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JUDICIAL MERIT SELECTION COMMITTEE

EVALUATION OF CANDIDATES

BY COMMITTEE MEMBERS

PUBLIC HEARINGS ON JUDICIAL QUALIFICATIONS

WEDNESDAY, NOVEMBER 6, 2013

GRESSETTE BUILDING

ROOM 105

COLUMBIA, SOUTH CAROLINA

COMMENCING AT 9:14 A.M.

REPORTED BY: TRACY E. BROWN  
Certified Shorthand Reporter (CA)

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1 MEMBERS IN ATTENDANCE:  
2 SENATOR LARRY A. MARTIN, CHAIRMAN  
3 REPRESENTATIVE ALAN D. CLEMMONS, VICE-CHAIRMAN  
4 JOSEPH PRESTON "PETE" STROM, JR.  
5 H. DONALD SELLERS  
6 SENATOR GERALD MALLOY  
7 REPRESENTATIVE DAVID J. MACK, II  
8 SENATOR GEORGE E. "CHIP" CAMPSER, III  
9 JOHN DAVIS HARRELL, ESQUIRE  
10 KRISTEN C. BELL, ESQUIRE

11 COUNSEL PRESENT:  
12 JANE O. SHULER, CHIEF COUNSEL  
13 PATRICK G. DENNIS  
14 E. KATHERINE WELLS  
15 J. J. GENTRY  
16 STEVE DAVIDSON  
17 EMMA DEAN

18  
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(INDEX AT REAR OF TRANSCRIPT)

1           SEN. MARTIN: This is the continuation of the  
2 Judicial Merit Selection Commission. This hearing is  
3 intended for the purpose of this fall's screening. And we  
4 have a -- I'm sorry -- we have a screening, one left to do  
5 of Judge Thomas Hughston, a retired judge.

6           It's my understanding and I apologize to our  
7 guests and participants, we need to have a brief executive  
8 session prior to getting started with the actual hearing.

9           And is there a motion to that effect?

10          MR. SELLERS: So moved.

11          SEN. MARTIN: Second.

12          So if you would, bear with us a few minutes, and  
13 we'll be back in open session shortly.

14          (The members went into executive session.)

15                                 - - - - -

16          (The members came out of executive session.)

17          SEN MARTIN: Welcome, everyone again. And I  
18 appreciate you bearing with us.

19          Judge Hughston, come on around and we'll get  
20 started.

21          Judge Hughston, if you would --

22          MR. HUGHSTON: I can't hear you.

23          SEN. MARTIN: You can't hear me? I hit the green  
24 button.

25          There we go. That's better.

1 Judge Hughston, good to see you and thank you for  
2 being here.

3 Again, for the record, this is a continuation of  
4 the Judicial Screening Commission's -- oh, wait, it went  
5 off -- I guess, Judicial Screening Commission fall  
6 hearing.

7 If you would, Judge Hughston, raise your hand and  
8 take the oath.

9 THOMAS L. HUGHSTON, having been first duly sworn  
10 testified as follows:

11 EXAMINATION

12 BY SEN. MARTIN:

13 Q The Judicial Merit Selection Commission has  
14 thoroughly investigated your qualifications for the bench.

15 Our inquiry has focused on nine evaluative  
16 criteria and has included; a ballot box survey, a thorough  
17 study of your application materials, verification of your  
18 compliance with state ethics' laws, a search of newspaper  
19 articles in which your name appears, study of previous  
20 screenings, and a check for economic conflicts of  
21 interest.

22 We have received two affidavits in opposition to  
23 your -- one? One affidavit, I'm sorry. I got the script  
24 wrong.

25 One witness is here to testify and others that

1 would like to be heard.

2 Do you have a brief opening statement you would  
3 like to make at this time?

4 A No. I just appreciate the consideration of the  
5 Commission.

6 Q Thank you very much.

7 Please answer the counsel's questions if you  
8 don't mind, sir.

9 A All right.

10 EXAMINATION

11 BY MR. DENNIS:

12 Q Good morning, Judge Hughston. Bear with me for  
13 just a moment. I'm going to put multiple things on the  
14 record while you're standing there and then we'll proceed.

15 Mr. Chairman, first, I'd like to ask Judge  
16 Hughston -- he should have before him a sworn statement  
17 with multiple answers to about 30 questions, he should  
18 have been through that.

19 Do you have any objection to him making that part  
20 of the record at this point?

21 A No, I do not.

22 SEN. MARTIN: All right. Any objection by any  
23 members of the Commission?

24 Hearing none, it will be so ordered and will be  
25 made part of the record.

1           (Exhibit 1 was marked for  
2           identification and attached hereto.)

3           MR. DENNIS: Mr. Chairman, I have six additional  
4           items. If you'll bear with me, I'll describe all six of  
5           them and ask that they be made part of the record.

6           One, is a transcript of a guilty plea before  
7           Judge Hughston involving Mr. McCauley dated January 18th,  
8           2013.

9           Another is a transcript of a subsequent hearing  
10          on that same matter, dated August 1st, 2013.

11          Second, is a set of documents obtained from the  
12          Charleston County Clerk of Court all involving The State  
13          versus McCauley matter. This is a complete collection of  
14          the motions, memos, orders, indictments, and tickets  
15          associated with that matter. The Social Security number  
16          of the public record have been redacted.

17          Additionally, a letter from Mr. Capers Barr, who  
18          served as defense counsel to Mr. McCauley, that outlines  
19          the procedural history of the matter.

20          Fifth, affidavits collected by Judge Hughston  
21          from people who were in the courtroom, during either the  
22          first or the second hearing, and offer their personal  
23          recollections of that matter.

24          And, finally, the complaint of Miss Phyllis  
25          Savenkoff which, among other things, includes affidavits

1 of Miss Gina Buchardt, who is not present today, but  
2 Miss Kelly DeHay, Miss Susan Strohm, and Miss Laura  
3 Hudson, all of whom are present today to testify, in  
4 addition to their affidavits included in the complaint.

5 Mr. Chairman, I think that's everything I have to  
6 offer for the record.

7 SEN. MARTIN: All right. Thank you, sir.

8 (Exhibits 2 - 7 were marked for  
9 identification and attached hereto.)

10 MR. DENNIS: At this point, Judge Hughston, I  
11 would ask if you would step aside, and I will ask  
12 Miss Savenkoff to come forward.

13 SEN MARTIN: Miss Savenkoff, will you raise your  
14 hand please.

15 PHYLLIS M. SAVENKOFF, having been first duly sworn  
16 testified as follows:

17 EXAMINATION

18 BY MR. DENNIS:

19 Q Ms. Savenkoff, good morning.

20 A Good morning.

21 Q Thank you for being here. You and I have had a  
22 couple conversations about what you're going to offer  
23 today.

24 You have filed an affidavit in opposition to  
25 Judge Hughston continuing to serve as a retired circuit

1 court judge.

2 The Commission is well aware of the circumstances  
3 that gave rise to the complaint that you have today. And,  
4 as you and I discussed, I really just want the Commission  
5 to hear from you and to understand exactly what your  
6 complaint concerning Judge Hughston is, so I think the  
7 floor is yours.

8 A Okay. I have got two issues: One is a violation  
9 of the Victim's Bill of Rights, and the second was the  
10 conduct in the courtroom.

11 On May 20th and June 4th, Judge Hughston violated  
12 the Victim's Bill of Rights by reducing the defendant's  
13 sentence without a hearing and by not notifying the  
14 solicitor's office in a proper manner by making certified  
15 paper copies of the order, filing it with the clerk, and  
16 mailing copies to the attorney for each side.

17 Thus, the solicitor's office, nor the victim's  
18 family, was notified of the sentence reduction; however,  
19 the defense attorney, Capers Barr, was aware of this  
20 reduction.

21 The fact, or lack thereof, by Judge Hughston not  
22 only violated the Victim's Bill of Rights, but also  
23 violated the integrity of our justice system in South  
24 Carolina.

25 Judge Hughston stated that he was told he no



1 longer needed to do that, and he didn't realize the  
2 process wasn't the same.

3 Attorney Barr also told Judge Hughston in the  
4 courtroom that he did nothing wrong by not having a  
5 hearing on the sentence reduction.

6 As Hughston is an active, retired judge and has  
7 been on the bench for many years, he should be fully aware  
8 and knowledgeable of proper judicial procedures without  
9 having anyone instruct him as to what is right or wrong.

10 I believe Judge Hughston's actions in this manner  
11 was a deliberate attempt to purposely avoid a hearing  
12 where the victim's family would have to be faced, yet  
13 another time. But more so to avoid the pressure of the  
14 media, who would be present and who were already very  
15 critical of his actions.

16 The second complaint pertains to the judge's  
17 reputation and conduct in the courtroom. Judge Hughston  
18 lacks judicial professionalism in the courtroom. His  
19 attitude was apathetic, discourteous, and very offensive  
20 towards the victim's family and friends.

21 His facial expressions and laughter during the  
22 hearing not only displayed great lack of respect for the  
23 victim's family, but also for proper judicial procedures.  
24 His attitude was flippant and gave many the impression  
25 that he was only there to satisfy the Victim's Bill of

1 Rights.

2 Attorney Barr stated to the judge that nothing  
3 new was presented at the hearing. The statement was not  
4 true as I had presented new information in the courtroom  
5 that had not been disclosed to the public at prior  
6 hearings.

7 I had also recommended ten conditions to be  
8 adhered to by the defendant at the time of the sentencing;  
9 however, none of these conditions were ever imposed on the  
10 defendant, nor ever mentioned in the courtroom by Judge  
11 Hughston.

12 Hughston was quoted in the Post and Courier  
13 article of August 23rd: I want them -- meaning defendants  
14 -- to feel good when they leave my courtroom.

15 He also quoted: I am always mindful of my duty  
16 to do justice, to love, to be merciful, to be humble, and  
17 to treat everyone with dignity, respect, and to be fair.

18 I feel that Judge Hughston did not serve justice  
19 in this case, nor did he treat the victim's family with  
20 dignity, respect, or fairness.

21 His reputation has become highly scrutinized in  
22 the Charleston area. And he is known as the felon's  
23 friend and Judge Hug-a-thug by members of the law  
24 enforcement community.

25 The Post and Courier reviewed his sentencing

1 records for the past year and compared them with the  
2 numbers of other judges from the same circuit. Hughston  
3 has placed more than twice as many offenders on probation  
4 than he sent to prison, nearly half of all his cases.

5 A local law and order blog, Charleston Thug Life,  
6 has kept a steady drumbeat of criticism for months,  
7 calling for Hughston's departure.

8 It is my opinion, and that of many others, that  
9 Judge Hughston should be taken off the bench at this time.

10 Q Thank you, Miss Savenkoff. Just a couple of  
11 things I want to clarify.

12 Your primarily concerns are that you don't  
13 believe Judge Hughston followed proper protocol in issuing  
14 a new order in the matter that involved your sister?

15 A Right.

16 Q And secondly, you do not believe that Judge  
17 Hughston's temperament and behavior on the bench was  
18 befitting a judge?

19 A Correct.

20 Q One or two more things.

21 While the process to get there was admittedly  
22 cumbersome, ultimately, the family and the victims were  
23 given an opportunity to testify again before Judge  
24 Hughston at a subsequent hearing; correct?

25 A Correct.

1 MR. DENNIS: All right. Thank you,  
2 Miss Savenkoff. That's all I have.

3 If you would please answer any questions that any  
4 members of the Commission might have.

5 SEN. MARTIN: Any members of the Commission have  
6 any questions?

7 All right. Well, thank you very much.

8 MS. SAVENKOFF: Thank you.

9 SEN. MALLOY: I do have one, I'm sorry.

10 SEN. MARTIN: Oh, I'm sorry.

11 The senator from Darlington has a question.

12 EXAMINATION

13 BY SEN. MALLOY:

14 Q One of my questions is that you were talking  
15 about facial expressions --

16 A Uh-huh.

17 Q -- and I just want to see, what are you talking  
18 about? I mean, you just said facial expressions.

19 A He had his head cocked to one side with smirks on  
20 his face. He was kind of laughing the whole time with  
21 every sentence.

22 Q Is that it?

23 A Uh-huh.

24 SEN. MALLOY: Okay.

25 SEN. MARTIN: Mr. Sellers.

1

EXAMINATION

2 BY MR. SELLERS:

3 Q Ms. Savenkoff, had you ever had any interaction  
4 with the judge before this occasion?

5 A Only with the several hearings.

6 Q But did his demeanor change in the last hearing,  
7 or was it something that you observed --

8 A It had changed in the last hearing.

9 Q So in the earlier hearing, you didn't have a  
10 problem with his demeanor?

11 A I did to a certain extent, but with the last  
12 hearing, it was worse. His demeanor was worse.

13 SEN. MARTIN: All right. Any other questions?

14 Thank you very much.

15 MS. SAVENKOFF: Thank you.

16 MR. DENNIS: I understand that Miss Savenkoff has  
17 three additional witnesses that have joined her, and I'm  
18 not sure what order they want to come in. If it does not  
19 matter, I would ask Miss Kelly DeHay to please come next.

20 SEN. MARTIN: All right.

21 Ms. DeHay, will you raise your right hand.

22 KELLY DEHAY, having been first duly sworn

23 testified as follows:

24

EXAMINATION

25 BY MR. DENNIS:

1           Q     Miss DeHay, before you begin, can you please  
2 explain to the Commission what your role in this matter is  
3 and exactly how you came to be personally involved in the  
4 McCauley matter.

5           A     Yes. My title is Charleston County Chapter  
6 Leader for Mothers Against Drunk Drivers -- Driving. And  
7 I was with Miss Savenkoff to assist her because I am a  
8 certified victim advocate. I have been in many courtrooms  
9 with many victims. And with this one, I have not had the  
10 opportunity of being in Judge Hughston's courtroom before,  
11 so I was not familiar with him before this.

12                   I am well-trained in this, and it's always a very  
13 sad occasion. It's very traumatic for the victims and the  
14 victim's families. And that's why I like to be with them  
15 because they need the support of my -- they need my  
16 support.

17                   And, thankfully, the people who work in the court  
18 system are usually extremely respectful and very  
19 professional, and I have a high respect for the judges.

20                   I am here as a volunteer for MADD who is  
21 passionate about helping victims. I have been in their  
22 shoes, and I know how it feels to lose someone. I know  
23 how it feels to sit in a courtroom feeling helpless, as a  
24 stranger decides the fate of the person who ripped apart a  
25 family.

1           I know that it's quite common to meet and discuss  
2 a reduction of the defendant's sentence after the original  
3 sentence has been handed down. However, it's very  
4 uncommon and a violation of the rights of victims to hold  
5 such a meeting without the knowledge of the family or the  
6 prosecution.

7           On Thursday, August 1st, 2013, I sat with Eleanor  
8 Caperton's family as they hoped that Judge Hughston would  
9 reconsider his decision to reduce by half, Samuel  
10 McCauley's sentence.

11           While each member of the family was very upset  
12 that this had occurred without their, or the prosecutor's,  
13 knowledge, they sat quietly and respectfully as the  
14 hearing went on.

15           One would think that the judge would be  
16 respectful as well; however, Judge Hughston made it clear  
17 in the beginning that this was just a formality. He  
18 actually said that. He made excuses as to why the proper  
19 people had not been notified, none of which seemed true.  
20 This statement would be the first blow to the family.

21           Later, the judge chuckled at something someone  
22 said which almost caused my jaw to drop. But, you know,  
23 you have to act a certain way in a courtroom, and so I  
24 just sat there stoic.

25           How could anyone, especially a judge, think it

1 was appropriate to laugh in a fatal DUI sentencing  
2 hearing? This hearing seemed like more of a casual  
3 conversation with an old friend instead of the serious  
4 matter it was supposed to be.

5 It is well-known that Capers Barr, the  
6 defendant's counsel, is old friends with Judge Hughston.  
7 That fact was rather noticeable in the courtroom as he  
8 dismissed much of what Scarlett Wilson and Jennifer  
9 Kinzeler Williams were saying in defense of the original  
10 sentencing.

11 At end of the hearing, the judge said he would  
12 issue his decision by the end of the day. However, most  
13 of us got the impression that, by the way he acted, he  
14 wouldn't change a thing. True to everyone's feeling, his  
15 final decision remained to keep the sentence reduction in  
16 place and was issued within an hour.

17 In my opinion, the victim's family was  
18 re-victimized on that day, on the day of that secret  
19 sentence reduction. This is not the way our judicial  
20 system should behave, and I doubt many in authority would  
21 condone Judge Hughston's actions.

22 Q Thank you, Miss DeHay. Would you answer any  
23 questions that members of the Commission might have?

24 A Absolutely.

25 SEN. MARTIN: Any questions by members of the



1 Commission?

2 Let me ask questions.

3 EXAMINATION

4 BY SEN. MARTIN:

5 Q You mentioned that Judge Hughston chuckled. Do  
6 you remember what the chuckle was in response to?

7 A Well, he did it several times to several  
8 different statements. And it was usually when he was  
9 talking to the defendant's counsel, Mr. Barr. But I don't  
10 remember any specific comment that was made.

11 Q I mean, was it in regards to the hearing itself,  
12 or was it in regards to something that was said maybe a  
13 little awkwardly or --

14 A No, sir. It wasn't an off-side comment. It was  
15 directly involved with the hearing. He also smirked a few  
16 times and sat with his chin on his hands while he was  
17 smirking and chuckling.

18 Q And do you specifically recall what the smirking  
19 might have been in response to?

20 A No, sir.

21 SEN. MARTIN: Okay. Any other questions?

22 Senator from Darlington.

23 SEN. MALLOY: Thank you, Mr. Chairman.

24 EXAMINATION

25 BY SEN. MALLOY:

1 Q Ma'am, thank you for being here.

2 I practice law and have doing so well over  
3 20 years. I have seen a lot of conduct from the bench.  
4 And I've seen some where there is a nervous reaction,  
5 judges are nervous too. And I have seen some that are  
6 very stern. I have seen a lot of activity going on from  
7 the bench.

8 And your testimony obviously is convincing, I  
9 mean, you make a good witness.

10 Tell me what you mean by a smirk.

11 A Do you want me to demonstrate it?

12 Q Sure.

13 A I mean, that's (demonstrating). Judge Hughston  
14 has been doing his job for many, many years, and I'm sure  
15 that he did a good job during his tenure. But having been  
16 doing that job for that many years, you would assume that  
17 he would know how to conduct himself in a professional  
18 manner.

19 And I understand if he might have been nervous.  
20 But it is never okay to laugh or chuckle or smirk in front  
21 of victims who are still mourning the loss of  
22 Miss Caperton's.

23 If someone had laughed like that during my  
24 hearing whenever I was victimized, it would have  
25 devastated me. That's being victimized all over again,

1 and I don't see where that would be right.

2 Q And what do you mean by a laugh? I mean, I'm not  
3 -- I'm just trying to --

4 A (Demonstrating), like that. Like  
5 (demonstrating). That's basically what he --

6 Q Loud enough to hear?

7 A -- did several times.

8 Yes, sir.

9 Q And your other comment about -- I think I heard  
10 something about a stranger?

11 A Yes. When you go into a courtroom, there is  
12 people -- like, you don't know the judge personally,  
13 that's a stranger in my opinion. And the defendant's  
14 counsel, you don't know them personally. And they all  
15 have -- and even the prosecution, they all have a hand in  
16 deciding the fate of the person that basically devastated  
17 an entire family and her friends.

18 And it's -- you feel helpless. One feels  
19 helpless when they are in that situation. And when they  
20 are, I guess, mocked or not taken seriously, that's  
21 re-victimization.

22 Q Uh-huh. And you realize that when you -- I mean,  
23 I am just -- but you realize that every judge that you  
24 have is going to be a stranger under that definition?

25 A Yes.

1 Q And then the thing is that with all -- you know,  
2 I understand you from a victim's standpoint. Because a  
3 lot of times, you go into a courtroom and, you know, you  
4 want to get your day in court.

5 And so what my concern, as you go forward with  
6 this, is that the perceptions that you're very observant  
7 to sometimes, some people are -- are not -- and I just  
8 want to make certain that -- that the characteristics and  
9 the things that the judge was doing was in response to  
10 something that happened in the case, as opposed to a  
11 general smirk or a general look away or a general  
12 laughter. And so that's what I want you to respond on for  
13 certain.

14 Do you think that these actions, the smirk, the  
15 laughter, was made directly in disrespect to the victim?

16 A It's a lack of taking the case seriously because  
17 he had remarked that it was merely a formality.

18 Q What was a formality?

19 A That hearing. That hearing was just -- as far as  
20 he said, it was merely to satisfy the Victim's Bill of  
21 Rights, and it was just a formality.

22 And, sir, I would like to ask you if you would  
23 chuckle and smirk during a case such as this, for any  
24 reason?

25 Q Ask me, would I smirk?

1           A     Yes, sir.

2           Q     I don't know. I have never been in that  
3 situation. But I have been a victim before, and I do know  
4 what it's like to be in court, which I've done for some  
5 20 years.

6           A     Yes, sir.

7           Q     And I don't know what the smirk means. I mean, I  
8 see folks up here with their hands on their cheeks, and I  
9 do that a lot. I'm trying to just see whether or not that  
10 is disrespectful.

11                     And with all due respect to your testimony, I  
12 mean, I appreciate you coming. I am just trying to get  
13 any, sort of, place in time and see exactly what happened.  
14 Because a lot of times reactions are whatever the  
15 perceptions of the person are.

16                     And I understand that you are very passionate  
17 about it, and I appreciate you being here.

18           A     Well, I just want to say that everybody that is  
19 in front of me is attentive and listening and taking this  
20 seriously and I appreciate that.

21                                     RE-EXAMINATION

22           BY SEN. MARTIN:

23           Q     Could I ask you just one last time, just to  
24 follow up?

25           A     Yes, sir.

1 Q At any point, was any action by the judge in any  
2 way directed toward the people in the audience? Was the  
3 laughter, was the facial expression directed at anyone --  
4 at anything that had been said that might be inferred to  
5 someone in the audience that was there?

6 A No, sir. It was mostly in the friendly banter  
7 between he and Capers Barr.

8 Q So it didn't have anything to do with -- in your  
9 view, your belief, that it was disrespectful -- directed  
10 -- or disrespect directed at someone in the courtroom,  
11 other than this exchange between the judge and the defense  
12 attorney?

13 A No, sir. But there is a time and place for  
14 everything.

15 SEN. MARTIN: I understand. I understand.

16 Okay. Any other questions?

17 Mr. Sellers.

18 EXAMINATION

19 BY MR. SELLERS:

20 Q Were you present at the original sentencing  
21 hearing?

22 A Yes, sir. I was there with her all the way  
23 through.

24 Q So you were there both at the original sentencing  
25 hearing and the last hearing?

1           A     Yes, sir.

2           Q     And was there a noticeable difference between the  
3 way the judge acted at the original hearing and the way he  
4 acted at this hearing?

5           A     Absolutely. It was very noticeable. He -- all  
6 the other times, he was very professional and he listened,  
7 and everything that he said was serious. But in the last  
8 hearing, he was just not -- he was very flippant.

9           SEN. MARTIN: All right. Any other questions?  
10           Well, thank you very much for being here today.

11           MS. DeHay: Thank you for having me.

12           SEN. MARTIN: All right.  
13           Counselor?

14           MR. DENNIS: Mr. Chairman, I would ask Ms. Susan  
15 Strohm if she would please come forward next.

16           SEN. MARTIN: Ms. Strohm, would you raise your  
17 right hand and take the oath.

18           Thank you very much. Would you respond to the  
19 counsel's questions.

20           SUSAN STROHM, having been first duly sworn  
21           testified as follows:

22   EXAMINATION

23           BY MR. DENNIS:

24           Q     Miss Strohm, again, if you would please briefly  
25 explain to the Commission how you came to be involved in

1 this matter and if you were personally present at either  
2 or both of the hearings.

3 A Miss Caperton was my mother's best friend. And I  
4 was present at both the original sentencing hearing and  
5 the rehearing that we had. And I'm a friend of the  
6 family. That's how I came to be here.

7 Q Thank you, Miss Strohm.

8 If you would just explain to the Commission what  
9 you saw at -- at either or both of those hearings as it  
10 relates to Judge Hughston.

11 A The way he was sitting, leaning on his arm with a  
12 scowl on his face, I felt like he was very aggravated that  
13 we were even having a hearing.

14 The hearing was interrupted shortly after it  
15 began so that the defendant could be un-handcuffed. A  
16 request was made from the defense attorney for the  
17 defendant to be un-handcuffed.

18 And the judge, smiling and joking, said, had he  
19 noticed that the defendant was still handcuffed, he would  
20 have had him un-handcuffed before the hearing had started.

21 The defendant was then led out of the courtroom,  
22 un-handcuffed, and returned to the courtroom.

23 It was repeated to us quite angrily and numerous  
24 times that we were there to satisfy the Victim's Bill of  
25 Rights and only because the family kept pushing the issue



1 of their right to a hearing.

2 We were told that unless we had any new evidence  
3 to present or anything new to say that wasn't said at the  
4 last hearing, we basically need not say anything at all,  
5 which left me with nothing to say.

6 Rehabilitation versus incarceration was  
7 constantly stressed, as well as the length and severity of  
8 his sentence for his age.

9 The fact that they were sorry for the victim's  
10 family and their loss was repeated with no sincerity  
11 throughout the hearing, followed by the remarks: How much  
12 time will ever be enough for you? Or, how much time is  
13 enough? Which was said with a great deal of sarcasm.

14 I am a firm believer in rehabilitation versus  
15 incarceration, but I am also a firm believer in  
16 punishment. When you do something wrong and you are  
17 punished, you do the punishment. Especially in light of  
18 the severity of the accident and the fact that he didn't  
19 know, and will never remember what he did, being  
20 Mr. McCauley, and his history just a few weeks prior to  
21 the accident.

22 After the victim's family had said their peace,  
23 it was stated to them that they had not presented anything  
24 new and that they were just repeating what had already  
25 been said. I got the impression from that statement that

1 we were just a waste of the court's time.

2 In the end, it became clear that the sentence  
3 reduction was not going to change because of the way the  
4 sentencing was worded in the beginning, even before the  
5 original sentence was handed down.

6 The hearing ended with the judge saying he would  
7 hand down his decision and notify everyone before the end  
8 of the day and that he wanted to meet with the press, more  
9 or less, immediately following his exit from the  
10 courtroom.

11 To me, the feeling in the courtroom was one of  
12 annoyance and irritation with our side at having to be  
13 there, and one of, hi, how y'all doing, don't worry,  
14 this'll be over as soon as possible, regarding the other  
15 side.

16 He was always leaning on his elbow and looking  
17 either angry, bored, or disgusted whenever somebody from  
18 our side spoke. And when the defense spoke, his attitude  
19 changed. He would perk up, sit up straight, and pay  
20 attention to them.

21 Q Thank you, Miss Strohm.

22 Your primary complaint here today is concerns of  
23 the demeanor of Judge Hughston during the second hearing?

24 A Yes, sir.

25 And in answer to the questions they had before,

1 yes, it was a very marked change from the first hearing.  
2 He was very attentive and listened to what we had to say.  
3 And in the second one, he appeared to want no part of  
4 wanting to be there at all.

5 Q Thank you, Miss Strohm.

6 Would you please answer any questions the  
7 Commission might have?

8 A Yes, sir, I will.

9 SEN. MARTIN: Senator from Charleston has a  
10 question.

11 EXAMINATION

12 BY SEN. CAMPSSEN:

13 Q You mentioned the history of Mr. McCauley a few  
14 weeks prior to the accident. Is that the history -- you  
15 referred to the history of somebody, was it Mr. McCauley?

16 A Mr. McCauley, yes, sir. My apologies.

17 Q What is that history as you understand it?

18 A I discovered that -- it was new to me, that just  
19 prior to this event, he had had one such alcoholic  
20 blackout where he had landed in a friend's basement and  
21 did not know how he got there or where he was.

22 Q No law enforcement was involved, no --

23 A I --

24 Q -- conviction or arrest?

25 A -- do not know. I just know that that was

1 something that was brought up by our side as new evidence  
2 that was supposed to be presented when we were allowed to  
3 present evidence.

4 Q One other criteria that we are to consider in  
5 evaluating whether a judge is qualified to be offered to  
6 the generally assembly to vote on, is judicial  
7 temperament. You're talking about the judge's mannerisms  
8 and the other witnesses before you.

9 In your opinion, are you talking about the  
10 judicial temperament of the judge?

11 A I'm not quite --

12 Q You're not sure what the judicial temperament  
13 means?

14 A I don't understand the question, no, sir.

15 Q Okay.

16 A I mean, can you explain that? I want to answer  
17 the question, but I'm not sure what you're asking me.

18 Q Well, it can mean several things. But one thing  
19 is the manner in which you conduct yourself, the manner in  
20 which people perceive you.

21 A When you're sitting here like this, to me, you  
22 look bored and you look disgusted. I don't see any of you  
23 sitting like that. You look to me like you want to hear  
24 what I have to say. I mean, that to me -- doesn't look,  
25 to me, like you really want to hear what I have to say.

1 And that is the way it -- to me, that's what I  
2 saw when he was sitting up there on that court -- or  
3 listening to us, he was just kind of like this.

4 Whenever Mr. Barr had something to say, it was,  
5 okay.

6 That, to me, is disrespectful. That's what I'm  
7 talking about, the leaning on the arm and the scowling  
8 looking disgusted, looking bored, versus sitting up and  
9 paying attention.

10 SEN CAMPSEN: All right.

11 SEN. MARTIN: Yes. Mr. Harrell.

12 EXAMINATION

13 BY MR. HARRELL:

14 Q Did I understand you correctly just now to say  
15 that when Mr. Barr was talking, the judge perked up and --

16 A He would sit up and listen and -- to what he had  
17 to say, versus us.

18 Q And when Scarlett Wilson was talking, then he  
19 struck that posture, hand to chin?

20 A He was more argumentative with her about the --  
21 the -- what had happened with the not notification of the  
22 -- with the notification of the hearing.

23 Q Right.

24 A He would sit up and talk to her, but he was -- to  
25 me, was very argumentative and combative, defending why we

1 hadn't been told and what had happened and the reasons for  
2 something to do with the changeover of the way they were  
3 notifying or doing some such thing.

4 Q Okay. And I appreciate that bit. But to his  
5 mannerisms, was he putting head in hands when Scarlett  
6 Wilson was presenting and perking up when Capers Barr was  
7 presenting?

8 A His attitude looking at the two, to me, did not  
9 change. It was more when we got up and we would have to  
10 say our peace that he would --

11 Q I see.

12 A -- would act that way. He didn't want to hear  
13 what we had to say. He listened to what they had to say.  
14 But when it came our turn, it's like we were just totally  
15 irrelevant. He didn't even want to be there to hear what  
16 we had to say.

17 Q Okay. I understand better now.

18 And did he ask questions of you?

19 A I didn't get to say anything. Nobody got to say  
20 anything other than Phyllis and the family because they  
21 were able to present new evidence. I was -- because I had  
22 nothing new to present, felt that I was not allowed the  
23 opportunity to stand up and say anything.

24 Q So he was attentive to the lawyers, but he was  
25 not attentive to the victims and the victim's advocate?

1           A       No, he was not.  And like I say, he was  
2       argumentative with Miss Wilson about the fact -- when we  
3       talked about the notification and the fact that we hadn't  
4       gotten it, they were argumentative about, well, things --  
5       the changeover in the system that had been going on and  
6       dismissive of that.

7                        But, otherwise, he would sit up and listen to  
8       her, yes, sir.  But to us, he was -- I don't know, a look  
9       of --

10                      MR. HARRELL:  Okay.  Great.  Very good.  Thank  
11       you.

12                      SEN. MARTIN:  All right any other questions?  
13       Well, thank you very much.

14                      MS. STROHM:  Thank you.  
15       Counselor?

16                      MR. DENNIS:  All right.  Mr. Chairman, I think  
17       the final witness associated with Miss Savenkoff'S  
18       complaint is Miss Laura Hudson.

19                      SEN. MARTIN:  Ms. Hudson, would you raise your  
20       hand to be sworn.

21                      LAURA HUDSON, having been first duly sworn  
22                                        testified as follows:

23                                        EXAMINATION

24       BY MR. DENNIS:

25           Q       Good morning, Miss Hudson, notwithstanding the

1 opportunity to have you under oath, could you please  
2 explain to the Commission that -- how you were present at  
3 both of these matters and what your relationship with  
4 Miss Savenkoff is.

5 A I was not present at the first trial. I had a  
6 conflict and couldn't be there. I did not get involved  
7 until I received a telephone call from Traci Thompson, who  
8 is our victim advocate for MADD in South Carolina, saying  
9 that it was her impression that a crime victim's rights  
10 had been violated.

11 I talked to Scarlett Wilson at that time. And I  
12 very much appreciate that she made a motion for a  
13 rehearing to rectify the, seemingly, violation of crime  
14 victim's rights. And I was very pleased with that. And I  
15 decided I would go down to the rehearing.

16 I have been in Judge Hughston's courtroom many  
17 times. I would be hard-pressed to give you any dates  
18 because I've been doing this for 30 years. I've probably  
19 been in every courtroom in the state and have been in  
20 front of all the circuit court judges and many of our  
21 family court judges and magistrates over the years.

22 I realize that there is a point of law here that  
23 -- I'm not an attorney -- about whether Rule 29 overrides  
24 a constitutional amendment of crime victim's rights. You  
25 might guess what I think would be the answer to that, that



1 the constitutional right would certainly overrule a Rule  
2 29. But that was rectified by Ms. Wilson, Solicitor  
3 Wilson asking for the rehearing.

4 I was very surprised at Judge Hughston's reaction  
5 to being asked to come back for the hearing. I think  
6 he -- you know, and I can't speak for what was going on in  
7 his mind. But he seemed to be chagrined at being asked to  
8 come back. I think he was embarrassed, you know, to have  
9 to come back and -- at the request of the solicitor.

10 There was a lot of lighthearted kind of exchange  
11 between he and Capers Barr. I didn't particularly find  
12 that offensive because, you know, he has a relationship  
13 there.

14 But when we moved into listening to Scarlett  
15 Wilson and to the assist prosecutor and, most importantly,  
16 to the crime victims, there seemed to be a change in his  
17 demeanor that I have never seen him do in a courtroom  
18 before. He smirked. He seemed to be bored.

19 I was sitting in the courtroom to the far right,  
20 and the news media was at the far right behind the  
21 banister. And they were looking -- the cameras were --  
22 and he kept pulling his head toward the news media. And  
23 when Phyllis got up to speak, it was like,  
24 (demonstrating), a breath.

25 He seemed to be bored. He seemed to be

1 disengaged and not really wanting to hear what she has had  
2 to say. I don't know whether that was because I heard  
3 this before, at the first hearing. He came across as  
4 being very disrespectful.

5           And I wrote him a letter, which I think you have  
6 a copy of, dated August 13th, asking him about the  
7 amendment, the constitutional amendment, and continued to  
8 argue that.

9           But -- I was very offended by your laughter and  
10 seemingly light-hearted attitude at the rehearing. Your  
11 facial expressions during the time of Miss Savenkoff's  
12 testimony were offensive and not worthy of your judicial  
13 position. And because of Mr. McCauley's under-aged  
14 possession of alcohol and the entire blood alcohol level  
15 being more than twice the legal limit, surely he deserved  
16 a higher sentence than five years.

17           I received a letter back from the judge denying  
18 that he had done any of that. He did not address my  
19 concerns about Rule 29 and the constitutional amendment in  
20 his letter.

21           As I say, I have been in many, many courtrooms.  
22 Each of our judges have their own personalities. And I  
23 have had the privilege of getting to know most of them.

24           And as I say, I have never seen Judge Hughston  
25 act that way in other hearings. And I don't know whether

1 he was angry that he had been called back in for a  
2 seemingly violation of crime victim rights or whether he  
3 truly was just off his game for the day. But he was  
4 offensive.

5 Q Ms. Hudson, can I clarify? You began by saying  
6 that you felt as though Scarlett Wilson may have rectified  
7 the issue involved by having Judge Hughston hold the  
8 second hearing.

9 A Yes, sir.

10 Q You acknowledge that there may be some friction  
11 between Rule 29 and the Victim's rights -- Bill --

12 A Right.

13 Q -- of Rights?

14 As the posture of this case stands now, do you  
15 feel that, ultimately, Judge Hughston complied with the  
16 procedural mandate that he was --

17 A I do. Because of Solicitor Wilson, in my  
18 opinion.

19 Q So your testimony centers exclusively on his  
20 demeanor and temperament --

21 A Correct.

22 Q -- during the course of the second sentencing  
23 hearing?

24 A Yes, sir.

25 MR. DENNIS: Thank you, Miss Hudson.

1           That's all I have.

2           SEN. MARTIN: Let me ask a question.

3                           EXAMINATION

4 BY SEN. MARTIN:

5           Q     Miss Hudson, he could have denied the motion for  
6 the rehearing, could he not?

7           A     Yes, sir.

8           Q     So I guess I'm having a little bit of difficulty  
9 understanding how he was, quote, called back in. I know  
10 the motion was made by the solicitor --

11          A     Right.

12          Q     -- and he granted the motion --

13          A     He did.

14          Q     -- had the hearing. So he really wasn't called  
15 back in, was he not? I mean, he could have said, look, I  
16 followed the rules and, you know, I don't see the point in  
17 having the hearing. I mean, I'm just --

18          A     No. I was grateful that he granted it and said  
19 so in my letter to him.

20          Q     Right. I'm just struggling because I -- as you  
21 know, having been here as long as I have, I've known Judge  
22 Hughston personally for many, many, years. And I've never  
23 -- as you have known him. And I have never known of him  
24 to -- when we had some pretty tough debates years and  
25 years ago. And I've have watched him -- and I think he

1 would be the first to admit -- and I haven't discussed any  
2 of this with him. I am just going on my recollection.

3 We all act a little bit odd at times when we get  
4 in an uncomfortable situation, if you want to call it  
5 that. But I have never known him to show disrespect to  
6 anybody. And that's the part of this that I'm really  
7 having some difficulty with.

8 And I guess the other thing is, if he truly had  
9 it within his power to dismiss the motion, I mean, he  
10 decided, I am going to have the hearing, we're going to  
11 moved forward with another hearing, hear what folks have  
12 to say. I'm just having some difficulty with the idea  
13 that he was there against his wishes, he was, quote,  
14 brought in by somebody --

15 A Well, that's just the appearance that --

16 Q Right.

17 A -- he gave in his demeanor. But as Patrick said,  
18 I mean, it was rectified. And I was grateful the crime  
19 victims were allowed their day in court, as they should  
20 have been allowed.

21 Q And we're going to hear from Judge Hughston. I'm  
22 sure we're going to ask him questions about this and how  
23 it -- how it played out. But I'm interested in your  
24 perception and your view of how he interacted that day,  
25 independent of the other witnesses that we've heard from.

1 A Yes, sir.

2 Q I have great respect for you and your  
3 observations. And I am just -- I am just at a loss.

4 A Yes. Well, I have great respect for Judge  
5 Hughston. As I say, I have never seen that before from  
6 him. But it was very obvious that something was amiss and  
7 that there was a poor attitude there. And I really feel  
8 hurt for the crime victims, that they were so offended.

9 SEN. MARTIN: Right. Right.

10 Any other questions?

11 Mr. Strom.

12 MR. STROM: Thank you.

13 EXAMINATION

14 BY MR. STROM:

15 Q Ms. Hudson, like the Chairman, I give great  
16 deference to what you have to say. And I know that you  
17 have been in courtrooms all over the state for 30 years,  
18 and I know the members of the general assembly here know  
19 that as well.

20 And I guess what I want to know from you to  
21 follow up on Senator Campsen's question, do you feel like  
22 what you saw, as far as Judge Hughston's temperament, was  
23 so severe that we should consider that in disqualifying  
24 him?

25 A I can't answer that. You know, all of the

1 testimony that's been given would lend itself to --  
2 certainly to a reprimand. I don't -- I would not name --  
3 or say what y'all should do.

4 SEN. MARTIN: Any other questions?

5 Senator from Charleston.

6 EXAMINATION

7 BY SEN. CAMPSSEN:

8 Q Miss Hudson, thank you for your involvement and  
9 your long-term involvement in criminal justice matters.

10 Judicial temperament is an issue that we are to  
11 take into consideration. And the ABA's -- I am going to  
12 give you the ABA's definition on judicial temperament.

13 I just want your opinion, based on what you saw  
14 because you were in the courtroom, whether the judge's  
15 judicial temperament was implicated in this incident and  
16 what you observed.

17 The ABA, American Bar Association, defines  
18 judicial temperament as:

19 A judge demonstrating compassion,  
20 decisiveness, open-mindedness,  
21 sensitivity, courtesy, patience,  
22 freedom from bias, and commitment  
23 to equal justice.

24 A I think the only one --

25 Q In that definition of what you saw, do you think

1 that judicial temperament is an issue?

2 A I think the only one he met was decisiveness.  
3 The rest of them, I think we're in violation.

4 SEN. CAMPSSEN: Thank you.

5 SEN. MARTIN: Mr. Clemmons, Representative  
6 Clemmons.

7 REP. CLEMMONS: Thank you, Mr. Chairman. Thank  
8 you, Miss Hudson, for being here and sharing your insights  
9 today.

10 EXAMINATION

11 BY REP. CLEMMONS:

12 Q Help us understand. I have never had the  
13 opportunity to be in Judge Hughston's courtroom, so your  
14 observations, I think, are very helpful to us today.

15 How many times have you had that opportunity to  
16 be in the judge's courtroom and observe his demeanor on  
17 the bench?

18 A Golly, I don't know how accurate I can be, but  
19 probably several times, many times through the years.

20 Q Would several or many be a dozen or --

21 A Probably.

22 Q You mentioned the press --

23 A Uh-huh.

24 Q -- expound on that if you would.

25 A Well, this case had gotten a lot of press



1 attention in the Charleston area. And there were several  
2 cameras and press people behind the rail up on the right.

3 And I was sitting on the right, so I could see  
4 the judge's expressions to -- towards the camera. And  
5 almost as an aside, because, you know, he would have been  
6 facing us. But frequently, he would turn his head so that  
7 he was looking at the cameras or looking away from the  
8 individuals that are in the courtroom. And I think the  
9 word, smirk, really does bring that to the forefront.

10 And when we -- I've had many occasions, as the  
11 general assembly, to have those same kind of expressions  
12 coming from people in committees. But then I've learned  
13 how -- and women are far more attuned to body language  
14 than most men are. And I can tell when I am being  
15 ignored. I can tell when I am being dismissed. I can  
16 tell when I'm -- what I have to say is falling on deaf  
17 ears.

18 And there was a -- a general disregarding of the  
19 crime victims' comments as being not worthy of his  
20 attention.

21 I think that in the previous testimony of him  
22 being attentive to the defense, but being inattentive to  
23 the crime victims, is a good one.

24 REP. CLEMMONS: Thank you, Miss Hudson.

25 SEN. MARTIN: All right. Any other questions?

1 All right. Senator from Darlington.

2 EXAMINATION

3 BY SEN. MALLOY:

4 Q Thank you, Miss Hudson, for being here.

5 I am listening as very -- as attentive as I can  
6 and trying to be careful not to have much movement.

7 A I am very accustomed to your facial expressions.

8 Q But the thing is, my facial expressions doesn't  
9 give away how I feel.

10 A No. And in none of us, it does.

11 Q And so I remember whenever I was a kid, I used to  
12 fight on the karate circuit. And we had to stare at each  
13 other and without expression. Because if you move, a  
14 flinch, a smile, anything, it was a sign of weakness.

15 A Right.

16 Q And so what I'm hearing is, is that -- is that  
17 these -- is body language gives a perception as to the one  
18 that's being perceived -- that is perceiving it.

19 And so the general question -- and it's a little  
20 rhetorical -- is that, how do we know?

21 A We don't.

22 Q Is that --

23 A I don't know the mindset of what he was thinking.  
24 I can only, you know, interpret what it appeared.

25 Q And I don't want to make -- make -- I don't want

1 this exchange to be trivial. But I have this with my wife  
2 all the time --

3 A Uh-oh.

4 Q -- and I want her to stop and look at me. And  
5 she says, I can do two things at once.

6 A And she can.

7 Q And you just made it a distinction?

8 A Right.

9 Q But when it comes the other way, I have to stop  
10 until -- as we're here, you know, I'm on the Internet -- I  
11 mean, on the -- looking at the statements that we have as  
12 we listen.

13 You're very experienced. You smile and laugh a  
14 lot. You do -- you've done it several times since you've  
15 been here. It doesn't mean that you're not very serious  
16 about what you're doing and we know that.

17 When I go to matters, they tell me, don't lean on  
18 the podium --

19 A Right.

20 Q -- don't touch the podium. So does that show any  
21 type of sign?

22 So what I'm trying to see, from your perspective  
23 after 30 years, do you know at the end of the day, any  
24 rules that were violated?

25 Understanding that you're not a lawyer, that you

1 -- that you, you know, observed. I am trying to see,  
2 what's the violation? I know she said that he should be  
3 reprimanded. That's not within our purview.

4 And so is there some part of the Constitution?  
5 Is there some statute?

6 A Well, as I answered Mr. Dennis, I think the  
7 violation of the crime victim rights were rectified by  
8 this hearing, the second hearing.

9 Q Okay.

10 A The judicial demeanor, I think, is the issue.

11 Q And, obviously -- and I don't want to appear for  
12 one side or the other. I've been a lot of things in front  
13 of judges that I've seen -- that it falls on deaf ears.  
14 And I don't know how to say whether they are listening or  
15 whether they are compassionate to me.

16 I am trying to see if this was result-oriented,  
17 you know, to satisfy the Crime Victim's Bill. Was that a  
18 situation where the folks got really charged up and said,  
19 this didn't happen?

20 And once the hearing was held and this was  
21 satisfied, did that meet compliance? Except for the fact  
22 that we say that there was some smirking, some laughing,  
23 some looking away, some attentiveness to one side -- one  
24 person and not the other. Is that, in summary, the basis  
25 of it?

1           A       Yes, sir. But I think we have to go back to the  
2       Constitution and to our crime victim law that's in Title  
3       16 that affords dignity and compassion for crime victims.

4                    One of those issues when we first wrote the  
5       Constitutional amendment, that crime victims, their input  
6       at that time, was feeling as though they were not listened  
7       to in the courtroom, that they were not being given the  
8       dignity that they deserved.

9                    So that is part of our Constitution, and is  
10      reiterated in 165, 1605 about compassion and dignity. And  
11      I do think that that was violated by the demeanor --

12           Q       Okay.

13           A       -- if that was your question.

14           Q       I think it sort of gets there. I think that this  
15      whole matter is about his demeanor on the bench.

16           A       Right.

17           Q       Temperament, do we know of anything to say that  
18      he is not listening, that he does not know what's going  
19      on, that he's not responding -- did not respond --

20           A       Uh-huh.

21           Q       -- at some point in time?

22           A       Sure.

23           Q       Because a lot of the statements that would've  
24      come to him, we don't know how they were being received.  
25      And so -- I'm jumping around just a little bit.

1           So if there were only two people, I think that  
2 were allowed to talk, and some say that they didn't feel  
3 like they could talk because of the fact that they didn't  
4 have any new information, a new testimony --

5           A     Right.

6           Q     -- a new statement. Did anyone stop them from  
7 doing that?

8           A     No, sir. But had I been testifying, as Phyllis  
9 was in front of him, I would have stopped him and asked  
10 him, was he listening.

11           SEN. MALLOY: All right.

12           SEN. MARTIN: All right.

13           All right. Representative Mack.

14           REP. MACK: Thank you, Mr. Chairman.

15   EXAMINATION

16   BY REP. MACK:

17           Q     It is good to see you.

18           A     You too.

19           Q     I am sorry it's under these circumstances.

20                   I'm a non-attorney, but I have a public  
21 relations' business. And I do work with clients as it  
22 relates to issues such as, presentation, body language,  
23 the new term of, what is your brand branding, those types  
24 of things.

25                   And just as -- my observations in listening to

1 everything is that -- I just want to throw a couple things  
2 out there for thought.

3 This was a very, very, very painful and tragic  
4 situation.

5 A Yes, sir.

6 Q One of the things that happens with regards to  
7 individuals is that our -- all of us, our brains are wired  
8 differently. And there is an old term that some folks  
9 make very bad poker players because they are very  
10 expressive with every situation. Happy, sadness,  
11 bewilderment, whatever the case may be, you can read it in  
12 an instant.

13 Some folks' brains are wired in such that there's  
14 a disconnect. I'm not saying with the judge, I don't  
15 know. But I'm just saying, generally, whereas there may  
16 be a situation as tragic and there is a smile. And it's  
17 not -- and perception is reality, especially in a  
18 situation like this.

19 But in some cases, there is a disconnect there,  
20 just how the individual's brain is wired where they may  
21 smile. There may be a nervous laughter. There may be a  
22 movement that relates to body language, which does not  
23 connect with the situation, the seriousness of the  
24 situation, or whatever the case may be. That is so  
25 subjective.

1           The challenge is always to tie in, like Senator  
2 Campsen talked about, temperament. And that comes under  
3 our purview, the tie-in temperament as relates to behavior  
4 on the bench. That gets into a sort of subjective thing.

5           What we have to do is basically look at  
6 procedure. Because, remember with this Committee, we  
7 don't actually pick who is going to be judges. We -- it's  
8 sort of a gateway, who -- three people, what have you.  
9 But the general assembly actually, as you know --

10          A     Yes.

11          Q     -- picks. So as we get this information, I think  
12 a lot of us are processing a lot of it, but how much can  
13 we actually use? How much of it can we actually put into  
14 place in a tangible situation, that is -- that would be  
15 workable from the family standpoint?

16                Because, you know, from MADD, and all the  
17 organizations, and the family, I mean, we -- I mean, every  
18 one of us around us up here, I know every individual  
19 around this table. And the compassionate aspect, the  
20 empathy aspect, plays out in our hearts in terms of that  
21 tragic loss.

22                We have family members and we drive all the time.  
23 And it's just a blessing to get from point A to point B,  
24 the way people drive out here just generally.

25                So anyway, for what it's worth, I just wanted to



1 kind of throw that out to kind of shed light on, sort of,  
2 our thought process as we get all this information.

3 A Yes, sir. I appreciate those remarks. But I  
4 think we have to hold a judge to a higher standard of  
5 demeanor.

6 SEN. MARTIN: All right. Mr. Sellers.

7 EXAMINATION

8 BY MR. SELLERS:

9 Q Miss Hudson, this is a tragic situation with a  
10 lot of emotions involved on both sides.

11 A Yes, sir.

12 Q And I guess my question is this, if Judge  
13 Hughston had acted exactly the way he did in the courtroom  
14 when you were there that day, but instead of denying the  
15 motion, had granted it and increased the sentence to ten  
16 years, would we be here today?

17 A That's a good question. I don't know.

18 Q Would you be here?

19 A Probably.

20 SEN. MARTIN: All right. Any other questions?

21 Thank you so much, Miss Hudson.

22 MS. HUDSON: Thank you.

23 SEN. MARTIN: Good to see you.

24 MS. HUDSON: Good to see all of you.

25 SEN. MARTIN: All right. Counselor?

1 MR. DENNIS: I would ask Judge Hughston if he  
2 would please return to the podium.

3 RE-EXAMINATION

4 BY MR. DENNIS:

5 Q Judge, you've heard what Miss Savenkoff and the  
6 three witnesses that joined her here have had to say about  
7 the McCauley matter in specific.

8 I am going to ask you in just a moment if you  
9 would react to the Commission to what you've heard here  
10 today and give your version of the events. I am going to  
11 ask in that question if you would, to the best of your  
12 ability, limit it to your demeanor at the second hearing,  
13 as that seems to be the issue-in-chief.

14 And if you would please describe to the  
15 Commission the process by which you undertook to effect  
16 the sentence of McCauley from the first sentence, all the  
17 way through the end of the process, and how you arrived  
18 there procedurally, and if you believed that you complied  
19 with the rules' mandate in doing so.

20 A All right. Let's start -- I'll start with the  
21 last because I'm not really sure exactly how --

22 SEN. MARTIN: Judge?

23 MR. HUGHSTON: -- what your question is in  
24 connection with that. Let me talk about the process and  
25 then see where you want to -- see if there is anything you

1 want to --

2 MR. DENNIS: One moment please.

3 SEN. MARTIN: One moment.

4 Senator from Darlington.

5 SEN. MALLOY: I want to be clear as to what the  
6 question is being asked of --

7 SEN. MARTIN: Thank you.

8 SEN. MALLOY: -- the judge.

9 Is it to limit his comments in response to the  
10 demeanor, I don't think he can do that.

11 MR. DENNIS: No, sir. I'm sorry. I misspoke,  
12 Senator Malloy. I am not asking him to limit his  
13 comments. I was -- I should have said that I'm asking him  
14 to comment specifically on those two items --

15 SEN. MALLOY: Okay.

16 MR. DENNIS: -- that have been raised by  
17 Miss Savenkoff. He can certainly speak to any other  
18 matter that he'd like to speak or that you would like for  
19 him to speak to.

20 MR. HUGHSTON: But I believe the first one has to  
21 do with the process of the sentencing; is that correct?

22 MR. DENNIS: Yes, sir.

23 MR. HUGHSTON: Is that your question?

24 And are you particularly interested in the aspect  
25 of the motion to reconsider? And then what happened

1 between me and the lawyers, the solicitor, and -- and my  
2 study of the materials, hundreds of pages, that were  
3 submitted to me, and then my issuing a second sentence?

4 BY MR. DENNIS:

5 Q I think what the Commission is most interested in  
6 is how you arrived at reducing the sentence.

7 A Okay. Well, I received, as I said, a lot of  
8 material from both the solicitor's office and from the  
9 defendant's attorney, and I studied all that. Mr. Barr  
10 presented a lot of material. The solicitor's office  
11 presented probably twice as much material to me.

12 And I studied all that. I gave it consideration  
13 over a long period of time. Several months I believe were  
14 involved in it and all. And I compared the sentence that  
15 I gave the defendant, particularly with those that had  
16 been given in similar cases in Charleston County, that  
17 Mr. Barr brought to my attention.

18 And I ultimately -- and I also considered the  
19 federal sentencing guidelines and the state guidelines  
20 that were proposed, back a number of years ago. And by --  
21 after a thorough examination and study and recommendation  
22 from the sentencing guidelines' commission.

23 And I looked at all that material. And I decided  
24 that the purposes of a criminal sentence could be better  
25 served by changing my sentence and imposing the sentence

1 that I ultimately imposed.

2 I think I mentioned that I consulted the federal  
3 guidelines for a similar offense. And their  
4 recommendation was 33 to 38 months, if I recall correctly,  
5 you know. But I still went a little -- I still went above  
6 that, you know, in the sentence that I ultimately imposed.

7 So I considered a whole range of things before I  
8 changed my sentence.

9 Q Yes, sir. I think what I am trying to get to  
10 specifically is, after issuing the first sentence to  
11 Mr. McCauley --

12 A Yes.

13 Q -- Mr. Barr filed a motion to reconsider that  
14 sentence.

15 Could you describe for the Commission, the actual  
16 physical steps that you took when you reduced that  
17 sentence.

18 A I'm not sure I understand what you mean.

19 Q I guess what I mean is, you took the -- you took  
20 his motion under advisement --

21 A I did. I took his motion under advisement. And  
22 I wrote an e-mail, a letter to Mr. Barr, and to the  
23 solicitor that was handling the case, and I sent out a  
24 schedule of briefing.

25 I said, you know, I've gotten this. You have so

1 much time to file your papers, Mr. Barr, and the state has  
2 so much time to file their papers in response to that.

3 And after I've received all that information from  
4 you, if I want to get anything else, if it raises any  
5 questions in my mind about it or anything, anything comes  
6 up, I'll get back in touch with you, and I will schedule a  
7 hearing if I feel like that's what I should do. And you  
8 all let me know. And I was saying, give me this stuff,  
9 and then, you let me know if you want me to do anything  
10 else.

11 Q I'm sorry if I'm asking my questions poorly,  
12 Judge. That's precisely the information I was looking to  
13 get.

14 A Okay. All right.

15 Q Judge, please go on.

16 A All right. I gave you a -- I prepared and gave  
17 to the Commission staff, a statement that I intend to read  
18 to you and I will. But I feel compelled after having  
19 heard what I've heard today to depart from that somewhat  
20 and to just respond to some of the things, as best I can,  
21 that I've heard here today. And I'll take it in the order  
22 in which I've heard it.

23 Miss Savenkoff said that I sat with a head to one  
24 side. And I probably did. I probably did. I have a  
25 habit of -- of looking to one side often when someone is

1 speaking. And, you know, perhaps it's because I have got  
2 a better ear on one side than I do on the other.

3 And another reason is that I -- I'm very focused  
4 on what people are saying in the courtroom. You know,  
5 that's -- 90 percent of a judge's job, or a big percentage  
6 of the judge's job, is listening to what somebody's saying  
7 to you and taking it in.

8 And often times, the movement and the things that  
9 are going on in the courtroom, otherwise distract me from  
10 hearing and processing the information that's being given  
11 to me. And so quite often, I do look to one side. And if  
12 somebody -- I skip over to this, like that I was playing  
13 to the press.

14 Well, let me tell you what I do. You have to get  
15 permission, the press has to get permission from the judge  
16 before they can come into the courtroom with a camera, a  
17 TV camera or a press camera. And what I put on the order  
18 that I sign allowing them to do that, do not show me in  
19 the newspaper or the TV, that you do on this occasion.

20 I certainly was not playing to the press or the  
21 television. Because I put that in every order that I  
22 give, allowing them to come to the courtroom, do not show  
23 me. I am not the person that this case is about. The  
24 defendant, prosecution, those are the people that you  
25 should show.

1           So I certainly was not playing to the press when  
2 I turned my head to the side where they were seated in the  
3 jury box. And that's often the way that I turn because I  
4 want to watch what the jury is doing. That's just a habit  
5 that I have when I'm trying a case. They're the people  
6 that are taking in the information, I hope, and also the  
7 information that I take in.

8           And so when she says that I turned my head to the  
9 side. I said, yes, I did that, but was out of no  
10 disrespect. It's just the way that I process information,  
11 the way that I try to get what I need to hear and process  
12 it during the course of the proceedings.

13           There was absolutely -- and I didn't get to see  
14 what the young lady put on her face to say that I smirked.  
15 But I don't -- I know I didn't giggle. I know I didn't  
16 laugh at anybody or anything that was being said by any of  
17 the people that presented it to the court.

18           But the transcript will show it. The court  
19 reporters put that sort of stuff in transcripts if there's  
20 a big laughter or what -- laughing event or whatever, they  
21 put in the transcript. You've got the transcript.

22           I also believe that you have an audio or the  
23 actual tape or whatever you want to call it. That little  
24 thing that's not a tape anymore. But anyway, that little  
25 thing. And if I laughed or did anything on there or



1 anybody else did anything like that, it would be on there.

2 I haven't listened to it. But I've been told by  
3 the court reporter that furnished it to you that it's not  
4 on there and that nothing like that is on there.

5 My facial expressions and so forth, I was as  
6 stoic as I could be. No laughter. If my face conveyed  
7 anything, it was the agony of hearing about this horrible  
8 case for a third time. I mean, it has an impact on me  
9 when I sit there and I listen to how people have been hurt  
10 in these situations.

11 And if I conveyed anything, I would have hoped  
12 that it conveyed the agony and the hurt that I felt of  
13 hearing about this case for the third time and reading  
14 about it.

15 I had read the sentencing memorandums (sic) that  
16 both the state and Mr. Barr had submitted and the  
17 pre-sentence report that I asked for. I want to know as  
18 much about a case as I can learn before I decide what to  
19 do. And I ask for pre-sentence investigations in this  
20 state. That's one of the tools that are available to  
21 judges.

22 And I'm not going to -- anyway, I ask for  
23 pre-sentence investigations in every case -- not in every  
24 case -- in the cases like this, that are unusual and so  
25 important. I asked for it and I got a pre-sentence

1 investigation.

2           Again, both sides had an input in regard to that.  
3 And I heard about all of the bad things as far as this  
4 awful case is concerned in that.

5           Somebody talked about a victim's -- a secret  
6 sentence reduction. There was no secret sentence  
7 reduction. Everything was open and aboveboard.

8           I hesitate to go into the aspect as far as how it  
9 -- the sentence, the reconsidered sentence didn't get sent  
10 to everybody. I believe that your staff has thoroughly  
11 investigated that and presented you with the facts in  
12 regard to that.

13           But for one of the first times in my life, I  
14 tried to be modern and give it to the clerk, as I've been  
15 told to do, and let it go online and not mail a paper copy  
16 to the attorneys involved. One of the first times, if not  
17 the first, that I've ever done that trying to get up to  
18 speed.

19           But anyway, I didn't know and the clerk didn't  
20 know that their system was not set up to handle that. It  
21 didn't go out like a normal sentence would to the  
22 attorneys, and they get a notice and they can go online  
23 and get a copy of it.

24           So the first -- the first realization of that  
25 came when the solicitor filed a motion. And I believe

1 that came about because Mr. Barr sent me a letter, an  
2 e-mail or an old-fashioned letter, saying, judge, there  
3 are actually two sentences, you didn't deal with but one.

4 And he sent the solicitor a copy of that, and  
5 that's how the solicitor found out about it. Mr. Barr had  
6 been monitoring their website, I believe, the clerk's  
7 office, and he had found out about it earlier.

8 But there was no secret meeting. There was no  
9 attempt to hide anything from anybody. That's all I can  
10 say in regard to that.

11 Miss Hudson said she was disappointed in the  
12 sentence and that the family was offended by my conduct.  
13 She didn't say that she -- well, you know what.

14 She did read to you part of a letter that she  
15 wrote to me. And since she read that, I'd like to read to  
16 you the reply that I gave -- that I wrote to her. And I'd  
17 be glad to give it to you to make it part of the record in  
18 this case, if you want it:

19 Dear Miss Hudson, thank you for your recent  
20 letter. I apologize for being slow to respond, but I was  
21 out of the office last week, one of the few times that I  
22 held court in another location. And I wanted some time to  
23 digest your letter. I write to clarify some of the things  
24 you mentioned.

25 I did not reduce the sentence from 15 years to

1 5 years. Originally, I imposed a sentence of 15 years  
2 suspended to 10 years, followed by 5 years of service on  
3 probation. I reconsidered that and changed it to 10 years  
4 suspended to 5 years, with 5 years probation.

5           Concerning -- this is the quote -- Phyllis  
6 Savenkoff and her family were very offended by your  
7 laughter and seemingly lighthearted attitude. I do not  
8 believe that I did any such thing. I have searched my  
9 memory of these hearings and do not recall laughing. I  
10 certainly did not laugh at anything Mrs. Savenkoff or any  
11 family member said or did.

12           I do not know who said that I had a seemingly  
13 lighthearted attitude at the hearing, and I do not know  
14 what led to that conclusion. I assure you that I had  
15 anything but a light heart throughout this tragic case. I  
16 expressed my heartfelt sympathy to all at every  
17 opportunity. If my facial expressions conveyed anything,  
18 I would have hoped it would have been the feeling of agony  
19 at, again, hearing the terrible facts of this case.

20           I appreciate the job that you have done over many  
21 years for MADD and the crime victim's counsel. I wish  
22 that you would advocate for a set of sentencing guidelines  
23 for the 50-plus circuit judges that are now sentencing  
24 people in South Carolina, each by his or her own  
25 guidelines. Fact-based guidelines considering all the

1 things that should be considered would be a great help to  
2 everyone, victims, prosecutors, defendants, defense  
3 attorneys, and judges. All involved should know in  
4 advance about what to expect.

5 Guidelines, as are available in 20 states, the  
6 District of Columbia and the federal courts, would provide  
7 equal, fair treatment for everyone. As I said in my  
8 post-hearing order, a range from 1 to 35 years in a case  
9 like this is just too much judicial discretion.

10 Miss Strohm took offense of the way that I sit --  
11 was sitting up. Hope that I've spoken to that. It was  
12 the most -- her testimony I must say, is the most  
13 distorted view of what I did and said that day that I have  
14 ever heard.

15 She mentioned somebody saying, how much time  
16 would be enough? What will ever satisfy you? I never  
17 said anything like that to her. I never said any --  
18 practically any of the things that she somehow attributes  
19 to me.

20 Now, whether that was what other representatives,  
21 other people that were involved in the process may have  
22 said to her, I don't know. But I can assure you that I  
23 never said anything like that and the record shows it.

24 I was not embarrassed to be there. I certainly  
25 was not embarrassed to be there. As I said, it's an

1 agonizing thing. It's a hurtful thing to go through the  
2 process of hearing from the people and having to make a  
3 decision that you know affects people's lives, but that's  
4 what I have to do.

5 And if I, in any way, offended anybody, I  
6 certainly apologize for it. But there was certainly no  
7 intention on my part to be offensive or to do anything  
8 that would hurt anybody during the course of any of these  
9 proceedings.

10 Now, I go to my prepared remarks which I've  
11 furnished you. But I won't be beginning by saying this.  
12 But that's what I said in there, in the -- in the writing  
13 that I gave to you.

14 Let me begin by saying once more, to all those  
15 whose family and friends are touched by this tragedy, that  
16 I express my deepest heartfelt sympathy as I have in every  
17 opportunity for the grief and suffering -- for your grief  
18 and suffering.

19 I want to be very clear in responding to this  
20 complaint. I have studied and reflected upon all  
21 available objective evidence that has been presented and  
22 believe an unfortunate misunderstanding has occurred. One  
23 based primarily on the perception of a relative who is  
24 understandably shocked and devastated by the death of her  
25 loved one. Nevertheless, the objective evidence,

1 presented from a variety of credible sources, is testimony  
2 that supports my conclusion.

3 First, a transcript, and I have mentioned also,  
4 the tape recording of the proceedings, fails to reveal  
5 anything that could be used to reach the conclusions,  
6 opinions, contained in the complaint.

7 Second, the tape recording, as I said of the  
8 hearing, is also devoid of anything that could be could be  
9 construed as unprofessional.

10 Third, seven affidavits have been submitted by  
11 people present at this and other hearings over which I  
12 have presided. And they are overwhelmingly supportive of  
13 my consistently ethical and professional behavior.

14 Several have taken the opportunity to explain  
15 that I have a number of verbal and body language traits  
16 that they understand to be characteristic of me when I am  
17 deep in thought and deliberation, but which may have been  
18 misunderstood by someone less familiar with me.

19 The specific examples provided in the complaint  
20 echo similar descriptions provided by the courtroom  
21 observers. And, yet, she has reached a very different  
22 conclusion, opinion, from those who have seen me often  
23 over the years.

24 Nevertheless, if Miss Savenkoff was upset by how  
25 she interpreted my behavior, I am sorry for any pain that

1 it has caused her.

2 The recent fourth -- the recent Joint Merit  
3 Selection Commission survey shows that of almost 500  
4 members of the bench and the bar, my closest peer/  
5 professional colleagues, 98 percent have stated that I am  
6 qualified or well-qualified as a judge.

7 Finally, I would like to say that I am deeply  
8 disappointed that anyone appearing before me in any  
9 capacity in the courtroom has expressed concerns or  
10 negative comments about me. The quality in criminal  
11 sentencing in a priority for me. And it is the main  
12 consideration in my long-time advocacy of sentencing  
13 guidelines for South Carolina. My goal has been and will  
14 continue to be fairness to every party in every dispute.

15 Let me conclude by saying, I have not violated  
16 any part of the Constitution. I have not violated any  
17 statute. I have not violated any rule or procedure. I  
18 have not violated any rules of ethics. I have not  
19 violated my oath as a judge.

20 I will reflect on this experience and gain what I  
21 can from it and renew my commitment to be the best judge  
22 that I can be, one who is fair and consistent in the  
23 administration of the law.

24 In conclusion, I once more offer my deepest  
25 condolences for the suffering of family and friends.



1 Thank you for your consideration and attention.

2 SEN. MARTIN: All right. Thank you, Judge.

3 Counselor.

4 MR. DENNIS: Judge, I have just two questions,  
5 both very simple, I hope.

6 FURTHER EXAMINATION

7 BY MR. DENNIS:

8 Q Do you feel you were required to have a hearing  
9 after Mr. Barr filed his motion for reconsideration of  
10 Mr. McCauley's sentence?

11 A No.

12 Q Do you feel you were required to have a hearing  
13 after Solicitor Wilson filed her motion to reopen the  
14 sentencing?

15 A No.

16 MR. DENNIS: Thank you, Judge.

17 That's all I've got, Mr. Chairman.

18 SEN. MARTIN: All right. Any other questions?

19 SEN. CAMPSSEN: Yes, I have a question.

20 SEN. MARTIN: The senator from Charleston has a  
21 question.

22 EXAMINATION

23 BY SEN. CAMPSSEN:

24 Q Judge Hughston, you've stated in your remarks  
25 what the sentence was and what the sentence was reduced

1 to. Would you restate that please?

2 A All right. Let me go back. Well, actually there  
3 were -- you know -- there were two crimes to which he pled  
4 guilty; one felony DUI involving death, for which he could  
5 have received up to 25 years in the penitentiary, and the  
6 other, reckless homicide, for which he could have received  
7 10 years in the penitentiary.

8 On the felony DUI involving death, I believe that  
9 my sentence was 15 years in the penitentiary, suspended on  
10 the service of 10 years in the penitentiary, with 5 years  
11 probation. That's what I consider the operative sentence  
12 because it has the probation tacked on to it at the end.

13 The other sentence on the reckless homicide was  
14 ten years -- or a straight ten years, no probation. But  
15 anyway.

16 Q They were concurrent?

17 A -- so those were the two -- excuse me. They were  
18 concurrent. Concurrent, that's exactly right.

19 And so when I reconsidered and changed my  
20 sentence, I changed the felony DUI to ten years, suspended  
21 on the service of five years, with five years probation.  
22 And I changed the reckless homicide to ten years,  
23 suspended on the service of five years, while on probation  
24 on the first case.

25 Q So in essence --

1           A     Save a little paperwork there and don't create a  
2 second case.

3           Q     So in essence, you cut the time served in half --

4           A     Correct.

5           Q     -- from ten to five years?

6           A     For time actually served to start with, that's  
7 correct.

8           Q     And you have been a judge for how long?

9           A     Twenty-nine years.

10          Q     How many felony DUI cases have you handled?

11          A     I have no idea. But it's, you know, probably in  
12 the -- you know, I really -- it's hard to -- it'd just be  
13 a pure guess. You know, 25, 30, something like that.

14          Q     How many sentences have you reduced in half?

15          A     One.

16          Q     This one?

17          A     Uh-huh.

18          Q     How many sentences have you reduced by less than  
19 a half when the sentence was --

20          A     About -- you know, actually they were -- go  
21 ahead. I didn't mean to interrupt you. Go ahead with the  
22 rest of your sentence.

23          Q     In a sentence that is capable of being served --  
24 I know sometimes you may issue a sentence that is an  
25 impossibility. It may -- there may be a treatment, there

1 may be -- you may have to go through a facility that can't  
2 take you or something like that for some special  
3 treatment, but I understand that.

4           So a sentence may be thwarted because it's  
5 impossible to serve. But a sentence that is not thwarted,  
6 okay, in that category of sentences that are not thwarted  
7 and are possible for the -- for the offender to actually  
8 serve, how many times have you reduced a sentence by less  
9 than 50 percent?

10          A     I'm not completely clear of your -- the question.  
11 But I can actually only think of two instances where I  
12 have reduced the sentence from what I originally imposed.

13          Q     This one and one other?

14          A     No. Two others.

15          Q     Two others, okay. And what are the -- when you  
16 reduce that -- a sentence, you've done it three times.  
17 What are the factors -- well, first of all, how many times  
18 have you had a motion to reconsider --

19          A     I've had a motion and they get more frequent. At  
20 the end, you don't keep a count of those kind of things --

21          Q     Is it common?

22          A     -- but 50 or so. You know, 50 or so.

23          Q     And what are the criteria that you would take  
24 into account when you determine whether a sentence ought  
25 to be reduced?

1           A       Everything you took into account to start with,  
2       and then any other information that's made available to  
3       you, you know, by anybody.  And then you just do that --  
4       you do that mental exercise of balancing the scales,  
5       considering all the things that you consider in regard to  
6       a sentence that you impose, the purpose of sentencing.

7                    I always keep those in mind in regard to every  
8       sentence that I impose.  You just do a re-balancing of the  
9       -- of the scales and reach a decision.

10          Q       I'm asking this, Judge, because I've talked to  
11       several -- I don't practice criminal law, never have.  But  
12       I have talked to several attorneys who do.  And I'm not  
13       sure that there is even statistics out there, but  
14       anecdotally, the feedback I get that it's -- it almost  
15       never happens that a sentence is reduced unless -- or  
16       modified unless the sentence, for some reason, cannot be  
17       carried out.

18          A       I've never heard that.

19          Q       You don't agree with that?

20          A       Well, no, I don't.

21          Q       Oh.

22          A       I have never heard that.

23          Q       But you have only done it three times in  
24       29 years?

25          A       Yes, that I can recall.

1 Q Well, that would be rare, wouldn't it, even --

2 A Yes.

3 Q -- in your case?

4 A It's not something you do lightly. You hope that  
5 you've done such a good job in the beginning that you  
6 don't see any reason to change it. You know, you hope  
7 that you've thoroughly considered it and that you've done  
8 such a good job in the beginning and given the appropriate  
9 sentence.

10 But sometimes, things come along, and you take a  
11 little different view, and you consider new information  
12 that's given to you, and you reach a different conclusion.  
13 And that's why we have a motion to reconsider.

14 SEN. CAMPSSEN: All right. Thank you.

15 SEN. MARTIN: All right. Mr. Strom.

16 EXAMINATION

17 BY MR. STROM:

18 Q Judge Hughston, I've followed this and I've got  
19 to say, the optics of this are horrible from the victim's  
20 perspective. And you understand that --

21 A I certainly do.

22 Q -- the sentence and they thought it was ten years  
23 and then motions were filed. And, you know, I've  
24 certainly read the motion for reconsideration, it's  
25 compelling. In laying out those statistics or something

1 that I think you would want to take into consideration as  
2 a judge and I get that.

3 The problem that I have is the fact that all this  
4 was done on papers, as opposed to reconvening a hearing.  
5 Because I don't know that --

6 A If I had it over to do again, I'd certainly have  
7 a hearing before I did it.

8 Q Well, that's what I wanted to ask you. Because I  
9 mean, --

10 A There is no question. If I had it to do over  
11 again, you know, as soon as I got that motion to  
12 reconsider, I would have said, okay, here's the briefing  
13 schedule and then we're going to have a hearing.

14 Q Right. So your testimony is, that if you had to  
15 do it over again, you would have had a hearing before  
16 you --

17 A Absolutely.

18 Q -- and in the future, that --

19 A Absolutely.

20 Q -- would be your priority?

21 A Absolutely.

22 MR. STROM: Okay. That's all I have for Judge  
23 Hughston.

24 SEN. MARTIN: Senator from Darlington.

25 EXAMINATION

1 BY MR. MALLOY:

2 Q The think that, one, I understand that -- what  
3 you would do in the future. But that's not something that  
4 is required of you, is it, to have the hearing before you  
5 actually do it?

6 Because, for example, you know, I am one of the  
7 guys that has to practice in every court. And it seems as  
8 though like I usually use the family court system. And  
9 they file motions for reconsideration as a practical  
10 matter in almost -- in a lot of cases.

11 And I think that you said that you had a motion  
12 for a reconsideration about 50 times probably?

13 A That's just a good guess, best guess I can give.

14 Q So --

15 A I guess they get a bit more frequent.

16 Q I think I did a case in front of you in 1991 over  
17 in Camden with a conspiracy case, back when the Grand Jury  
18 was first taking place. That shows you how long I am  
19 going -- going back.

20 Do you recall, in your earlier practice, where  
21 this was much more common that they would end up changing  
22 a sentence before the end of a term --

23 A Yeah.

24 Q -- as long as it was timely?

25 A Right. Yeah. There was some -- there was a --



1 you know, that there was a body of law, rules, whatever it  
2 was that said when a visiting judge -- when the term was  
3 over for that judge, and particularly if he was out of the  
4 circuit, that that was it.

5 Q And there was a race to the courtroom --

6 A That's right.

7 Q -- before Friday afternoon?

8 A That's right. Because when that judge left town  
9 on a Friday, nothing else could be done.

10 Q But now, it's been changed?

11 A Right.

12 Q There is more notification in those kinds of --  
13 those kinds of things?

14 A Correct.

15 Q So I think there is some discussion about how  
16 many times this has happened. We don't have any  
17 statistics on reconsideration in the 17th circuit in South  
18 Carolina, do we?

19 A Not that I know of.

20 Q And do you have a recollection of the other two  
21 times that you had -- had opted to have a reconsideration  
22 hearing and the sentence was changed? Do you have an  
23 independent recollection of that?

24 A To what extent that it was?

25 Q To what extent of the cases.

1           A       Well, I can recall one that I changed from four  
2 to three years. And I can call -- recall another that I  
3 changed from two years to eighteen months.

4           Q       Okay. All right. And in this particular  
5 situation, the -- the timeliness of motion, was any of  
6 those things taken into consideration, everything was  
7 filed timely?

8           A       It was as far as I know.

9           SEN. MALLOY: Okay. All right. That's all I  
10 have.

11          SEN. MARTIN: All right. Any other questions?

12          Well, Judge, thank you very much.

13          Now, Counsel --

14          MR. HUGHSTON: One other thing that I want to  
15 mention. And I'm just going to mention it because it's --  
16 I've read it twice and I've heard it again today, that  
17 there was some sort of special relation between me and  
18 Mr. Barr that has somehow influenced me in regard to this  
19 situation. The fact that he went to The Citadel and I  
20 went to The Citadel. That he went to the University of  
21 South Carolina, that I went to the University of South  
22 Carolina law school.

23                 Before this began, I wasn't even sure -- and I'm  
24 still not sure -- what year Mr. Barr was at The Citadel.  
25 And I'm still not sure what year he went to the University

1 of South Carolina law school, you know.

2 He may have been at one more or he may have been  
3 at both of those places at the same time that I was. But  
4 I have absolutely no recall of any interaction between me  
5 and Mr. Barr during the time that I was at The Citadel or  
6 during the time that I was at the University of South  
7 Carolina law school.

8 I know he was not in my company. I know he was  
9 not in my battalion. I know he was not on my honor  
10 committee with me. I know he was not on Summerall Guards  
11 with me at The Citadel. I don't know what department he  
12 was in as far as his major was concerned. I've never had  
13 a class with him that I know of. And the same things goes  
14 for law school.

15 I recall one other occasion where he appeared  
16 before me on a case several years ago. And the reason I  
17 recall that is because, again, it was a very unusual and  
18 serious case. But other than that, I've had absolutely no  
19 connection with Mr. Barr in any shape, form, or fashion.

20 SEN. MARTIN: Thank you very much.

21 SEN. MALLOY: I have one last thing.

22 SEN. MARTIN: Senator from Darlington.

23 SEN. MALLOY: Judge, I have one last thing.

24 RE-EXAMINATION

25 BY SEN. MALLOY:

1           Q     And I -- and, obviously, I'm not only interested  
2     in the total purview. I am also interested in the  
3     sentencing aspects. And so I will ask you this in your  
4     process for going through this and to do a sentence  
5     reduction.

6                     I have seen in my lifetime for felony DUIs for  
7     people who get 30 years. I have seen -- I mean, because  
8     it has another related charge. And I have seen in cases  
9     where they get very little time.

10                    I've seen where -- I've got something in my  
11    office that's pending now where the passenger in a vehicle  
12    of a person driving. And it seems that there's a tendency  
13    to end up giving a very minimal sentence because they were  
14    in the vehicle together. Sort of a step-down kind of  
15    thing with family members.

16                    In light of the fact that this was a person who  
17    was no relation, was, you know, no connection to the  
18    victim, sometimes those sentences, they do go higher than  
19    those that are in the passengers.

20                    So in your process of going through this,  
21    understanding that there is no consistency, no disparity  
22    -- I do disagree with you on the guideline issue.

23                    I don't -- I do not -- I do agree on the range  
24    that we probably need something more specific. I do agree  
25    that there should be a handbook of some sort to end up

1 showing the sentences.

2 But what you indicated was, in looking at it, you  
3 studied the federal guidelines. And what other guidelines  
4 did you --

5 A Well, we had a set of proposed guidelines from  
6 South Carolina that was introduced and that -- well --  
7 introduced about in 2000 or the late 1999s that was  
8 sponsored by a lot of the prominent members of the general  
9 assembly then, and are still here now. You know, it had  
10 actually passed the house and got to the senate.

11 But anyway, that's the history of it. And I  
12 looked at the -- I got a copy of those and looked at those  
13 to see what they would recommend in regard to this  
14 particular case.

15 Q And do you have any type of process of the  
16 sentencing that you've imposed in the past on that? Did  
17 you take --

18 A I certainly thought about those. You know, I've  
19 thought -- you know, you keep -- each judge -- as I've  
20 said, eventually somehow or another during the time that  
21 you're on the bench, each judge comes up with your own  
22 sentencing guidelines as far as how you handle particular  
23 types of case.

24 You know, that's just -- that's what we do now.  
25 We've got 50-some-odd judges that have got 50-some odd

1 sets of guidelines that they generally go by, you know, in  
2 regard to sentencing a criminal defendant.

3 Q And I'll end with this. And Miss Hudson was very  
4 helpful in working on our sentence reform package --

5 A And I appreciate that.

6 Q -- we have concerns in our state that where --  
7 where a sentence in Greenville, a sentence in Darlington,  
8 a sentence in Charleston, they are not the same.

9 A Right.

10 Q I think that there's a reluctance, on the  
11 judiciary as a whole, to end up imposing guidelines. And  
12 so I think that, one, that it is very critical that as we  
13 go forward in those processes that -- I understand that  
14 you said that you would do it a little bit different,  
15 again.

16 And, you know, in light of this circumstance, I  
17 appreciate the fact that you -- or at least are taking  
18 that -- that side, that you would give them due  
19 consideration for having as much transparency and openness  
20 as possible --

21 A Absolutely.

22 Q -- notwithstanding what the law requires.

23 A Absolutely. And, again, I say often times, you  
24 know, when you quit learning, it's time to leave. And I  
25 learn every day. I learn something new every day. That's

1     why I keep doing it. That's why I keep doing it is that  
2     every case is different. I learn something every day I'm  
3     in the courtroom. I learn something every day I'm in the  
4     courtroom. I take some lesson home with me every day, and  
5     I certainly have in this.

6             SEN. MARTIN: Thank you, Judge.

7             All right, sir. Counselor.

8             MR. DENNIS: Mr. Barr, if you could please step  
9     forward.

10            SEN. MARTIN: Mr. Barr, would you take the oath.

11            MR. BARR: I will.

12            SEN. MARTIN: Thank you. And would you please  
13     respond to the counselor's questions.

14            MR. BARR: I would be glad to.

15            CAPERS BARR, having been first duly sworn

16                            testified as follows:

17    EXAMINATION

18     BY MR. DENNIS:

19            Q     Mr. Barr, you were Mr. McCauley's defense counsel  
20     in the matter that we're discussing here today?

21            A     That's correct.

22            Q     You were present, obviously, at both hearings?

23            A     I was.

24            Q     And you filed a timely motion, subsequent to the  
25     first hearing, for a reconsideration of Mr. McCauley's

1 sentence?

2 A I did.

3 Q You have heard everything that everyone has had  
4 to say today?

5 A Yes, I have.

6 Q Could you please offer the Commission your  
7 observations and your thoughts on Judge Hughston's  
8 procedural -- whether he followed the proper procedure and  
9 whether his demeanor and temperament were appropriate in  
10 this manner.

11 A I would glad to do that.

12 Ladies and gentlemen, I am pleased to be here  
13 this morning.

14 I think Representative Mack made a comment a few  
15 minutes ago in the context of his remarks that perception  
16 is reality. And that made me think of some things.

17 What I have heard from Mrs. Savenkoff and the  
18 other members of Miss Caperton's family and friends is  
19 directed to the final hearing that we had. And I believe  
20 that when they came to that hearing -- remember the  
21 context of that is, that Judge Hughston had filed an order  
22 reducing the sentences as Senator Campsen observed, the  
23 active sentence in half.

24 And I believe that they came to that hearing with  
25 certain perceptions. One of them is the last remark that



1 Judge Hughston just addressed. And that is, that Judge  
2 Hughston and I are big buddies because we both attended  
3 The Citadel, and that there was some backdoor-dealing  
4 involved in this case because he just filed an order and  
5 there was no hearing. I think that they believe that.

6 And I think that the other thing that they  
7 believe was that the Victim's Bill of Rights was violated.  
8 And to them, that was reality the day that they appeared  
9 at that hearing. That was their thinking as they observed  
10 Judge Hughston and as they heard the arguments.

11 And, Representative Mack, I think the point made  
12 is those perceptions, those beliefs as they came, in turn,  
13 formed the perceptions that they gained of what happened  
14 at that hearing.

15 Now, I was there too. And I knew there had been  
16 no backdoor-deal. I knew that the Victim's Bill of Rights  
17 was not violated. And I was sweating bullets. Because I  
18 had worked hard in probably one of the most, if not the  
19 most, emotionally-challenging cases that I have ever  
20 handled in 44 years.

21 I was sweating bullets that Judge Hughston would  
22 indeed reconsider and jump the sentencing back up to ten  
23 years. That was my perception. But I can say this  
24 without equivocation: Judge Hughston did not smirk, he  
25 not treat the Savenkoff family, the Caperton family with

1 any disrespect. He regarded them as seriously and as  
2 attentively as he did me.

3 And had -- had the Judge Hughston that they're  
4 described, listened to Capers Barr and ignored Scarlett  
5 Wilson and put his head on his hands when he heard from  
6 them, I would have walked back to my office after that  
7 hearing, confident and glad, but I didn't. I walked back  
8 literally sweating bullets that what I had worked so hard  
9 for, for my client, would not be sustained.

10 So perception is reality, Representative Mack.  
11 And I believe, I would respectfully suggest, that that is  
12 what greatly informs the matters that we're called upon to  
13 address and discuss here this morning.

14 I graduated from The Citadel in 1963. I looked  
15 up my -- in my alumni directory, and I learned that Judge  
16 Hughston graduated in 1965.

17 I celebrated my 50th reunion last weekend. And  
18 back in the days when I attended The Citadel, there was  
19 this healthy camaraderie in the core of cadets because we  
20 were assigned to units by height.

21 And I was in A company, and the other tall guys  
22 are in T company. And the core then descended down to the  
23 middle. And we called the likes of Judge Hughston -- we  
24 called them the duck-butts. They were the short guys.  
25 Well, the tall guys and the short guys barely -- very

1 rarely knew each other except in your own class.

2 I had no inkling who Judge Thomas Hughston was at  
3 The Citadel. I don't remember Judge Hughston. I hope I'm  
4 not offending him, because he doesn't remember me either,  
5 from law school. I don't know whether he went directly to  
6 law school from The Citadel or whether he might have gone  
7 in the service. I went into the service after law school.  
8 I don't remember him from law school.

9 Prior to the McCauley case, I am positive that I  
10 don't -- that I don't -- that I've never tried a case in  
11 front of him. But prior to the McCauley case, I probably  
12 pled six or eight cases before Judge Hughston. He only  
13 remembered maybe one other. But probably over my  
14 forty-four years, I have pled 6 or 8 cases before Judge  
15 Hughston.

16 And his demeanor in those cases was a little  
17 different than the demeanor in this case, except that this  
18 was a high-profile case. In this case, my client pled  
19 guilty in May of 2012, and his picture was on the front  
20 page. And there was a big splash about it, sentence was  
21 deferred.

22 He asked Judge Hughston, by the way, to take him  
23 into custody and he did. And then he wasn't sentenced  
24 until -- my timeline, until the following -- there was  
25 another splash at the first sentence. And at the hearing

1 on the motion for reconsideration, the media was again  
2 present.

3 And I know we all remember that in the debate  
4 over whether cameras should be included in the courtroom  
5 or permitted in the courtroom, one of the -- perhaps, one  
6 of the valid arguments made is, how will that affect the  
7 demeanor and the way that participants in the process  
8 conduct themselves?

9 And, perhaps, that's another observation that  
10 should be made, in addition to what I believe was the  
11 perception of the Caperton family when they attended that  
12 hearing on -- on the motion for reconsideration.

13 But I can say from where I sat and from where I  
14 stood, that I was focused on Judge Hughston at least  
15 90 percent of the time. When Scarlett was talking, I was  
16 looking at her some, and when the Caperton family  
17 addressed Judge Hughston, I was looking at them  
18 occasionally.

19 But I was directed 90 percent to Judge Hughston.  
20 He did not smirk. He did not treat anyone with  
21 discourtesy. He treated us all the same. I went back to  
22 my office sweating bullets.

23 Now, I think it's important from what I have  
24 heard from the Caperton family to understand how this  
25 decision to reduce the sentence evolves. I found a --

1 Senator Malloy, a short summary motion for reconsideration  
2 stating my grounds but not briefing them.

3 And then Judge Hughston wrote us back, wrote to  
4 Assistant Solicitor Williams and to me, and he set out a  
5 briefing schedule. I sent you a volume of papers, I --  
6 probably haven't had a chance to look at them all.

7 But in the letter asking for the briefing -- or  
8 setting the briefing order. Judge Hughston said this -- I  
9 just have my summary here. I can find the actual letter.  
10 But he says after he got them, he said, I will then do an  
11 order or may ask for a hearing.

12 Now, I think that's important because he told me  
13 and he told the solicitor at that time that he may not  
14 hold a hearing at all. Neither one of us said, Judge --  
15 unequivocally, at least, Judge we want to hear it.

16 I think when I wrote him back, I said, I am  
17 prepared to have a hearing or not. And I think in the  
18 solicitor's brief, she said, we want you to summarily  
19 dismiss the defendant's motion, summarily take it. But if  
20 you don't, give us ten days' notice if you're going to  
21 have a hearing, I think, words to that effect.

22 So nobody actually said to Judge hearing -- I  
23 mean to Judge Hughston, we want a hearing in this case.  
24 And, respectfully, I don't believe that there is any  
25 conflict, Mr. Dennis, between Rule 29 and the Victim's

1 Bill of Rights. Because the Victim's Bill of Rights says  
2 that a victim has a right to be present when the defendant  
3 has a right to be present.

4 Rule 29 says that posttrial motions can be  
5 decided in chambers. State versus Bradley -- and I am not  
6 going to give you the cite. It is somewhere buried in  
7 these papers.

8 State versus Bradley was a case where a  
9 defendant's motion for reconsideration was denied. The  
10 judge ruled against him. And he appealed it saying that  
11 he had a right to be present. And the court of appeals  
12 said, no, you didn't.

13 So it's clear that a defendant has no right to be  
14 present at his posttrial motion. And, therefore, under  
15 the Victim's Bill of Rights, the victim doesn't have a  
16 right to be present.

17 Now, does that mean that a judge should exercise  
18 his discretion to hold a hearing? You've just heard from  
19 Judge Hughston about that. And he said, certainly, I wish  
20 that I had in this case, and I would in the future.

21 But, again, I believe that the Caperton family  
22 and the representatives of Mothers Against Drunk Driving  
23 appeared at that hearing with the firm belief that  
24 something had happened that was not appropriate behind  
25 closed doors between two Citadel graduates.

1           And, secondly, that the Victim's Bill of Rights  
2 was violated, neither of which, I respectfully submit to  
3 you under oath, is true. I believe that's all I have to  
4 say.

5           I will say this, I forgot the lady's name from  
6 MADD. When Senator Campsen -- when you read the ABA  
7 definition of judicial temperament, I believe I heard her  
8 respond in -- to those criteria that she would object to  
9 -- I think she said decisiveness. I don't hear very well,  
10 but I think that's what I heard her say.

11           And I think -- I think Mr. Sellers asked this  
12 question. I think that if Judge Hughston had upped that  
13 sentence back to ten years, you wouldn't see a face in  
14 this room right now.

15           And I believe that the essence of the complaint  
16 that's being voiced is that the sentence was reduced at  
17 all. And I believe that the most persuasive aspect -- I  
18 am not tooting my own horn here. The most persuasive  
19 aspect that influenced Judge Hughston to act as he did was  
20 the comparative sentences that I was able to discover.

21           I learned -- to those of you in the general  
22 assembly who are responsible for funding the clerk of  
23 court's information systems, I learned networking with a  
24 colleague that you can go to the clerk of court and they  
25 can report all kind of statistics out of their filings.

1           And so I asked the clerk of court in Charleston  
2 to produce for me all of the sentences in felony DUI cases  
3 in Charleston County for five years. And she -- they got  
4 it out in 15 minutes. I mean, it was remarkable.

5           And then I had my assistant extract from that,  
6 the felony DUI death cases. And we were able to sort  
7 them. And we were able to discover that in 5 years, there  
8 were 19 felony DUI death cases in Charleston County.

9           Of those 19, Sam McCauley was the youngest. Of  
10 those 19, Sam McCauley got the second harshest sentence.  
11 And I think that he got the equally harshest sentence in  
12 terms of active time served. And that the average active  
13 sentence was 5-point something years. And I think that  
14 that's why this sentence was reduced, as it should have  
15 been.

16           Thank you. I hope I haven't --

17           SEN. MARTIN: That's okay.

18           MR. BARR: -- expounded too much. And I'll be  
19 glad to answer questions that anybody might have.

20           SEN. MARTIN: Thank you, Mr. Barr.

21           Any questions from members of the commission?

22           All right. Well, thank you very much.

23           MR. BARR: It's a pleasure being here.

24           SEN. MARTIN: Just a minute.

25           Miss Savenkoff, would you like to be heard one



1 more time in response to anything that's been said?

2 MS. SAVENKOFF: I'd just like to --

3 SEN. MARTIN: Please take the podium because of  
4 the transcript. I apologize.

5 I've got to remind you, you're still under oath.

6 MS. SAVENKOFF: Yes. I would like to say that a  
7 lot of things presented by Mr. Barr and Judge Hughston, to  
8 me, is not truthful information.

9 If the sentence had gone back up, we would still  
10 be here today because that's not the purpose of this. The  
11 purpose of this hearing, with us here, is the way that we  
12 were treated in that courtroom. It was not one of  
13 dignity, respect. It was very unprofessional by the  
14 judge. And that's the main purpose of us being here. And  
15 this should not be allowed in a courtroom by a judge. And  
16 this needs to be taken seriously.

17 Thank you.

18 SEN. MARTIN: Thank you.

19 Yes, ma'am. I am going to recognize you, but  
20 we're not going to hear from you. We're going to have to  
21 move on.

22 Do you have something you'd like to say that's  
23 specific to something that's been said?

24 MS. DEHAY: Well --

25 SEN. MARTIN: And I'm going to ask you to come up

1 because --

2 MS. DEHAY: Yes, sir.

3 SEN. MARTIN: -- we've got to get it on the  
4 record.

5 And I remind you, you are still under oath.

6 MS. DEHAY: Yes, sir.

7 The assumptions of Mr. Barr I greatly resent. I  
8 absolutely would be here regarding the actions of Judge  
9 Hughston whether he had upped the sentence or not.

10 Because I'm -- I'm ashamed to admit, but I'm a  
11 volunteer. If I were in a paid position, they wouldn't  
12 have hired me because I don't have the education that  
13 every one of you have.

14 I mean, I graduated high school, and I took some  
15 classes at Trident Tech. And that's basically -- the rest  
16 was from the school of hard knocks. And even I know how  
17 to act in a courtroom. Even I know how to treat people.

18 Many of you have learned in school, if somebody  
19 stands with their arms crossed, what does that mean?  
20 You're closed off. It's -- you're closing yourself off.

21 If you do certain facial expressions -- you're  
22 taught in speech class how to -- how to act. You don't do  
23 that. You have your hands open. You know, there's -- you  
24 are taught certain things. And every one of us -- every  
25 one of you in this room has more education than I have,

1 and even I know how to conduct myself.

2 And having someone with, you know -- having  
3 someone assume how everyone is reacting, and it was an  
4 incorrect assumption that we went in hurt and just  
5 expecting certain things, that's not true. And I just  
6 wanted to say that.

7 And I wanted you guys to please make sure you  
8 read this. This was in Miss Savenkoff's affidavit. And  
9 there are several things of great interest for you guys.  
10 And I don't need to read them.

11 SEN. MARTIN: That's fine. Thank you so much.

12 MS. DEHAY: Thank you.

13 SEN. MARTIN: Thank you.

14 All right. Counselor.

15 MR. DENNIS: Judge Hughston, before we proceed  
16 with the remainder of your hearing, do you have any final  
17 reaction to anything that Miss DeHay or Miss Savenkoff has  
18 offered?

19 MR. HUGHSTON: I think I've --

20 MR. DENNIS: If you would please come back to the  
21 podium.

22 MR. Hughston: I have offered my apologies. If I  
23 did or said anything that they found offensive, I am  
24 sorry. I certainly did not intend to hurt anyone. And  
25 that's all I can say.

1 MR. DENNIS: Thank you, Judge Hughston.

2 If you'd come to the podium, we'll proceed with  
3 the remainder of the hearing. And then the Commission can  
4 decide how to proceed after that.

5 SEN. MARTIN: All right.

6 FURTHER EXAMINATION

7 BY MR. DENNIS:

8 Q Judge Hughston, I have, sort of, some basic  
9 questions for you. Not the least of which is, would you  
10 please explain to the Commission why you'd like to  
11 continue to serve as a retired, active circuit court  
12 judge.

13 A Well, it's been my work for 29 years and I still  
14 continue -- I still enjoy it. I still think that I do a  
15 good job. I devote half my time to criminal work. We've  
16 only talked about criminal work here today, one case out  
17 of thousands and thousands that I've handled in all of the  
18 29 years, you know.

19 But I also do half on the civil side. And I also  
20 enjoy doing the civil side of court also. And I  
21 particularly enjoy being in Charleston.

22 Senator, I used to live in Greenwood. I moved to  
23 Charleston when I retired. And I know you said I'm from  
24 Greenville earlier from Senator Martin. But I have been  
25 in Charleston for 13 years. And one of the reasons that

1 I'm there is because I get such a variety of cases and I  
2 get such good lawyers. Not that I don't get good lawyers  
3 at a lot of other places too.

4 But it's a barrage of cases and it's enjoyable  
5 work. And I still think that I do a good job. And I  
6 still think that I benefit the people who appear before me  
7 in resolving their conflicts in a judicious way. And  
8 that's the best way I can answer that question.

9 Q Judge Hughston, we've talked a lot about demeanor  
10 today. Can you please, briefly, describe what you believe  
11 the appropriate demeanor for a circuit court judge is.

12 A Well, certainly one that let's everybody know  
13 that you're listening to what they have to say and you're  
14 considering what they have presented to you. You know,  
15 that's the first thing.

16 You want everybody to consider -- everybody to  
17 leave, feeling that they have been heard and that you will  
18 consider what they have to say.

19 I was quoted by somebody saying I want everybody  
20 to leave feeling good about having been in my courtroom.  
21 You know, that's what I mean by that. I want everybody to  
22 leave feeling that I have heard them, that I have listened  
23 to them, and that I am going to consider what they've  
24 presented to me. And I do that in every case.

25 That's my goal as a judge is to -- is to treat

1 people fairly and equally that appear before me. And I'm  
2 very sorry that somebody -- that some people did not reach  
3 that conclusion in regard to this one case that we've  
4 focused on.

5 But I think the absence of any other conduct over  
6 29 years like that, certainly suggests the way that I  
7 normally handle cases and the normal perceptions of how I  
8 handle cases.

9 Q Thank you, sir.

10 As you know, you've met with the Lowcountry  
11 Citizens Committee, and they issued a report on your  
12 qualifications under the nine evaluative criteria.

13 They included a comment at the end of their  
14 report that said that they were aware of -- and I am going  
15 to use their terms here -- community concerns about the  
16 candidate's possible arbitrariness, specifically as it  
17 relates to repeat offenders.

18 Can you please react to that comment in the  
19 Citizens Committee report.

20 A Well, I don't know how deeply you want me to go  
21 into that. But I certainly am not arbitrary. Well, I  
22 looked up arbitrary. When I saw that word, I looked up in  
23 the dictionary to see what it meant when someone said that  
24 you're arbitrary in your decisions in the way that you  
25 handle cases. And it means -- I think it means without

1 reason, something to that effect. And so -- without  
2 taking into consideration what you should take into  
3 consideration.

4 In every case that comes before me, you know, I  
5 hear from the state, you know, as far as laying out the  
6 facts of the case and what led to the charge and how they  
7 violated the law and so forth. And then I turn to the  
8 defense, and I say, let me hear from you. Tell me what  
9 you have to say about all of us.

10 And then I go back and forth until I -- and I ask  
11 a lot of questions. Because I've -- as I've said, I think  
12 the most important thing for a decision maker to do is to  
13 ask the right questions. It's amazing what you can find  
14 out when you ask a question about something that's been  
15 overlooked.

16 So I take a lot of time and I ask the questions.  
17 And I also ask for pre-sentence reports. And I also hear  
18 from the probation officers in regard to anything, any  
19 contact that they have had with him.

20 So my process of handling cases, I think, you  
21 know, is anything but arbitrary in terms of having  
22 something.

23 You know, I try to establish the facts, objective  
24 facts, that I can rely on in deciding how to handle a  
25 case. You know, maybe the particular allegation that I

1 put people on parole, on probation that have been repeat  
2 offenders, on occasion, you do put somebody on parole, on  
3 probation for a second time.

4 But I looked at the materials that that  
5 particular person -- that brought that issue up. He had a  
6 stack of papers about, like that thick. And I'm so glad  
7 that I asked and got a copy of what he had with him at  
8 that time, you know.

9 And when I examined that, I found that he was --  
10 he had picked out eight cases that I had been involved  
11 with in some way, over ten years. And most of those were  
12 non-violent offenses. Most of them had to do with drugs  
13 of some sort or another.

14 And of those eight cases, in four of those cases,  
15 I followed the recommendation that the solicitor had given  
16 to me regarding how to handle the case. And in four  
17 others, I -- there was no recommendation. And,  
18 presumably, I handled it on the basis of how I saw to  
19 handle it.

20 So I don't think there is any substantive  
21 evidence, objective evidence that I am any different from  
22 any other circuit judge in South Carolina in regard to the  
23 way I handle the cases that come before me.

24 You all did some research as far as the  
25 percentages are concerned, and that sort of thing, about



1 the retired judges. I think you got statistics on seven  
2 retired judges. And I'm about in the middle as far as the  
3 percentages are concerned.

4           So I don't think that I'm arbitrary. I do, in  
5 every case, consider certain things. But I think the  
6 things that I consider in deciding whether to place  
7 someone on probation, remember, every probation case is a  
8 split sentence. Every probation case involves some loss  
9 of liberty. It may be the jail time that they -- that  
10 they've experienced, and we are required to give them  
11 credit for that.

12           I had a case just within the last week or two,  
13 several, several. It's not usual to have somebody now  
14 come to -- come in who has served more than the maximum  
15 amount of time that the law allows in regard to the  
16 offense that they pled guilty to. They don't get credit  
17 for the next time -- but anyway. It's not unusual to have  
18 somebody come in with a year's jail time before you  
19 sentence them.

20           So every sentencing which probation is imposed as  
21 a condition at the end, and it's serving the sentence  
22 while on probation. That's the way the law is written,  
23 serving the sentence while on probation.

24           So every sentence involves some loss of liberty.  
25 So much time -- every sentence is a split sentence. So

1 much time, suspended on so much time, with so much  
2 probation.

3 So I don't think that I do have an arbitrariness  
4 about the way I handle those cases.

5 Q Judge Hughston, you're also aware, and you eluded  
6 to it a little bit earlier, the Commission has received  
7 478 ballot box surveys regarding you.

8 Within those ballot box surveys, there were 92  
9 individualized comments. The vast majority of those 92  
10 comments were positive. They suggested that you're  
11 diligent, hard-working, fair-minded, and overall a good  
12 judge.

13 There were three specific comments that called  
14 into question your consistency on the bench and suggested  
15 certain lawyers more receive more advantageous treatment  
16 than others.

17 I understand you've touched on that a little bit  
18 already today. But could you, one more time please, react  
19 to those specifics comments on this.

20 A I have tried to figure out -- without some  
21 context of where those remarks came from in relation to  
22 what I did in court, it's very hard to respond to that.  
23 But I would just think that the -- the comments about  
24 inconsistencies or inconsistent rulings, I think they  
25 said, are -- come from the civil side of the court rather

1 than the criminal side of the court. Because you have  
2 much more opportunity on the civil side of the court to --  
3 to do things, you know.

4 Civil cases are the cases where you have to rule  
5 on rules of evidence and rules of procedures and summary  
6 judgments and so forth and so on. You get much more  
7 opportunity on the civil side than you do on the criminal  
8 to -- to be faced with difficult questions.

9 And every lawyer thinks that, you know, when he  
10 asks that question that it's not hearsay, but you've got  
11 to say whether it is. And everybody -- every lawyer, you  
12 know, when they want to present some -- some piece of  
13 evidence in court -- in court, and you say, no, you can't  
14 do that, you know, it's not in accordance with the rules  
15 of procedure or whatever, they think -- obviously they  
16 disagree with you. You know, they think that you are not  
17 ruling correctly.

18 So without some context that says, you did this  
19 in this case, and you did that in that case and that's  
20 inconsistent, it's hard to respond to that. But -- but I  
21 certainly am mindful of that. And I will try to, you  
22 know, learn from that as I go forward.

23 Q Thank you, Judge.

24 I have just a final series of housekeeping  
25 questions that are really only for the record.

1           Have you sought or received the pledge of any  
2 legislator prior this date?

3           A     No.

4           Q     Have you sought or have you been offered a  
5 conditional pledge of support of any legislator pending  
6 the outcome of your screening?

7           A     No.

8           Q     Have you asked any third parties to contact  
9 members of the general assembly on your behalf?

10          A     No.

11          Q     Are you aware of anyone attempting to intervene  
12 in any part of this process on your behalf?

13          A     No.

14          Q     Have you had contacted any members of this  
15 Commission?

16          A     No.

17               MR. DENNIS: Thank you, Judge Hughston.

18               I would note that the Lowcountry Citizens  
19 Committee found Judge Hughston qualified in the evaluative  
20 criteria of constitutional qualifications, physical health  
21 and mental stability.

22               The Committee found him well-qualified in the  
23 evaluative criteria of ethical fitness, professional and  
24 academic ability, character, reputation, and experience.  
25 And qualified in the area of judicial temperament.

1           Mr. Chairman, I would note for the record that  
2 all of the concerns raised during the investigation of  
3 Judge Hughston have been incorporated into the questioning  
4 or the complaint today.

5           Mr. Chairman, that is all that I have for this  
6 candidate.

7           SEN. MARTIN: All right. Any other question of  
8 members of the Commission?

9           Well, thank you very much.

10          MR. HUGHSTON: Thank you for your consideration.

11          SEN. MARTIN: And let me just say that it's my  
12 understanding, up until just a few years ago, the  
13 continuation of a retired judge was done by appointment of  
14 the Supreme Court Chief Justice.

15          The statute was amended probably five, six years  
16 ago to require that, in order for a retired judge to  
17 continue to hold court, that the screening had to occur  
18 and a recommendation had to be made by the screening  
19 commission in order for the Chief Justice to make that  
20 appointment.

21          So, actually, we're not screening for reelection  
22 in the sense that the legislature would reelect. We are  
23 screening to determine whether or not the recommendations  
24 will be sent over to the Chief Justice pursuant to the  
25 statute, so that the Chief Justice can continue to appoint

1 Judge Hughston to the bench for a period of time. And  
2 that would be her call to make.

3 So with that, we would need -- yeah, we're going  
4 to take a brief recess. And then we'll go into executive  
5 session. And then we'll come out and make a decision as  
6 to what we're going to do. And we'll notify everyone  
7 who's here, and, of course, notify Judge Hughston and the  
8 Chief Justice of our dispositive action.

9 So with that, we'll take a brief recess. And  
10 then come back and hopefully finish up shortly.

11 (Recess taken.)

12 The members went into executive session.)

13 - - - - -

14 (The members came out of executive session.)

15 SEN. MARTIN: We're back on the record.

16 The purpose of this screening has been to  
17 determine whether to recommend to the Chief Justice to  
18 find Judge Tommy Hughston qualified for continuation as a  
19 retired judge pursuant to the statute.

20 I would entertain any motion by members of the  
21 Commission at this time.

22 SEN. MALLOY: Mr. Chairman?

23 SEN. MARTIN: Yes, sir. Senator from Darlington.

24 SEN. MALLOY: Thank you, Mr. Chair.

25 I would first qualify my comments by saying that

1 I have been a practicing lawyer for well over 20 years.  
2 And I have the great responsibility, here in this general  
3 assembly, of -- and one of my other tasks has been chair  
4 in a Criminal Justice Task Force, chair to the Sentencing  
5 Reform Committee, and also the Sentencing Oversight  
6 Committee.

7 And I am -- also want to offer my greatest  
8 sympathy to the family for what they have been doing.

9 Miss Hudson and I worked on the Sentencing Reform  
10 Committee. She came to me and said, we've got more stuff  
11 for victims than this bill's going to have in my -- at  
12 that time -- 20-some odd years of being here in the  
13 general assembly. She was very helpful in getting the  
14 matter passed.

15 As revealed with this matter, with all due  
16 respect to all, I don't think that Judge Hughston violated  
17 the Constitution rules, statutes in those issues.

18 And so for that reason, I want to move that we  
19 find him qualified and send a letter to the Chief Justice  
20 recommending that he continue to serve.

21 SEN. MARTIN: Motion.

22 And is there a second?

23 MR. HARRELL: Second.

24 SEN. MARTIN: A motion to second.

25 Any other discussion?

1 SEN. CAMPSSEN: Mr. Chairman?

2 SEN. MARTIN: Yes, sir.

3 SEN. CAMPSSEN: I would like to make a statement.

4 I am going to vote against Judge Hughston  
5 qualified. And it's not -- it's very little based upon --  
6 I am not giving a whole lot of weight to his demeanor in  
7 the courtroom. I think those go to judicial temperament.

8 I am giving a lot of weight to what I think is an  
9 unprecedented reduction in sentence. And that sentence  
10 was either -- either the sentence itself was a huge  
11 outlier or the reduction was a huge outlier, and it can't  
12 be taken any other way.

13 And my focus is largely upon that, which I think  
14 itself goes to reputation and also judicial temperament  
15 and to the other un-enumerated factors that we statutorily  
16 are authorized to take into account on the Judicial Merit  
17 Screening Commission. We're not limited to the nine.

18 So I just wanted you to know it's really that  
19 very unprecedented sentence reduction that I am focusing  
20 on more than demeanor. Because I understand that is  
21 speculative, perhaps it's subjective. Given some weight  
22 to that, but I think that sentence reduction was a big  
23 issue.

24 SEN. MARTIN: All right. Any other comments?

25 Mr. Strom.



1 MR. STROM: Mr. Chairman, I have done a number of  
2 these cases. I have had three felony DUI cases resulting  
3 in death this year. Two where I represented defendants.  
4 One where I represented the victim's family. The  
5 sentences were one year, five years, and ten years. And I  
6 thought, frankly in all those cases, the sentences were  
7 appropriate.

8 The ten-year sentence was my client. The  
9 five-year was a victim. The one-year was a defendant. So  
10 I don't think the sentence is an outlier.

11 I did not like the way that the matter was  
12 handled. I thought that everything should have been done  
13 in open court. I think the constitutional requirements  
14 are a minimum standard, and the victims should have been  
15 present at every phase of this.

16 And if Judge Hughston would not have acknowledged  
17 that if he had to do this over, that he would have done it  
18 in open court and assured this committee under oath that  
19 in the future, that he will do it on the record, I would  
20 be prepared to vote that he was not qualified.

21 But given his testimony and his history and my  
22 understanding of the body of sentences in felony DUIs, I  
23 am going to vote that he's qualified.

24 SEN. MARTIN: All right, sir.

25 Any other comment?

1 SEN. MARTIN: All right. We have a motion.

2 All those in favor of finding Judge Hughston  
3 qualified, please raise your hand.

4 MS. SHULER: And you're voting a proxy too?

5 SEN. MARTIN: I will. I want to do the vote  
6 first and then we'll vote the proxies.

7 MS. SHULER: Seven.

8 SEN. MARTIN: All right. All those opposed?

9 MS. SHULER: One.

10 SEN. MARTIN: And I have a proxy on behalf of  
11 Mr. Sellers.

12 REP. CLEMMONS: And I have a proxy on behalf of  
13 Representative Bannister.

14 MS. SHULER: So it is nine to one that he is  
15 found qualified.

16 SEN. MARTIN: All right. That vote of nine to  
17 one will send the letter.

18 The purpose of the judicial screening commission  
19 having been accomplished, I would declare it adjourned.

20 Thank you very much.

21 (Ending time: 12:19 p.m.)

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## REPORTER'S CERTIFICATE

I, TRACY E. BROWN, CSR No. 13433, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by Senator Martin;

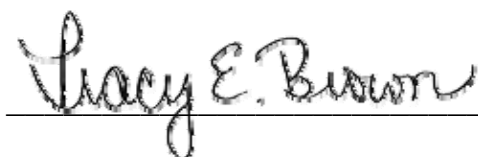
That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 17th day of December, 2013.





TRACY E. BROWN, CSR No. 13433

1	I N D E X			
2	EXAMINATION			
3	WITNESS NAME	EXAM	RE-EXAM	FURTHER EXAM
4	THOMAS LEE HUGHSTON, JR.			
5	By Sen. Martin	4		
6	By Mr. Dennis	5	50	65, 92
7	By Sen. Campsen	65		
8	Mr. Strom	70		
9	Sen. Malloy	71	75	
10	PHYLLIS M. SAVENKOFF			
11	By Mr. Dennis	7		
12	By Sen. Malloy	12		
13	By Mr. Sellers	13		
14	KELLY DEHAY			
15	By Mr. Dennis	13		
16	By Sen. Martin	17	21	
17	By Sen. Malloy	17		
18	By Mr. Sellers	22		
19	SUSAN STROHM			
20	By Mr. Dennis	23		
21	By Sen. Campsen	27		
22	By Mr. Harrell	29		
23	LAURA HUDSON			
24	By Mr. Dennis	31		
25	By Sen. Martin	36		

1	By Mr. Strom	38
2	By Sen. Campsen	39
3	By Rep. Clemmons	40
4	By Sen. Malloy	42
5	By Rep. Mack	46
6	By Mr. Sellers	49
7	CAPERS BARR	
8	By Mr. Dennis	79

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22	7	-	Complaint, Affidavits on Behalf of Ms. Phyllis Savenkoff	7

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