only amendment that
10 I may consider mentioning because I don't think I
11 put it in was previously the committee actually
12 honored me by nominating me for Circuit Court
13 judicial election back in 2001. I don't know of
14 any other ones.

15 MR. DENNIS: Mr. Chairman, at this
16 time I would ask that Judge Turner's PDQ and the
17 amendment be entered as exhibits into the hearing
18 record at this time.

19 REPRESENTATIVE DELLENEY: Those
20 documents will be admitted as exhibits at this
21 point in the transcript without objection.

22 (EXH. 22, James A. Turner's Personal
23 Data Questionnaire, Amendment, and Sworn
24 Statement, was admitted.)

25 MR. DENNIS: Judge Turner, you have

1 before you also the sworn statement that you
2 provided with detailed answers to over 30
3 questions regarding judicial conduct, statutory
4 qualifications, office administration, and
5 temperament.

6 Do you have any amendments to this
7 statement at this time?

8 MR. TURNER: No, sir, not that I'm
9 aware of.

10 MR. DENNIS: At this time,
11 Mr. Chairman, I would ask that Judge Turner's
12 sworn statement be entered as an exhibit into the
13 hearing record.

14 REPRESENTATIVE DELLENEY: The
15 statement will be admitted as an exhibit in the
16 hearing transcript at this point without
17 objection.

18 MR. DENNIS: One final procedural
19 matter. I note for the record based on the
20 testimony contained in the candidate's PDQ, which
21 has been included in the record with the
22 candidate's consent, Judge Turner meets the
23 statutory requirements for this position regarding
24 age, residence, and years of practice.

25 Judge Turner, please state for the

1 record the city and judicial circuit in which you
2 reside.

3 MR. TURNER: Yes. I actually live in
4 the City of Charleston in the South Windermere
5 section, which, as some of you know, is in the
6 Ninth Judicial Circuit.

7 MR. DENNIS: Judge Turner, why do you
8 want to serve as a family court judge?

9 MR. TURNER: The reason that I want
10 to serve as family court judge is very personal.
11 As I indicated earlier, I've been on the bench and
12 I've had that honor for over 18 years now.

13 I've enjoyed it, and I've attempted
14 to be fair and impact the lives of those who come
15 in front of me; however, I was in education
16 previous to going to law school, and I am not able
17 to impact families and their emotional situations
18 and make an impact in that regard.

19 I feel like, as a family court judge,
20 at this point in my life -- and I have an 11-year-
21 old daughter who's my only child and very near and
22 dear to me. I feel that, at this particular point
23 in my life, I'm 52 years old, that this would be
24 an opportunity in the Charleston area to make a
25 difference with some families and folks who have

1 some problems in a very, very direct way, which I
2 don't do now, and that's the reason that I would
3 like to do it.

4 And I believe that I bring --
5 hopefully, the fact that folks weren't lined up
6 down I-26 to be here in opposition to me says that
7 I've done okay as a judge for 18 years. And I
8 hope to bring those values to the family court
9 bench.

10 MR. DENNIS: Judge Turner, are there
11 any areas, including subjective areas of the law,
12 which you would need to additionally prepare for
13 in order to serve as a family court judge and how
14 would you handle that preparation?

15 MR. TURNER: I can only honestly say
16 that I am a student and try to be a student of the
17 law. I read the advance sheets. In fact, I was
18 interested in a family court case that came out
19 this past week and read it with some interest.

20 And, because of the nature of what I
21 do, currently I'm the judge of the small claims
22 court in Charleston County, and, as you may know,
23 we see a wide variety of subject matter in that
24 court. I feel almost compelled to try to stay up
25 on the current law as best I can.

1 And so I feel like I try to stay
2 abreast of the law as much as I can, and I read
3 the advance sheets and, you know, I've written an
4 article for the South Carolina Lawyer, and I try
5 to stay abreast of the law.

6 MR. DENNIS: Judge Turner, you
7 addressed this in your sworn affidavit, but would
8 you please explain to the members of the
9 Commission what you think the appropriate demeanor
10 for a judge is?

11 MR. TURNER: I believe that the
12 appropriate demeanor is to be calm, to listen
13 carefully. We take an oath, after all, and that
14 oath is important, and there are a lot of
15 important things in the oath.

16 But we want to listen carefully, we
17 want to be patient, we want to be dignified, and
18 we need to be courteous. And, additionally, I
19 have always tried my best for the 18 years that
20 I've been on the bench to do what I call peel the
21 onion, and that's making sure that I'm grasping
22 all the issues, particularly because I see a
23 number of pro se litigants as well as lawyers.

24 I mean, yeah, I see the John Tillers
25 and I see the Trey Thompsons from Haynesworth and

1 a lot of other attorneys, but I see a lot of pro
2 se litigants. And that obliges me to kind of peel
3 the onion and make sure that I understand their
4 positions and what all the issues might be.

5 And let me say one final thing. When
6 I started practicing, the two judges that
7 primarily I would appear before were Richie Fields
8 and Bill Howard. And they were, in my mind, for
9 those of you who may know them, what a judge was
10 supposed to be. That, in my mind, was the way a
11 judge was supposed to be. So they're my role
12 models.

13 MR. DENNIS: Judge Turner, it's been
14 suggested today that the Ninth Judicial Circuit
15 has one of the worst backlogs there is in the
16 family court. What improvement, what suggestions,
17 would you have for alleviating that backlog?

18 MR. TURNER: First of all, there's no
19 harder worker than James Turner. In fact, we were
20 almost joking about that back in the waiting room
21 with some of the other lawyers. I like to joke
22 that I'm the fastest gun in the west.

23 Nobody moves cases quicker in my
24 circuit in any court that I'm aware of than I do.
25 Now, I do that because we work hard, we do that

1 because I'm available, we do that because I am
2 around on Friday afternoons.

3 And, you know, my standard sort of
4 joke is, if I can't get a lawyer the rest of the
5 week because he's got conflicts in a higher court,
6 I bring him in on Friday afternoons and we get it
7 done. This year, at the end of this year -- at
8 the end of this year, I am probably going to
9 dispose of close to 3,000 cases.

10 Now, let me hasten to add, that's not
11 a function of my winning personality or because
12 I'm so good as a judge; a lot of that is a
13 function of the economy. But I'm handling them
14 all by myself, and they'll be disposed of.

15 My backlog right now, from the time
16 you file a case with me, you'll get it done in a
17 couple of months. Some lawyers think I'm too
18 fast.

19 MR. DENNIS: Judge Turner, the
20 Commission received two bench and bar surveys
21 concerning your candidacy. The first of the two
22 suggested that you did not have adequate family
23 court experience.

24 Could you please respond to that?

25 MR. TURNER: Right. I think there

1 were a lot of people, and obviously those are
2 anonymous, that did not realize I did family court
3 work before I became a judge. And I tried to
4 respond to that in the questionnaire and gave a
5 percentage of my prior family court practice.

6 You know, I did that before I became
7 a judge full-time, conversant with the rules,
8 conversant with the case law to the best of my
9 ability, and granted and truthfully and
10 forthrightly, I have been out of family court for
11 a while; however, I feel like I stayed up with
12 it.

13 And I did practice in the court for a
14 number of years before I became a full-time judge,
15 so it's not as if I was never in family court and
16 just decided to do that at this point in life.

17 MR. DENNIS: Judge, the second bench
18 and bar survey referred to you as, their words, a
19 perennial candidate. As you and I discussed in
20 our interview, you have run some six times for
21 three different judicial positions.

22 How would you respond to the
23 accusation that you're a perennial candidate?

24 MR. TURNER: Well, I'm not sure
25 exactly how to respond to it, I guess in two ways,

1 as I try to think through the question. Number
2 one, I don't think there's -- I have an 11-year-
3 old. And I don't think there's any dishonor in
4 wanting to be in the judiciary.

5 If you feel like you have a good
6 record and you've done well, I don't think there's
7 anything wrong with that; however, I will say this
8 in response to that particular inquiry: As was
9 noted earlier, I'm now 53 years old. I have an
10 11-year-old, and I'm at a different point in my
11 life. And I've been a judge on the bench for a
12 long time doing criminal court, doing civil
13 court.

14 I saw this as a unique opportunity
15 because I felt like I could impact families, I
16 felt like I could impact people in my community.
17 If that is not to be in this particular case --
18 you should never say never in your life, but it's
19 my inclination that I would not seek another
20 judicial position after this one. I ran for this
21 one for a unique reason, and that's the reason
22 why. So I guess that's my best response.

23 MR. DENNIS: Judge, as you know, the
24 Citizens Committee also interviewed you. And,
25 again, using their words, they raised a concern

1 about your ability to be tactful and how that
2 might impact your temperament as a judge.

3 Again, would you please respond to
4 that?

5 MR. TURNER: That's hard to respond
6 to because I don't know exactly what they mean,
7 but I'll do my best because I want to be as candid
8 as I can possibly be.

9 Let me go back to my earlier example,
10 I think it's illustrative, about Judge Fields and
11 Judge Howard. Why I thought they were excellent
12 role models was because, on the one hand, they had
13 personalities that, in their respective cases, as
14 a lawyer, you felt like maybe you were sorting
15 through the facts with your nice uncle or your
16 nice grandfather, that was their personality.

17 I am never abusive to any litigant, I
18 wouldn't last with the number of pro se folks who
19 come to me who would file complaints instead of
20 appeals if I were, and I don't think lawyers will
21 tell you that I am.

22 You know, I make -- I go to great
23 pains to be patient and courteous with my
24 litigants and with my lawyers, because it's hard
25 being a practicing lawyer these days. I haven't

1 forgotten that.

2 Having said that -- having said that,
3 I want to add candidly, in terms of a self-
4 evaluation, that my personality as a person is a
5 little different than Judge Howard's and Judge
6 Fields. I'm kind of an intense personality, and,
7 when I'm on the bench, I greatly want to
8 understand the positions of the lawyers so I can
9 be fair.

10 I don't ask mean questions, I don't
11 try to embarrass anybody. But, as one colleague
12 said, well, maybe you ought to smile more. And
13 probably I should be smiling more now. But I'm
14 very serious about what I do, and I always have
15 been, because, at the end of the day, I want the
16 litigants not to go away thinking, He was the
17 nicest, sweetest guy in the whole world, but that
18 they've gotten a fair shake and that I spent time
19 with them and tried to explore all the issues that
20 were before me. Kind of a long-winded answer, but
21 I'm trying to be as forthright as I can.

22 MR. DENNIS: Thank you, Judge.

23 MR. TURNER: Sure.

24 MR. DENNIS: Mr. Chairman, at this
25 point I think we need a very brief executive

1 session.

2 REPRESENTATIVE DELLENEY: All in
3 favor?

4 (Unanimous vote.)

5 REPRESENTATIVE DELLENEY: We're now
6 in executive session.

7 (The members went into executive
8 session at 5:46 p.m.)

9 * * * * *

10 (The members returned to open session
11 at 5:55 p.m.)

12 MR. DENNIS: Judge Turner, just a few
13 last things.

14 MR. TURNER: Yes, sir.

15 MR. DENNIS: Have you sought or
16 received a pledge from any legislator prior to
17 this date?

18 MR. TURNER: No, not at all. In
19 fact, I've really not even talked to any, that I
20 can think of, about the race. There might have
21 been one or two who asked me if I'm running, and
22 my response has been yes. Very careful about
23 that.

24 MR. DENNIS: Have you sought or have
25 you been offered a conditional pledge of support

1 from any legislator pending the outcome of your
2 screening?

3 MR. TURNER: No way.

4 MR. DENNIS: Have you asked any third
5 parties to contact members of the general assembly
6 on your behalf?

7 MR. TURNER: No, sir.

8 MR. DENNIS: Have you contacted any
9 members of this Commission?

10 MR. TURNER: No, sir.

11 MR. DENNIS: Do you understand that
12 you're prohibited from seeking a pledge or
13 commitment until 48 hours after the formal release
14 of the Commission's report?

15 MR. TURNER: Absolutely.

16 MR. DENNIS: Have you received the
17 Commission's guidelines on pledging?

18 MR. TURNER: I have reviewed them --
19 I must -- again, to be totally honest, in sort of
20 a cursory fashion, but I'm familiar with them from
21 prior times, so I think I'm familiar with them.

22 MR. DENNIS: As a follow-up, are you
23 aware of the penalties for violating the pledging
24 rules; that is, it is a misdemeanor and, upon
25 conviction, a violator could be fined not more

1 than \$1,000 or in prison not more than 90 days?

2 MR. TURNER: Absolutely.

3 MR. DENNIS: I would note that the
4 Low Country Citizens Committee found Judge Turner
5 well-qualified in the areas of constitutional
6 qualification, ethical fitness, professional and
7 academic ability, character, reputation, physical
8 health, and experience.

9 They found him qualified in the areas
10 of mental stability and judicial temperament
11 noting the issue dealt with earlier in this
12 questioning.

13 And, Mr. Chairman, I would note for
14 the record that any concerns raised during the
15 investigation regarding this candidate were
16 incorporated in the questioning of the candidate
17 today. And I have nothing further.

18 REPRESENTATIVE DELLENEY: Does the
19 Commission have any further questions of the
20 judge? Judge Turner, we thank you for appearing
21 before us this evening.

22 This concludes this portion of your
23 public hearing screening. Of course, any time
24 until we issue the report we can call you back and
25 ask you questions if the need arises, which I

1 don't expect that to happen, but I would just
2 remind you of that.

3 MR. TURNER: I'd be happy to if
4 necessary.

5 MR. DENNIS: I would also like to
6 remind you of the 48-hour rule. If anyone
7 inquires with you as to whether they could
8 advocate for you, I would ask you to also remind
9 them about the 48-hour rule.

10 And, with that, we'd like to thank
11 you for being here and hope you have a safe trip
12 back home.

13 MR. TURNER: I thank you for your
14 consideration and hope very much that you would
15 nominate me. Thank you.

16 (Candidate excused.)

17 REPRESENTATIVE DELLENEY: Good
18 evening, Ms. Varner.

19 MS. VARNER: Yes, good evening.

20 MR. DENNIS: Before we get started,
21 do you have anybody you'd like to introduce?

22 MS. VARNER: I do. I brought my
23 husband, Dean Varner, with me from Charleston.

24 REPRESENTATIVE DELLENEY: We're glad
25 to have you here with us tonight. We have before

1 us Ms. Alexandra DeJarnette Varner, who is seeking
2 a position on the Family Court, Ninth Judicial
3 District, Seat Number One. If you would at this
4 time please raise your right hand, Ms. Varner, to
5 be sworn.

6 (Candidate sworn.)

7 REPRESENTATIVE DELLENEY: Thank you,
8 ma'am. The Judicial Merit Selection Commission
9 has thoroughly investigated your qualifications
10 for the bench.

11 Our inquiry has focused on nine
12 evaluative criteria, which have included a survey
13 of the bench and bar; a thorough study of your
14 application materials; verification of your
15 compliance with State ethics laws; a search of
16 newspaper articles in which your name may have
17 appeared; a study of previous screenings; and a
18 check for any economic conflicts of interest.

19 We have received no affidavits filed
20 in opposition to your election, nor are there any
21 witnesses to testify.

22 Do you have a brief opening statement
23 that you'd like to make at this time?

24 MS. VARNER: I do not.

25 REPRESENTATIVE DELLENEY: Thank you,

1 ma'am. If you would answer any questions
2 Ms. Anzelmo might have for you.

3 MS. ANZELMO: Thank you,
4 Mr. Chairman. Mr. Chairman and members of the
5 Commission, I have a few procedural matters to
6 take care of with regard to this candidate.

7 Ms. Varner, you have before you the
8 personal data questionnaire and the amendment you
9 submitted as part of your application.

10 Are there any additional amendments
11 you'd like to make at this time to your PDQ?

12 MS. VARNER: There are none, no.

13 MS. ANZELMO: Mr. Chairman, I would
14 like to ask that Ms. Varner's PDQ and amendment be
15 entered as an exhibit into the hearing record.

16 REPRESENTATIVE DELLENEY: It will be
17 made an exhibit at this point in the transcript.

18 (EXH. 23, Alexandra DeJarnette
19 Varner's Personal Data Questionnaire, Amendment,
20 and Sworn Statement, was admitted.)

21 MS. ANZELMO: Ms. Varner, you have
22 before you also the sworn statement that you
23 provided with detailed answers to over 30
24 questions regarding judicial conduct, statutory
25 qualifications, office administration, and

1 temperament.

2 Do you have any amendments to this
3 statement?

4 MS. VARNER: There are none.

5 MS. ANZELMO: At this time,
6 Mr. Chairman, I would ask that Ms. Varner's sworn
7 statement be entered as an exhibit into the
8 hearing record.

9 REPRESENTATIVE DELLENEY: That will
10 be made an exhibit to the transcript at this time.

11 MS. ANZELMO: I note for the record
12 based on the testimony contained in the
13 candidate's PDQ, which has been included in the
14 record with the candidate's consent, Ms. Varner
15 meets the statutory requirements for this position
16 regarding age, residence, and years of practice.

17 Ms. Varner, please state for the
18 record the city and judicial circuit in which you
19 reside.

20 MS. VARNER: I reside on Sullivan's
21 Island in Charleston County.

22 MS. ANZELMO: And the judicial
23 circuit?

24 MS. VARNER: The judicial circuit is
25 the Ninth Judicial Circuit.

1 MS. ANZELMO: Thank you. Ms. Varner,
2 why do you want to serve as a family court judge?

3 MS. VARNER: I'd like to serve as a
4 family court judge -- I practiced just in family
5 court for the last 15 years, pretty much since
6 I've left law school. It's a great passion of
7 mine. I've enjoyed practicing law in private
8 practice, but I also feel a certain pull towards
9 doing some public service work.

10 I grew up, my father was a diplomate,
11 and so I've always had that component in my life,
12 the public service component. And so I feel that
13 I'm in a position, having done family court work
14 for a long time -- of course, there's lots that I
15 have to learn, but I feel like I have a good
16 knowledge and I'd like to share that.

17 And I feel like I would be a good
18 asset to the bench, and, again, I feel like I
19 would like to do some public service work.

20 MS. ANZELMO: Thank you. Are there
21 any areas of the law that you would need to
22 additionally prepare for in order to serve as a
23 family court judge, and, if so, how would you
24 handle that preparation?

25 MS. VARNER: Well, I've handled, like

1 I said, primarily all family court work. Right
2 now, in my private practice, it is private
3 practice, complex cases, and I also handle a lot
4 of DSS cases.

5 I'd say probably the only area that I
6 have not had as much experience in is with
7 juvenile. And I have, you know, started to look
8 into that, talk to people. Of course, if that's
9 something -- if I were nominated, I would
10 certainly do some more work on that, go listen to
11 hearings to get a little bit more practical
12 experience with that. I would say probably that's
13 the only aspect that I have not had as much
14 exposure to.

15 MS. ANZELMO: Although you've
16 addressed it in your sworn affidavit, could you
17 please explain to the Commission what you think
18 the appropriate demeanor is for a judge?

19 MS. VARNER: I think the appropriate
20 demeanor is -- I think you have to have a lot of
21 patience, I think you have to be very courteous,
22 very polite, I think the public expects that. I
23 think they expect to be treated, the litigants,
24 whether they're pro se or whether they come in
25 with their attorneys, with respect, with dignity;

1 it's their one and only chance for some people to
2 be in a courtroom.

3 And I think their experience should
4 be a good one and they should be treated with
5 respect. So I think patience, it takes a lot of
6 patience to sit on the bench and listen to
7 someone's story, someone's life story. So I think
8 that, kindness. I think also you need to somewhat
9 run your courtroom in a good sort of firm fashion,
10 you need to have decorum. So I think a little bit
11 of those.

12 MS. ANZELMO: Thank you. What
13 suggestions would you offer for improving the
14 backlog of cases in the family court?

15 MS. VARNER: I think one of the
16 things that Charleston County is doing right now
17 that I have been impressed with is that, when a
18 case is set for trial, they're not just setting a
19 week-long trial, they're also setting -- I know
20 that our administrative court judge in Charleston
21 County has done that quite well.

22 And a lot of times, you know, I've
23 had cases where we think that we're going to try
24 the case, and, at the very last minute, they get
25 settled. So you would have a whole week, for

1 instance, so I think a whole week that would go
2 with unused time. So if you have standby dates
3 behind those dates, let's say 24 hours notice to
4 the attorneys, 48 hours, something to that effect,
5 I think that that really moves the case along.

6 I know that, in Charleston County,
7 we've had a good bit of backlog, but I think that
8 would do it. I think also there's some things
9 perhaps with the DSS docket that you can do.

10 We now have mandatory mediation in
11 DSS and that's going a long way, in my opinion, to
12 move things along. It's very hard to have
13 conversations sometimes with DSS personnel and the
14 attorneys, and these mandatory mediations is a way
15 for everybody to get together, and it seems to get
16 cases settled. So I think there are a number of
17 things that can be done.

18 MS. ANZELMO: Thank you. Ms. Varner,
19 you had some bench and bar surveys filed in
20 response to your candidacy. One person stated
21 that you are soft spoken and may not be able to
22 demand attention in the courtroom.

23 Would you please offer your response
24 to that comment?

25 MS. VARNER: I don't -- I'm not sure

1 why that comment was made. I don't think of
2 myself as soft spoken. I think, again, going back
3 to what I think of a judge, I think it's somebody
4 that you have to respect, and I think that you can
5 command respect without being extremely loud or
6 having a hard, difficult personality.

7 So I think, in the -- with all the
8 attorneys I've worked with, I think people respect
9 me, and I think that I can get things
10 accomplished, and I think I could handle the
11 courtroom in the same way. I think there's lots
12 of different ways you can handle respect.

13 MS. ANZELMO: Thank you. The second
14 person stated that you lack solo family law
15 experience. Would you please offer a response to
16 that comment as well.

17 MS. VARNER: Actually, I practice
18 primarily -- when I first got out of law school, I
19 practiced with a small firm in Mount Pleasant, and
20 then I went to another firm; and, since then, I've
21 been on my own.

22 I'm not really sure what their
23 concern is, maybe it's a concern maybe that I
24 haven't done a lot of my own trials. I'm not
25 really sure. I mean, I am in solo practice right

1 now. I handle complex cases, I also do a number
2 of DSS appointments.

3 So, in my opinion, I feel like I have
4 a good amount of experience doing my solo
5 practice. I mean, that's what I've been doing
6 since 2000, so for the last ten years. So I think
7 maybe the person might be thinking that I do some
8 joint work with Mr. Rosen. He and I will try
9 cases together, and so, in those cases, I act as
10 second seat in those cases.

11 MS. ANZELMO: Thank you, Ms.
12 Varner. Have you sought or received a pledge from
13 any legislator prior to this date?

14 MS. VARNER: I have not.

15 MS. ANZELMO: Have you sought or have
16 you been offered a conditional pledge of support
17 of any legislator pending the outcome of your
18 screening?

19 MS. VARNER: I have not, no.

20 MS. ANZELMO: Have you asked any
21 third parties to contact members of the general
22 assembly on your behalf?

23 MS. VARNER: I have not.

24 MS. ANZELMO: Have you contacted any
25 members of the Commission?

1 MS. VARNER: I have not.

2 MS. ANZELMO: Do you understand that
3 you're prohibited from seeking a pledge or
4 commitment until 48 hours after the formal release
5 of the Commission's report?

6 MS. VARNER: Yes.

7 MS. ANZELMO: Have you reviewed the
8 Commission's guidelines on pledging?

9 MS. VARNER: I have.

10 MS. ANZELMO: As a follow-up, are you
11 aware of the penalties for violating the pledging
12 rules; that is, it is a misdemeanor and, upon
13 conviction, a violator could be fined not more
14 than \$1,000 or in prison not more than 90 days?

15 MS. VARNER: Yes, I am aware of
16 that.

17 MS. ANZELMO: I would note that the
18 Low County Citizens Committee found Ms. Varner
19 well-qualified for each of the nine evaluative
20 criteria, constitutional qualifications, ethical
21 fitness, professional and academic ability,
22 character, reputation, physical health, mental
23 stability, experience, and judicial temperament.

24 I would further note that any
25 concerns raised in the investigation of this

1 candidate were incorporated into the questioning
2 of her today.

3 Mr. Chairman, I have no further
4 questions.

5 REPRESENTATIVE DELLENEY: Does any
6 member of the Commission have any questions?
7 There being no further questions, thank you,
8 ma'am. Ms. Varner, we appreciate you being here
9 with us today and we appreciate you bringing your
10 husband with you.

11 This concludes this portion of your
12 public hearing screening. Of course, any time
13 until we issue the report we can call you back and
14 ask you questions if the need arises, which I
15 don't expect that to happen, but I would just
16 remind you of that.

17 I would also like to remind you of
18 the 48-hour rule. If anyone inquires with you as
19 to whether they could advocate for you, I would
20 ask you to also remind them about the 48-hour
21 rule. With that, I hope you and your husband have
22 a safe trip back home.

23 MS. VARNER: Thank you.

24 (Candidate excused.)

25 REPRESENTATIVE DELLENEY: Okay. Do

1 we need to go into executive session and take
2 comments?

3 REPRESENTATIVE CLEMMONS: So moved.

4 SENATOR NICHOLSON: Second.

5 REPRESENTATIVE DELLENEY: All in
6 favor say aye.

7 (Unanimous vote.)

8 REPRESENTATIVE DELLENEY: We're now
9 in executive session.

10 (The members went into executive
11 session at 6:10 p.m.)

12 * * * * *

13 (The members returned to open session
14 at 6:22 p.m.)

15 REPRESENTATIVE DELLENEY: Now we need
16 to vote on the Family Court, Ninth Circuit.

17 REPRESENTATIVE CLEMMONS:
18 Mr. Chairman, I would move that all five are
19 qualified.

20 SENATOR KNOTTS: Second.

21 REPRESENTATIVE DELLENEY: All in
22 favor of finding all five qualified, raise your
23 hand.

24 MS. SHULER: Nine.

25 REPRESENTATIVE DELLENEY: Next we

1 vote in the category of qualified nominated.

2 Everybody in favor of finding Ben F. Mack
3 qualified and nominated, raise your hand.

4 MS. SHULER: Seven.

5 REPRESENTATIVE DELLENEY: All in
6 favor of finding Daniel E. Martin, Jr., nominated
7 and qualified, raise your hand.

8 MS. SHULER: Nine.

9 REPRESENTATIVE DELLENEY: All in
10 favor of finding Rita J. Roache qualified and
11 nominated, raise your hand.

12 MS. SHULER: Three.

13 REPRESENTATIVE DELLENEY: All in
14 favor of finding the Honorable James A. Turner
15 qualified and nominated, raise your hand.

16 MS. SHULER: Seven.

17 SENATOR KNOTTS: How did you have me
18 voting on Rita Roache?

19 MS. SHULER: I had three people
20 voting on it. I didn't count you. Did you vote
21 for her?

22 SENATOR KNOTTS: I'm mixed up. Mark
23 me for Roache and take me off of Martin.

24 REPRESENTATIVE DELLENEY: So that
25 will be eight for Martin and four for Roache.

1 MS. SHULER: No. Because I missed --

2 SENATOR KNOTTS: I'm Mack and Roache.

3 REPRESENTATIVE DELLENEY: Now

4 everybody finding Ms. Varner qualified and

5 nominated, raise your hand.

6 MS. SHULER: One.

7 SENATOR KNOTTS: James Turner?

8 REPRESENTATIVE DELLENEY: Varner.

9 SENATOR KNOTTS: Okay.

10 MS. SHULER: So I have seven for

11 Mack, eight for Martin, four for Roache, seven for

12 Turner, and one for Varner; which means it's Mack,

13 Martin, and Turner.

14 SENATOR KNOTTS: Mr. Chairman?

15 REPRESENTATIVE DELLENEY: Yes, sir.

16 SENATOR KNOTTS: I want to make sure

17 I'm recorded as voting for Mack, Roache, and

18 Turner.

19 REPRESENTATIVE CLEMMONS: So that

20 takes the one off of Varner and puts it on Turner.

21 MS. SHULER: So now we have eight for

22 Turner and zero for Varner. So it's Mack, Martin,

23 and Turner; seven, eight, and eight.

24 MR. SELLERS: Do we need to vote on

25 these retired judges?

1 REPRESENTATIVE DELLENEY: Everybody
2 in favor of voting for the retired judges, Judge
3 Bartlett and Judge Cureton. Is there a motion?
4 Do we find them qualified?

5 MR. SELLERS: So moved.

6 SENATOR KNOTTS: I second.

7 REPRESENTATIVE DELLENEY: All in
8 favor?

9 (Unanimous vote.)

10 REPRESENTATIVE DELLENEY: Do we have
11 a motion in favor of finding Judge Short and Judge
12 Williams qualified and nominated?

13 REPRESENTATIVE CLEMMONS: So moved.

14 SENATOR KNOTTS: Second.

15 REPRESENTATIVE DELLENEY: All in
16 favor?

17 (Unanimous vote.)

18 MS. SHULER: So nine and nine.

19 REPRESENTATIVE DELLENEY: That's
20 all.

21 (The afternoon session adjourned at
22 6:27 p.m.)

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CERTIFICATE OF REPORTER

I, Rita A. DeRouen, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate, and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of December 2010, at Columbia, Richland County, South Carolina.

Rita A. DeRouen
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
August 12, 2019

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