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PROCEEDINGS

November 28, 2018

Judicial Merit Selection Commission, 2018

REPORTER: Patricia Bachand

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

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7 BEFORE:

8 SENATOR LUKE A. RANKIN, CHAIRMAN

9 REPRESENTATIVE G. MURRELL SMITH, JR., VICE CHAIRMAN

10 SENATOR TOM YOUNG, JR.

11 ROBERT W. HAYES, JR.

12 REPRESENTATIVE J. TODD RUTHERFORD

13 MICHAEL HITCHCOCK

14 LUCY GREY MCIVER

15 ANDREW N. SAFRAN

16 ERIN B. CRAWFORD, CHIEF COUNSEL

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20 DATE: November 28th, 2018

21 TIME: 9:30 A.M.

22 LOCATION: Gressette Building, Room 105

23 1101 Pendleton Street

24 Columbia, South Carolina 29201

25 REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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19 Court Reporter's Legend:
20 dashes [--] Intentional or purposeful interruption
21 ... Indicates trailing off
22 [sic] Written as said

1 CHAIRMAN RANKIN: We are going to go on the
2 record. Let me first state that while in executive session
3 earlier this morning, we passed no votes or made any
4 decisions.

5 Now, Judge Smoak, we're ready to proceed
6 with your screening. Let me get you to first raise your
7 right hand.

8 WHEREUPON,
9 THE HONORABLE GERALD C. SMOAK JR., being
10 duly sworn and cautioned to speak the truth, the whole
11 truth and nothing but the truth, testifies as follows:

12 CHAIRMAN RANKIN: Very well. And you have
13 before you financial -- excuse me -- a PDQ Personal Data
14 Questionnaire and a a sworn statement; is that correct?

15 JUDGE SMOAK: Yes, sir.

16 CHAIRMAN RANKIN: Any changes that need to
17 be made to those?

18 JUDGE SMOAK: No, sir.

19 CHAIRMAN RANKIN: And you don't have any
20 objection to those being made a part of the record, do you?

21 JUDGE SMOAK: No, sir.

22 CHAIRMAN RANKIN: All right. If you'll hand
23 those to Lindi, we'll put them in.

24 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
25 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE

1 HONORABLE GERALD C. SMOAK JR.)

2 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
3 COMMISSION SWORN STATEMENT OF THE HONORABLE
4 GERALD C. SMOAK JR.)

5 CHAIRMAN RANKIN: Thank you for being here.
6 And are you familiar with this process -- you've done this
7 before, but for the record let me just state that in our
8 investigation of your candidacy and for reelection to the
9 bench. We've looked at nine evaluative criteria, which has
10 included a ballot box survey, a study of your application
11 materials, verification of your compliance with state
12 ethics laws, a search of newspaper articles in which your
13 name appears, a study of past screenings, and a check for
14 economic conflicts of interest.

15 No affidavits have been filed in opposition
16 to your election. No witnesses are present to testify.
17 You have the opportunity to make a brief opening statement
18 if you want to. Otherwise, Mr. Triplett will start and
19 proceed with the exam.

20 JUDGE SMOAK: I don't have any statement.
21 I'll defer to Mr. Triplett.

22 CHAIRMAN RANKIN: Very good. Thank you.
23 EXAMINATION BY MR. TRIPLETT:

24 **Q. Thank you, Judge Smoak. After serving for**
25 **twenty-three years on the family court, why do you want to**

1 **continue serving as a family court judge?**

2 A. I enjoy what I do. I enjoy resolving the
3 conflicts that come before me in my courtroom. I enjoyed
4 doing that when I was practicing law, and I enjoy it on the
5 bench. And as long as you keep enjoying, it I'm going to
6 keep doing it as long as they'll have me.

7 **Q. Judge Smoak, please explain one or two brief**
8 **accomplishments that you feel you've completed during your**
9 **tenure, and then a goal you would like to accomplishment if**
10 **reelected.**

11 A. Of course judicial-wise, I guess I've enjoyed
12 participating -- I guess it's not so much an
13 accomplishment, but I've enjoyed participating in the Joe
14 Program, which is the judicial observations program put on
15 by the law school, where you get a law student come sit
16 with you. And I've done that for probably the past four or
17 five years. And I've really enjoyed that.

18 I've got to know some smart, smart law students
19 that we're lucky to have in this state, from here in
20 Columbia and Charleston. I think that's probably what I
21 have enjoyed of recent the most.

22 If you're talking about not judicial, I guess I -
23 - my best accomplishment is my grandson was born about a --
24 over a year ago. So I guess that's the best one. But
25 hopefully in the future, I will continue to participate in

1 the Joe Program.

2 I have lectured at the high school. My former
3 administrative assistant left me some years ago and went to
4 the high school, and of course she calls me when she needs
5 somebody to come and I'm willing and able to do so. And I
6 go there a good bit when she asks. And I enjoy doing that.

7 I see a lot of people. I don't know as many
8 students that I used to know when my children were there,
9 but it's still a fun thing to do.

10 **Q. Judge Smoak, what do you think your reputation is**
11 **among attorneys that practice before you, as well as court**
12 **personnel?**

13 A. I hope I have a good reputation. I think I do.
14 I mean, my courtroom is pretty laid back. The people that
15 come in my courtroom, of course they have enough
16 controversy and tension going on, and I try to make sure
17 that I make everybody feel comfortable. And not only the
18 litigants, but the attorneys.

19 I haven't been far enough removed from being an
20 attorney that I've forgotten what it's like to be one. And
21 sometimes you have to remember they're busy, too, and they
22 have the -- various things come up. And sometimes you just
23 have to accommodate them. And the same thing with
24 litigants.

25 But I hope the reputation is good. I hope that

1 people feel comfortable when they come in my courtroom, and
2 think they have gotten a fair shot. I think that's the
3 best I can ask for.

4 Q. Judge Smoak, the Commission received 459 ballot
5 box surveys regarding you, with 24 additional comments.
6 All but one were positive. And those positive comments
7 included:

8 "We need more judges like Judge Smoak. He's a
9 credit to the bench and Bar. He's clearly one of the best
10 serving judges in South Carolina today." And lastly, "I
11 believe that he's one of the best, if not the best, family
12 court judges I've ever been in front of, because he's
13 knowledgeable. But past that, more importantly this
14 individual applies his knowledge of the law by tempering it
15 with his clear application for humanity. He does what is
16 right even when what is right is not convenient. And,
17 frankly, he has done so even when it was not in my client's
18 favor. I give him my highest recommendations."

19 One comment expressed concerns that, "Judge Smoak
20 is super nice to be in front of, but sometimes gives too
21 many chances to pro se litigants."

22 How would you respond to that concern?

23 A. I may agree somewhat. Because, you know,
24 sometimes pro se litigants, what they want is they want to
25 be heard. And a lot of times they don't think they're

1 heard. And sometimes maybe you give them too many
2 opportunities, you know, "Anything else you want to tell
3 me? Anything else you want to tell me?"

4 You want to make sure that they have felt they
5 told you everything they want to tell you. And it's quite
6 possible that I've done that a couple of times when I --
7 maybe I shouldn't have. But I think it's better to err on
8 maybe the other side than not give them the opportunity.
9 So I think that certainly could be possible.

10 Q. Thank you, Judge. And there are a few
11 housekeeping issues to address. Since submitting your
12 letter of intent have you contacted any members of the
13 Commission about your candidacy?

14 A. No, sir.

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

18 A. Yes, sir.

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

23 A. No, sir.

24 Q. Have you asked any third parties to contact
25 members of the General Assembly on your behalf, or are you

1 aware of anyone attempting to intervene in this process on
2 your behalf?

3 A. No, sir.

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

7 A. Yes, sir.

8 MR. TRIPLETT: The Low Country Citizens
9 Committee found Judge Smoak to be qualified as to
10 constitutional qualifications, physical health and mental
11 stability, and well qualified as to ethical fitness,
12 professional and academic ability, character, reputation,
13 experience and judicial temperament.

14 I would just note for the record that any
15 concerns raised during the investigation regarding the
16 candidate were incorporated into the questioning of the
17 candidate today. And with that, Mr. Chairman, I have no
18 further questions.

19 CHAIRMAN RANKIN: Representative Smith.

20 REPRESENTATIVE SMITH: Thank you, Mr.
21 Chairman.

22 EXAMINATION BY REPRESENTATIVE SMITH:

23 Q. Judge Smoak, how are you doing this morning?

24 A. I'm good. I'm a little cold. It wasn't this
25 cold in the Low Country when I left.

1 Q. Judge Smoak, let me tell you I appreciate your
2 being here today, and I appreciate what you do. I don't
3 practice in family court anymore, but whenever I started
4 practicing you were over on Sumter when I first started
5 practicing.

6 And I'm going to say this as, you know, though
7 back then I was a young lawyer, maybe a couple of years in
8 practice, and you were kind and you were -- you were
9 knowledgeable and you were fair to everybody. And the good
10 news is, is as I look here twenty-something years later,
11 and I look at your ballot box surveys, it looks like
12 nothing's changed then.

13 So, you know, I think it's important while we
14 point out negative comments to judges -- sitting judges, we
15 also need to discuss the positive comments we have with
16 judges. And, you know, I want to congratulate you and,
17 more importantly, thank you for what you're doing on behalf
18 of the family court in South Carolina.

19 Because it appears to me that when I look at
20 this, your judicial temperament is probably some of the
21 lowest -- or where you have just a few people say you're
22 unqualified, that's one of the lowest marks. But more
23 importantly, almost everybody says you're well qualified in
24 your experience, your reputation, your character, your
25 professional and academic ability.

1 You get marks at the top of what we're seeing for
2 judges. And I know there's a debate about whether we
3 should pay much attention to these ballot boxes or throw
4 them away, but in my opinion that's probably a fair
5 barometer of people who can anonymously talk about what
6 they think of a judge that they appear in front of.

7 And your marks are just without -- just without
8 question one of the finest ones in the state. And I
9 appreciate you handling yourself in that manner.
10 Especially someone that's been here as long as you have
11 been on the bench.

12 A. I appreciate it.

13 Q. Let me ask you one thing that caught my eye is
14 that you are working on -- with the drug court in the 14th
15 Circuit?

16 A. I used to. I don't right now.

17 Q. Do you all have a drug court, Judge, down in the
18 14th Circuit?

19 A. We have a drug court down in Beaufort right now.
20 Judge Few and another magistrate usually does it right now,
21 that's going on.

22 Q. Are you all not having it in the other counties
23 of the 14th Circuit?

24 A. No, sir. We had it. And I quit doing it --
25 matter of fact, I was given authority to do it through the

1 circuit court. I was doing that in Colleton and I was
2 doing it in Hampton. And it was basically a grant and it
3 ran out. And that was that.

4 Q. And so that's one of the issues that we debate at
5 the Legislature up here with reestablishing drug courts,
6 we're seeing more alternatives courts. And I presume what
7 you -- what I'm hearing from you is that the issue in the
8 smaller, rural counties where we don't have drug courts is
9 defunded.

10 A. Exactly.

11 Q. And I presume your time as being a drug court
12 judge and -- you didn't get paid anything extra being a
13 drug court judge then, did you?

14 A. Oh, no. No.

15 Q. It was a labor of love, wasn't it? And I presume
16 that you have a lot of success stories where you -- when
17 you were a --

18 A. Oh, yes.

19 Q. -- drug court judge?

20 A. No doubt. No doubt.

21 Q. From people who were given a second chance and
22 took advantage of it and cleaned up their lives and moved
23 forward in a positive manner?

24 A. No doubt.

25 Q. Do you think drug courts are something that needs

1 to bed continued in the state of South Carolina --

2 A. No doubt.

3 Q. -- with your experience with it?

4 A. No doubt.

5 Q. Well, Judge, I appreciate this. You know, it's
6 nice to have sitting judges in here. You know, I think
7 we've got to give each judge that's a -- that comes in
8 here, whether they're a candidate or whether they're a
9 sitting judge, a thorough look and make sure that they
10 still are serving the judiciary with honor and integrity
11 and competence. And there's no doubt you're exceeding all
12 expectations in that regard. And I thank you for your
13 service.

14 A. I appreciate it.

15 CHAIRMAN RANKIN: Mr. Safran.

16 MR. SAFRAN: Thank you, Mr. Chairman.

17 EXAMINATION BY MR. SAFRAN:

18 Q. I will say I've known Judge Smoak for thirty-five
19 years now. And I've had the pleasure of appearing in front
20 of you probably once. But I probably had less sense --
21 kind of get into areas I don't quite necessarily fully
22 understand. But I want to tell you that it is very, very
23 impressive that in a family court setting where things can
24 get so contentious and so out of hand, that you see these
25 repeated statements about patience and courtesy.

1 Which, you know, many times we don't see that.
2 And judges in that area are really criticized. But
3 patience and courtesy seem to be the last thing that people
4 want to talk about. And I think it is a credit that you're
5 able to maintain that over this length of time doing it.

6 And I just want to ask you -- it seems to me from
7 reading between the lines that people come in -- and I know
8 in my limited experience with you, it was like this, you're
9 not watching the clock, you're basically giving every case
10 however much time it needs, even though you've got a
11 schedule and even though you've got people waiting around.

12 I mean, is that something you consider to be
13 really essential in doing what you do?

14 A. I don't so much watch the clock, but I certainly
15 like to start on time. You have to make some -- you have
16 to have some leeway, of course. 'Cause you hate to stop a
17 hearing and you think it's going to take thirty more
18 minutes, and the next case is due up and you're not going
19 to make them come back. So you just go ahead and finish
20 it. I mean, obviously, if that's the case, you just got to
21 go ahead and do it.

22 Q. Right. I mean, what I've heard as far as the pro
23 se's, I think you do it with everybody, don't you?

24 A. Oh, yeah.

25 Q. Don't you provide the opportunities --

1 A. Yeah.

2 Q. -- to say, "Hey, I'm going to -- I want you to
3 hear this." You give everybody a chance to more or less be
4 heard, pretty much. But you know exactly what their
5 concerns are.

6 A. No doubt.

7 Q. And, you know, you rule -- you're more concerned
8 with rule on the merits as opposed to saying, "Well, you've
9 only got fifteen minutes for this, and it might take
10 twenty. I'm going to give you the other five and do it"?

11 I mean, if it's needed, it's needed.

12 A. No doubt. Yes, sir.

13 Q. Okay. And let me ask you also, again you still
14 enjoy doing this, don't you?

15 A. Oh, yes, sir.

16 Q. And, you know, family court can be a pretty high
17 stress area, can't it be?

18 A. Sure.

19 Q. And even with all the high stress, again
20 everybody that seems to be appearing in front of you is
21 saying, "He takes his time. He's pleasant. He's patient."
22 And I don't think anybody from what I'm seeing walks away
23 feeling like that, and been treated fairly at least for
24 that day. I mean, you go out of your way to do that, don't
25 you?

1 A. Sure. I mean, I think that's the way it ought to
2 be.

3 Q. Well, I just want to tell you that, you know, we
4 see a lot of these things, and comments like this are the
5 exception necessarily rather than the rule. I really do
6 think you deserve a great deal of admiration and
7 appreciation for it. And I appreciate you being here.

8 A. Well, I appreciate that.

9 CHAIRMAN RANKIN: Senator Young.

10 SENATOR YOUNG: Thank you, Mr. Chairman.

11 EXAMINATION BY SENATOR YOUNG:

12 Q. Judge Smoak, I too want to echo the compliments
13 that are being extended your way on the Bar -- on the Bar
14 input. It's very impressive and speaks volumes as to the
15 reputation that you earned in your time on the bench.

16 I just a question in the area of abuse and
17 neglect cases, and that is that based on -- you know, based
18 on your experience with being a family court judge for many
19 years, if you could improve the system on how we handle
20 abuse and neglect cases that are in family court for the
21 children and the families involved, what would you do? Or
22 what would you recommend?

23 A. We need more caseworkers and more court time.

24 Q. The court time being you think it would benefit
25 having a certain judge assigned to hear just abuse and

1 **neglect cases in a --**

2 A. That's a very good question. Now, I think the --
3 and just as an aside, I went to judge's school with Judge
4 Williams and Judge Henderson, and there was some judges
5 from Florida, and they were telling us that there were
6 judges in Florida and that's all they did. And we kind of
7 -- I said, "You do what?"

8 And they said, "Yeah, that's all we do is abuse
9 and neglect." And, you know, now I hear people talking
10 about that very same thing, you know, and whether you --
11 that can happen, I don't know. Would I think that's a good
12 idea? If you can give more court time and have them come
13 into court and not having to push cases back, I think the
14 better off you're going to be.

15 'Cause I just got out of doing DSS Monday, and
16 there were two cases then they had to schedule for trial
17 and there wasn't time to do them. I mean, it's -- I mean,
18 it's -- I mean, it can be a problem. I mean, granted it's
19 not all the time. And that's the -- I guess that's the way
20 you've got to schedule it.

21 I mean, it doesn't happen every week or every two
22 weeks. But all of a sudden you get a big backlog and you
23 have a rush of cases and then you get stuck. All of a
24 sudden you have cases that should have been concluded and
25 not -- they're not concluded. And it's not a month later,

1 it's three months later.

2 I don't know what the answer is. You know, we
3 try to stick them in whenever we can. Of course the
4 emergencies you have to hear, no doubt. But it's just the
5 merits hearing and caseworkers -- I think if I could do
6 something about it right away, that's what I would do.

7 Q. Thank you very much.

8 CHAIRMAN RANKIN: Senator Hayes.

9 EXAMINATION BY MR. HAYES:

10 Q. Very briefly, I just want to add my support and
11 thanks for the work you're doing. You're doing the Class
12 of 1983 proud from law school.

13 A. I appreciate it.

14 Q. You apparently learned pretty well. I'm not so
15 sure I learned so well in law school, but you did well.
16 And we're proud of the work you do. And thanks for
17 continuing to serve.

18 A. I appreciate it.

19 CHAIRMAN RANKIN: Representative Rutherford.

20 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

21 Q. Judge, given the fact that people -- people being
22 lawyers have the opportunity to say things anonymously
23 about you, and they chose overwhelmingly and unanimously to
24 say that you are a good guy, that you are a good judge.
25 How do we get more people like you, who are willing to

1 **serve, who can come and do a good job? What do you think**
2 **the recipe for success is?**

3 A. I guess what you're doing. I mean, some of the
4 anonymous comments may be the best way to get the true
5 comments. You know, I'm not sure. But, you know, I'll
6 tell you right now, of course I know everybody has their
7 comments about certain judges, but, you know, the guys I
8 work with, the girls I work with, I mean, it's the best
9 bunch of people there are.

10 I think the system you all have, I think does a
11 pretty good job of that. I don't know what else you could
12 do. And a lot depends upon the candidates you have. I
13 mean, you know, if you have a open seat and you only have
14 two candidates, you only have two candidates.

15 Obviously, it's going to be one of the two. And,
16 you know, sometimes you wonder why there are not more
17 candidates for some seats. And I don't know the answer --

18 **Q. Well, how do you -- how do we attract better**
19 **candidates? How do we attract good candidates? How do we**
20 **make the people that appear in front of you, that you know**
21 **are good that you would like to see come in front of you**
22 **because they're prepared and they're ready to do, how do we**
23 **attract them to the bench besides paying you all more than**
24 **minimum wage?**

25 A. Well, I was about to say maybe pay is one thing

1 to look at. I mean, seriously -- I mean, 'cause some of
2 them just don't want to step out of the comfort zone of
3 practicing law to go into --

4 **Q. Right.**

5 A. This is what you got. That's right, I mean,
6 basically. And we've got kids going into college and
7 everything, and they're just not going to do it, I mean, as
8 much as you hate it. 'Cause there are some good lawyers in
9 my bar, and fortunately in Colleton County we have a heck
10 of a good bar.

11 But they're not going to do it, more than likely.
12 And they'll tell you why. There was one young lady, and I
13 won't call her name, and I asked her, I said, you know,
14 "When the time comes up and you're of the age, would you
15 consider it?"

16 And she said, "Absolutely not."

17 And I said, "Why?" 'Cause she's smart and good -
18 - a good lady and got children. She said, "I can't afford
19 the pay cut." And that's what -- just when you hear that,
20 you just go golly, you know.

21 **Q. Right. Right.**

22 A. And whether that's -- you know, a lot of times
23 that happens, I don't know for sure.

24 **Q. Well, I appreciate it. And I appreciate you**
25 **having that conversation with that young lawyer as well,**

1 because that's what we need. So thank you.

2 A. Sure.

3 EXAMINATION BY REPRESENTATIVE SMITH:

4 Q. Just following up, Judge, on that, real quickly
5 is -- I also want to tell you how I appreciate that.

6 'Cause we -- as we see candidates come forward, you know,
7 sometimes we see circuits where we know there's excellent
8 lawyers, and the best of the lawyers are not running for
9 these seats anymore.

10 And that's what's concerning to, I think, this
11 commission, and I can certainly say to me is that, you
12 know, you look in the circuits which you know there are
13 fine family court practitioners, and they're not applying
14 for the jobs. You know, part of it is, where is the
15 judiciary? Why doesn't -- you know, I -- one day you're
16 going to have to retire, and that's what the law says.

17 And, you know, I appreciate you saying, "Look,
18 I've suggested someone, you know, when the time's up to
19 help." And that's a little disheartening to me to hear
20 that people are saying -- you know, I see being a judge as
21 an honor.

22 I mean, it's a -- there's some -- just legends in
23 the law who have served, you know, on the bench in the
24 circuit court and family court throughout the years. And,
25 you know, it's an honor to be elected. It's an honor to

1 carry on the integrity and the reputation of our judiciary.
2 And unfortunately, we find people who are choosing "I'm
3 unable to do that" because of the -- I guess the pay and
4 everything else that goes along with being a judge.

5 And, you know, I appreciate you and other judges.
6 And I know you're one of the leaders in the Family Court
7 Judge's Association and, you know, if you all would just
8 help us find candidates. I mean, you know, you don't --
9 you don't have to hand-pick, but just say, you know, when
10 I'm about to retire let your Bar know that, you know,
11 you're about to retire and we need good candidates to come
12 forth to carry on the legacy and reputation that you've set
13 for this seat.

14 CHAIRMAN RANKIN: Judge, that's a great
15 question and statement, but you don't need to do anything
16 other than nod your head. Which you are certainly doing,
17 the record will reflect.

18 JUDGE SMOAK: I appreciate it.

19 CHAIRMAN RANKIN: With a big smile on your
20 face. So just a couple more pile-ons here. And it is so
21 refreshing to see someone has served as long as you have,
22 which is not that long, but in the scheme of things you've
23 been on the bench since '95?

24 JUDGE SMOAK: Yes, sir.

25 CHAIRMAN RANKIN: Who is held in such high

1 regard by the anonymous participants in these ballot box
2 surveys, and the Citizens Committee who again you
3 interviewed with. And it is just so, again, refreshing and
4 the norm, generally speaking, for those who don't begrudge
5 the job, who don't display an attitude that some pick up on
6 that they're not happy with what they're doing, but those
7 like you, who truly are -- truly are happy to be serving
8 and foregoing for additional compensation, foregoing what
9 could be a far more lucrative career.

10 So with that, I hope you've got it going good
11 down there. It's always warmer down there, apparently.

12 JUDGE SMOAK: No joke.

13 CHAIRMAN RANKIN: So we are proud of your
14 service and your desire to continue doing it. And I can't
15 help but commend you for following in your dad's footsteps,
16 though in a different courtroom.

17 JUDGE SMOAK: Yes, sir.

18 CHAIRMAN RANKIN: You all enjoy a wonderful
19 reputation down there.

20 JUDGE SMOAK: I appreciate it.

21 CHAIRMAN RANKIN: It's glad to see good
22 people serving, like you.

23 JUDGE SMOAK: I appreciate it.

24 CHAIRMAN RANKIN: All right. Unless there
25 are any other comments, that will close this portion of the

1 screening process. Judge, you're familiar with the rules,
2 and, again, we talked about one of them earlier. We're
3 real keen on both the spirit and the letter of the South
4 Carolina laws of ethics. As candidates, you have got to
5 abide by that. You know that any violation of appearance
6 of impropriety would be deemed very serious by us, and you
7 know that we would call you back to ask, if we would need
8 to. We trust that will not happen with you, though,
9 correct?

10 JUDGE SMOAK: Yes, sir.

11 CHAIRMAN RANKIN: All right. Because the
12 record is not closed until the final process ends.

13 JUDGE SMOAK: Yes, sir.

14 CHAIRMAN RANKIN: Thank you, Judge. With
15 that, head on home. And you can leave the coat in the car
16 when you get out at the office.

17 JUDGE SMOAK: You're exactly right. I
18 appreciate it.

19 CHAIRMAN RANKIN: Take care.

20 JUDGE SMOAK: Thank you all. I appreciate
21 you all, too, letting me get to see my lawyer, Mr.
22 Triplett. Because my son and I spent many afternoon over
23 at the baseball stadium watching him, so we enjoyed that.
24 I enjoyed meeting him. Nice fellow. Thank you all.

25 (Candidate excused.)

1 CHAIRMAN RANKIN: Welcome, Judge Malphrus.
 2 Thank you for your patience this morning. We are right on
 3 time. It is twelve o'clock by our watch.

4 JUDGE MALPHRUS: Thanks a lot, Chairman.

5 CHAIRMAN RANKIN: If you will please raise
 6 your right hand.

7 WHEREUPON,

8 THE HONORABLE DEBORAH ANN MALPHRUS, being
 9 duly sworn and cautioned to speak the truth, the whole
 10 truth and nothing but the truth, testifies as follows:

11 CHAIRMAN RANKIN: You have given to us a
 12 Personal Data Questionnaire and a sworn statement. Any
 13 changes that need to be made to those?

14 JUDGE MALPHRUS: No, sir.

15 CHAIRMAN RANKIN: And you don't object to
 16 Othose being included in the record with your sworn
 17 testimony?

18 JUDGE MALPHRUS: I do not object.

19 CHAIRMAN RANKIN: All right. Very good.
 20 Hand those to Lindi, and we'll put them in the record.

21 (EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION
 22 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
 23 HONORABLE DEBORAH ANN MALPHRUS)

24 (EXHIBIT NO. 8 JUDICIAL MERIT SELECTION
 25 COMMISSION SWORN STATEMENT OF THE HONORABLE

1 DEBORAH ANN MALPHRUS)

2 CHAIRMAN RANKIN: Judge, we have, as you
3 know, thoroughly investigated your candidacy. And we look
4 at nine evaluative criteria, which includes a ballot box
5 survey, a study of your application materials, verification
6 of your compliance with state ethics laws, a search of
7 newspaper articles in which your name appears, past
8 screenings, and a check for economic conflicts of interest.

9 No one has filed an affidavit in opposition
10 to your campaign, and no one has desire -- or contacted us
11 to be a witness for you or against you. You are welcome
12 now to make a brief opening statement if you'd like.
13 Otherwise, we'll have questions of the Commission and Ms.
14 Foster.

15 JUDGE MALPHRUS: Mr. Chairman, I will waive
16 my opportunity to make an opening statement.

17 EXAMINATION BY MS. FOSTER:

18 **Q. Judge Malphrus, after serving seven years on the**
19 **family court bench, why do you want to continue serving as**
20 **a family court judge?**

21 A. You know, I love my job. I think that this is
22 the one job where I'm able to blend making a difference in
23 families' lives, as also with the law. You know, I'm a
24 lawyer and I love law. And but I also really appreciate
25 the opportunity to impact and be involved in families'

1 lives, and family court gives me that opportunity.

2 **Q. Judge Malphrus, please explain one or two brief**
3 **accomplishments that you feel you've completed during your**
4 **tenure, and then a goal you'd like to accomplishment if**
5 **reelected.**

6 A. Accomplishments. The clerk of court in Colleton
7 County and I, we found that there were a large number of --
8 as there are, I suspect throughout the state -- in my
9 circuit we have a large number of pro se litigants. And
10 Fridays -- one day during the term of court is set aside
11 for the pro se litigant divorces.

12 And all clerks are different, but in Colleton
13 County the clerk's office there does a wonderful job
14 assisting the pro se litigants with their divorce packets.
15 And the pro se litigants would come to court and their
16 paperwork would look -- would be in order, except for one
17 issues, and that was with the service for the notice of the
18 final hearing.

19 And so the clerk and I developed a program -- her
20 office actually assists the litigants with having the
21 initial summons and complaint served. She would collect
22 the fifteen-dollar check for the sheriff's department and
23 send the whole packet to the sheriff's department for
24 service.

25 So we just developed a protocol where we just

1 took it one step further. When the pro se litigants came
2 to file their lawsuit papers, she would go ahead then -- my
3 suggestion was let's go ahead then and set the -- set the
4 matter for final hearing, say sixty days out, and when you
5 sent the paperwork to the sheriff's office to get served,
6 go ahead and serve them with the notice of the final
7 hearing as well, so the pro se litigants don't show up to
8 court only to be told we can't go forward because they
9 didn't have service for the notice of the final hearing.

10 So we developed that protocol. And it's worked
11 wonderfully in Colleton County. And I'm now on the self-
12 represented litigant committee and I'm -- that's something
13 that I would love to see other counties develop as well.
14 So that's an accomplishment that I'm proud of.

15 Another accomplishment -- I'm not so sure that
16 this is an accomplishment. I had a young man appear for
17 me, I was participating with the Department of Juvenile
18 Justice Pre-adjudication Program, and I had a young man
19 come before me and -- something that I had said made an
20 impact upon him, and I encouraged him to look into joining
21 the military. Which he ultimately did.

22 And he sent me a picture of his graduation
23 picture from boot camp. And he sent me a Christmas card
24 ever since. And so I feel like that was an accomplishment
25 that I made in that young man's life. I don't know if

1 that's really a career accomplishment, but that was a
2 personal accomplishment.

3 And something I would like to see -- another goal
4 I have for myself, is that your last question, ma'am?

5 **Q. Yes.**

6 A. Well, I would like to see our self-represented
7 litigant program that we started in Colleton County carried
8 forward into other counties. And so I hope that I can
9 accomplish that on the self-represented litigant
10 committee.

11 **Q. Judge Malphrus, what do you think your reputation**
12 **is among attorneys that practice before you?**

13 A. I think I have a reputation as being no-nonsense.
14 I think I have a reputation -- I hope I have a reputation
15 of being treating everyone the same no matter their walk in
16 life. I think I have a reputation as being a hard worker.
17 I think I have a reputation of not putting off on someone
18 else, something that I can get accomplished that day.

19 **Q. Judge Malphrus, the Commission received 392**
20 **ballot box surveys regarding you, with 18 additional**
21 **comments. The ballot box survey, for example, contained**
22 **the following positive comments:**

23 "A very good judge. Thoughtful about her
24 decisions and seems to genuinely care. Judge Malphrus is
25 an excellent judge, always courteous and respectful to

1 parties and matters."

2 Nine of the written comments expressed concerns.
3 All of the negative comments indicated that you have poor
4 judicial temperament, and that you are often condescending
5 and unprofessional with other attorneys and litigants.
6 What response would you offer to this concern regarding
7 your temperament?

8 A. You know, when we discussed these comments
9 previously, I can tell you that I've taken them all to
10 heart. And I hope that those comments maybe came from our
11 early days on the bench. I hope that people -- that
12 attorneys and litigants don't feel that way about me today.

13 I do think that I am pretty -- I'm no-nonsense
14 and I've very cognizant of needing to maintain control in
15 the courtroom and keep -- and keep the docket moving along
16 so litigants and attorneys aren't inconvenienced.

17 But the negative comments are certainly
18 disheartening, and certainly areas that I hope that I can
19 improve on.

20 MS. FOSTER: Mr. Chairman, I'd like to
21 request that we go into executive session to handle a
22 matter.

23 CHAIRMAN RANKIN: Motion from Senator Young,
24 seconded by Mr. Safran.

25 (Off the record from 1:19 p.m. to 1:55 p.m.)

1 CHAIRMAN RANKIN: We are back on the record.
2 And while in executive session, the Judicial Merit
3 Selection Commission neither cast any votes or conducted
4 any business. And we'll resume the screening questions by
5 Ms. Foster.

6 BY MS. FOSTER:

7 Q. Thank you, Judge Malphrus. Some housekeeping
8 issues. Judge Malphrus, since submitting your letter of
9 intent have you contacted any members of the Commission
10 about your candidacy?

11 A. No, ma'am.

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

15 A. Yes, ma'am.

16 Q. Since submitting your letter of intent have you
17 sought or receive the pledge of any legislator either prior
18 to the date of pending the outcome of your screening?

19 A. No, ma'am.

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

24 A. No, ma'am.

25 Q. Have you reviewed and do you understand the

1 Commission's guidelines on pledging and South Carolina Code
2 Section 2-19-70(E)?

3 A. Yes, ma'am.

4 MS. FOSTER: I would note that the Low
5 Country Citizens Committee reported that Judge Malphrus is
6 qualified in the evaluative criteria of constitutional
7 qualifications, physical health and mental stability and
8 experience, and well qualified in the evaluative criteria
9 of ethical fitness, professional and academic ability,
10 character, reputation and housekeeping.

11 The Committee also commented that Judge
12 Malphrus is very experienced. I would just note for the
13 record that any concerns raised during the investigation
14 regarding the candidate were incorporated into the
15 questioning of the candidate today. Mr. Chairman, I have
16 no further questions.

17 CHAIRMAN RANKIN: Ms. McIver.

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

19 EXAMINATION BY MS. MCIVER:

20 Q. Judge Malphrus, we've spent a good bit of time in
21 talking to family court judges about the temporary hearings
22 and issues with perhaps not having enough time, that the
23 lawyer schedules fifteen minutes because he or she has
24 clients that desperately want to get before the family
25 court, but the only way to get court time is to schedule

1 the fifteen-minute hearing. Have you found that to be an
2 issue?

3 A. Yes, ma'am. And, again, I sort of accepted that
4 as the nature of the beast and understand -- I understand
5 the position that lawyers are in, needing to get into court
6 as quickly as possible. I wish that we did have more time.
7 I don't like to -- I don't like to continue cases. I try
8 to have everybody's case heard that needs to be heard.

9 And it would be nice if we had more time, yes,
10 ma'am, particularly with those temporary hearings.

11 Q. Because this has been an issue that we've kind of
12 taken very seriously, and also dug a little deeper on, one
13 of the comments that you received asking you about -- one
14 of the comments was, "She cuts off the attorneys in the
15 middle of presentations and very annoyed by having to read
16 affidavits at a temporary hearing."

17 Can you address that for us in the context of the
18 shorter temporary hearings and whether or not those are
19 connected?

20 A. In terms of cutting off attorneys, generally I
21 don't allow -- if I have a huge packet of documents to look
22 at a temporary hearing, I do try to allow attorneys to
23 summarize for me their position. But again, being
24 cognizant of others that are coming behind them, I don't
25 allow a whole lot of argument at temporary hearings. I

1 allow a summary of their position. And I'm sorry if
2 someone felt like I didn't read their affidavits, because I
3 make it a point to read everything that is submitted to me.
4 I read everything that's submitted to me.

5 And perhaps I don't have to ask as many questions
6 of the attorneys because I have familiarized myself with
7 the issues that are before me by actually reading -- by
8 reading all of the material.

9 **Q. Do you typically allow attorneys to present a**
10 **summary of the affidavits, or take the affidavits and --**

11 A. I generally -- I generally like to read -- I read
12 the affidavits. I will allow them to make a summary of the
13 relief that they are seeking, and what they -- their
14 positions, but I don't -- I don't a whole -- I read the
15 affidavits. I don't allow an attorney to summarize what's
16 contained in the affidavit for me.

17 **Q. And do you typically rule from the bench?**

18 A. Yes, ma'am.

19 **Q. On temporary hearings?**

20 A. Yes, ma'am, if I can elaborate. I've found --
21 I've had attorneys tell me, you know, "We want a ruling.
22 We'd like to have a ruling." And so I try to -- I try to
23 rule and let people know where we're going, going forward.

24 **Q. Let me ask you about one more comment.**

25 A. Yes, ma'am.

1 Q. This is from the ballot box survey, which as you
2 know is anonymous, so we don't know where this comes from.
3 But this comment provides, "I've been practicing for
4 decades and this is the most unnecessarily impolite and
5 intemperate judge who I've had the honor of appearing in
6 front of."

7 Would you address that comment for us?

8 A. That is so -- it's embarrassing, that comment.
9 And I'm sorry that I ever made anyone feel that way. I
10 wish -- I wish I knew who that was so that I could reach
11 out and apologize for whatever I may have done or said that
12 gave them that impression of me. That -- that's
13 embarrassing for me.

14 Q. Thank you, I don't have anything further.

15 A. Thank you, ma'am.

16 CHAIRMAN RANKIN: Mr. Safran.

17 EXAMINATION BY MR. SAFRAN:

18 Q. Judge, let me just kind of again pick up on the
19 comments. As far as these ballot box surveys are
20 concerned, I think you previously discussed, and I think
21 you indicated they do play, you know, a role in this
22 process.

23 A. Sure. They have to -- they have to.

24 Q. And they're relevant, but not necessarily always
25 going to be, you know, the end all be all. Is that fair?

1 A. I think that's fair, yes, sir.

2 Q. Okay. But, you know, I guess what we're looking
3 at is, is a situation where most people's, I guess, more or
4 less introduction to the court system can often be in a
5 family court setting. I mean, have you run into that?

6 A. Yes, sir.

7 Q. And more so than maybe some of the other contexts
8 that we deal with --

9 A. Sure.

10 Q. -- like a traffic ticket or a -- you know, maybe
11 it's a property dispute. Really in that scenario, stress
12 is generally going to be high, emotions are going to run,
13 you know, beyond what their normal parameters might be.
14 And I'm sure in seven years, and plus the time you
15 practiced before, you became aware of that.

16 A. Yes, sir.

17 Q. And would you agree with me that in a context
18 like that, having the judge set the tone for the
19 proceedings is really essential?

20 A. Yes, sir.

21 Q. And when we look at some of these comments that
22 talk about, you know, rude and uncaring, not seemingly
23 wanting to be here, that's not the tone you want to set, is
24 it?

25 A. Yes, sir.

1 Q. Now, as far as I can tell, again, there are a
2 stream of comments that seem to all be consistent, at least
3 in their substance, at least from what you've been shown
4 and what you've heard about. Is that fair?

5 A. Yes, sir.

6 Q. All right. And, again, this is not a matter of a
7 situation where you just started being a judge last year or
8 the year before. I mean, this is after seven years.

9 A. Yes, sir.

10 Q. Would you agree with me that, basically, those
11 comments would be reflective, at least up until today, of
12 the perception at least of a -- of a decent segment of your
13 local bar, of kind of how they've felt being in your
14 courtroom has been during that time frame?

15 A. I sure hope not, sir. I don't -- I don't recall
16 -- are the ballot -- I believe that the ballot -- the
17 questions are submitted to the entire --

18 Q. Sure.

19 A. -- Bar statewide. And I don't think it's limited
20 to your interactions over the last year, I don't think. I
21 hope it's my belief that --

22 Q. And I'm not -- I'm not limiting it. Let me --
23 let me make sure I'm --

24 A. Yes, sir.

25 Q. -- saying it correctly. Basically as I

1 understand it, these are from the Bar in general. And I
2 get that.

3 A. Yes, sir.

4 Q. Okay. And I think you've said that at least
5 during the period that you've been on the bench, a decent
6 portion has been staying local?

7 A. The last year. Yes, sir.

8 Q. Okay. And even before when you traveled, you
9 didn't travel the whole year, did you?

10 A. No, sir. Typically, we traveled one -- about one
11 week out of the month that we were not in our circuit. Our
12 circuit has five counties.

13 Q. Okay. And so if you're traveling, basically, one
14 week out of the month over the course of a year, it's
15 pretty fair to say that probably about 75 percent of your
16 time is going to be in your home circuit, wouldn't it?

17 A. Yes, sir.

18 Q. A good estimate?

19 A. Yes, sir.

20 Q. Okay. I mean, and it gets back -- again these
21 are things that have been generated during a time frame
22 where probably 75 percent of your time has been in the home
23 circuit, and so we -- you know, do you really think that
24 these are all coming from a toe in the water in Greenville,
25 or, you know, spending the night in Rock Hill? I mean --

1 A. No, sir.

2 Q. Okay. So what I'm trying to get at is this: We
3 have, I think, consistently during the time I've been here
4 put a certain focus on certain elements of being a judge.
5 And I think I touched on it earlier as far as that
6 introduction to the court and the setting, and particularly
7 the sensitivity that you would want to have when somebody's
8 coming in there in some of the most troubled elements of
9 their lives. You agree with that process, don't you?

10 A. Yes, sir.

11 Q. And, you know, from my standpoint I guess what
12 I'm asking is, is that -- how do you intend to want to try
13 to change, maybe make these comments --

14 A. Meaningful?

15 Q. Well, make them go away.

16 A. Yes, sir.

17 Q. To get away from that segment.

18 A. Make a positive impact upon me?

19 Q. Uh-huh.

20 A. I guess would be a fair -- is how I've looked at
21 it. And so that is what I have committed myself to do is
22 to be aware of how I am perceived. And it's not just about
23 the decision that I make, but it is the perception and the
24 importance of temperament and --

25 Q. And let me ask this.

1 A. Yes, sir.

2 Q. You know, you obviously practiced in family court
3 for roughly a decade before you went on the bench? Or a
4 little bit more, didn't you?

5 A. Yes, sir.

6 Q. And who are the judges down there at the time,
7 you know, when you were --

8 A. Judge Black was one of our family court judges.
9 Judge Fender and Judge Armstrong and Judge Kleckley.

10 Q. Judge Kleckley was a --

11 A. A wonderful --

12 Q. -- nice a guy you'd ever want to see.

13 A. He really -- yes, sir, he was.

14 Q. And I think you also had the opportunity to
15 practice in front of Judge Smoak.

16 A. Yes, sir, I did. Yes, sir.

17 Q. And so I guess, you know, you --

18 A. And he is a wonderful role model,
19 temperamentally. He is a wonderful role model.

20 Q. And I guess the flip side is, though, you had
21 situations where you've been in front of judges that
22 probably you walked of the room, shaking your head going,
23 you know, "I sure didn't deserve that." I'm sure that
24 happened in your own experience as a lawyer, didn't it?

25 A. Yes, sir.

1 Q. Okay. You know how you felt.

2 A. Yes, sir.

3 Q. And I think is that really a feeling you'd ever
4 want anybody to have happening after an experience with
5 you?

6 A. No, sir.

7 Q. It's exactly the opposite of what you want.

8 A. Yes, sir.

9 Q. Let me switch gears with you. We've heard
10 several times during the course of the last few days -- and
11 I say this is the caveat that I don't do family court work,
12 I'm more or less kind of getting an indoctrination into how
13 much goes on in their -- some of it I'm accepting as a
14 given. Some of it, I'm wondering.

15 But I guess the question is, is that given that
16 there are time constraints, and I get it, isn't kind of the
17 bottom line trying to get to the merits of the case and do
18 the right thing?

19 A. Yes, sir.

20 Q. That's the bottom line.

21 A. Yes, sir.

22 Q. And so I mean, if a case is going to take a
23 little more than fifteen minutes, if unfortunately the
24 clock's running would doing the right thing is -- may take
25 you twenty, maybe even thirty. I mean, is that something

1 that you would err on the side of getting it done that way?
2 Or is it a matter of, hey, the fifteen minutes is up?

3 A. No, sir. Absolutely not. You know, I -- it
4 would -- if it takes twenty minutes, if it takes thirty
5 minutes. Which oftentimes in the context of an emergency
6 hearing which isn't even on your docket, that gets worked
7 in, if it takes an hour, it takes an -- it takes an hour.
8 And that's just -- you know, that's what you do. And I
9 devote that time to it. Yes, sir, I absolutely devote that
10 time to it.

11 Q. And the last thing I want to ask you is, is that
12 I've heard -- and you're not the first, and so I'm not
13 certainly saying that, you know, you're unique, but what I
14 kind of found a little bit -- I don't know. It's certainly
15 hard to get my arms wrapped around is the fact that you've
16 got people who come in, who are lawyers and advocating for
17 clients, but pretty much there are family court judges that
18 say, "I don't want to hear from you. Let me read your
19 documents and that's it."

20 I mean, is that really how the train's supposed
21 to run? I mean, it strikes me as a lawyer, somebody's
22 who's supposed to be making arguments, that I'm supposed to
23 come in and effectively put a muzzle on and keep my mouth
24 shut, that seems to kind of cut against the whole idea of
25 advocacy.

1 And that's -- maybe that's a function of the
2 family court. But I'm just asking is that something that
3 necessarily is supposed to be the rule?

4 A. I wish we had a better system and a better way of
5 handling -- conducting our family court business. Family
6 court -- and like a motion for summary judgement, that is
7 all argument for the most part.

8 But family court is different. Family court is -
9 - particularly in that temporary stage, the issues are
10 generally -- mother wants custody and father wants custody.
11 And the mother wants the house and father wants the house.
12 And I certainly -- like, it's wonderful when there is time
13 to have attorneys make arguments.

14 But I understand that's important for them and
15 for their clients. And I do understand that. And I do
16 wish there were more time that allow us to read the
17 affidavits and hear arguments -- full arguments.

18 I guess for me, I find it really important to
19 read the document -- the affidavits that people have
20 submitted, that they want me to hear their story. Because
21 again at a temporary hearing, we don't take testimony. So
22 I'm having to hear their story through their -- through
23 their affidavit.

24 Q. I get you. And, you know, I'm going to do
25 something that basically you would probably tell me if I

1 was in court that you -- you know, I've already used my
2 time and I've already said I was finished. But let me just
3 ask this: You said when we started, "I love my job." Some
4 of these comments seem to say the exact opposite. But
5 you're telling me today that maybe they're mistaken.

6 A. I love the opportunity -- I love my job, yes,
7 sir. I love being involved in families and in children and
8 trying to make a difference with our -- with our juveniles,
9 with our abuse and neglect cases, and families that are in
10 crisis and that need help. I do love that. I do.

11 Q. I appreciate your candor. And thank you.

12 A. Thank you, Mr. Safran.

13 EXAMINATION BY CHAIRMAN RANKIN:

14 Q. Judge, I want to follow up on this as well. And
15 first, let me ask you -- I think I -- I've heard you on
16 this point. But you do agree, do you not, that the ballot
17 box survey is an important or useful -- or something that
18 we should consider in our evaluation of your candidacy?

19 A. I wish that we had other tools. But I understand
20 that this is -- this is a tool that we have. And I
21 understand that it has to be -- that it's used. Yes, sir,
22 I certainly don't think that you discard the anonymous
23 ballot boxes.

24 Q. For good or bad?

25 A. Good or bad. Yes, sir.

1 Q. All right. And I will tell you that the
2 overwhelming comment from folks who have been on the bench
3 for a year or twenty-three years, generally, perhaps
4 unanimously, don't hesitate in acknowledging the value of
5 input.

6 A. Sure.

7 Q. So you don't disagree that we should consider
8 this.

9 A. I do not disagree. I agree that you should
10 consider -- consider the ballot boxes. I think you have
11 to. I don't know of any other -- I don't know of a better
12 tool that we -- that we have, unfortunately.

13 Q. In terms of the Bar review as well in terms of
14 the South Carolina Bar report --

15 A. Yes, sir.

16 Q. -- the comments outside the ballot box, which
17 I'll come back to, but is that something that should be
18 given credence by the Judicial Merit Selection Commission?

19 A. Yes, sir.

20 Q. And should we look more favorably at judges,
21 family court, male and female who are long-serving that are
22 -- that warrant and get for all questions of ethical
23 fitness, character, professional and academic ability,
24 reputation, experience, and judicial temperament, should we
25 look more favorably at those candidates who get the highest

1 scores? Particularly on reputation, experience, and
2 temperament.

3 A. You know, Mr. Chairman, I don't know that I'm
4 qualified to answer that question. I'm sure that there's
5 many factors that go into the deliberations that take place
6 here by the Commission.

7 Q. Judicial temperament. Should a sitting judge be
8 deemed by the -- as far as the judicial qualifications
9 committee to be well qualified, do you think that it -- in
10 your case, you have not been found to be well qualified.
11 In fact, you've been found only to be qualified.

12 A. Yes, sir.

13 Q. And you cannot go lower than that, or higher than
14 well qualified, correct?

15 A. Yes, sir.

16 Q. And so other judges who have been on the bench
17 for -- Judge Abstance, we screened her earlier this week,
18 or last week or last month whenever --

19 A. And recently not -- just before that, I believe.
20 I think she's had to go through this process twice, very
21 closely. Yes, sir.

22 Q. Judicial temperament found to be well qualified.

23 A. Yes, sir.

24 Q. And we talked about Judge Smoak who is in your
25 circuit, who's been on the Bar -- or the bench for twenty -

1 -

2 A. A number of years, yes, sir.

3 Q. Found well qualified --

4 A. Yes, sir.

5 Q. -- on judicial temperament and reputation,
6 professional and academic ability. As a commission how
7 should we weight your candidacy when the Bar and the JQC,
8 the Judicial Qualifications Committee only find you
9 qualified in, again, the temperament and reputation and
10 professional and academic ability? How should we -- what
11 weight should we give that?

12 A. Mr. Chairman, I hope that you'll give some weight
13 to the Citizens Committee which is made up of people that I
14 serve in my community, and not just -- although there are
15 attorneys on that committee, they're not just attorneys on
16 that committee. And I believe that I have a good
17 reputation when it comes to the decisions that I make, and
18 the impact that at the end of the day I have on families'
19 lives.

20 Q. And you correctly point out that they state that
21 you are -- you get the highest marks on the areas of
22 reputation and character, professional and academic ability
23 and ethical fitness. And then you go to the back page and,
24 likewise, on temperament and experience, with the comment
25 "very experienced."

1 So we should give that greater weight than the
2 Bar results? Or consider it in the whole realm of what
3 have to consider.

4 A. I think you have to consider it in the whole
5 realm of everything that you consider, sir.

6 Q. So then to the ballot box survey. And you've
7 heard a number of questions about these. And just to --
8 you've got positive and you have negative. And but it is
9 not -- it is a split. It is a split.

10 It's not overwhelmingly positive, and thus the
11 time and the questions that you've heard a couple -- from a
12 couple of folks by now, "Difficult to deal with. Attorneys
13 avoid having her hear their cases. Poor judicial
14 temperament. Unpleasant. Unprofessional. Annoyed by
15 having to read affidavits at temporary hearings. Impatient
16 and disrespectful behavior temperament."

17 And in fact one asking this commission to find
18 you unqualified. Not one. Not two. But how do we process
19 this? I mean, how do we do our job to help you do your job
20 and other judges do their jobs? And as you said, you
21 recognize the value of the input of the ballot box survey,
22 you recognize the input of the Bar, you recognize the input
23 of the Citizens Committees. So how do we square this? And
24 what do we do with that? What would you have us do?

25 A. Mr. Chairman, I can tell you that this is -- this

1 is my first experience to go through this process after
2 being elected. And it is a -- it is a challenging
3 experience. I can tell you that I have committed myself to
4 making changes, to recognizing the importance of my
5 temperament and my dealings with the attorneys and
6 litigants in the courtroom.

7 And I -- sir, I can only tell you that I have
8 committed to make changes and to -- to exercise the proper
9 temperament in dealing with attorneys and litigants. And
10 that the ultimate decision that I make isn't -- aren't
11 running on time for everyone isn't always what's it's all
12 about that I recognize, sir, that I -- that family court
13 does impact people, families, children.

14 It's important to hold myself in a manner that is
15 upstanding of the position. And I've committed to do that.

16 **Q. I looked at Judge Pincus -- I mentioned Judge**
17 **Abstance, Judge Robertson, your male and female, and Judge**
18 **Smoak as well earlier today, who either get no negative or**
19 **two negatives out of all that would reply, who also pass**
20 **muster with the -- their Citizens Committee.**

21 A. Sure.

22 **Q. Who also pass muster with the Bar, who get the**
23 **top evaluative marks from them. And I am -- I am**
24 **struggling with this because I -- fortunately, you don't**
25 **have an opponent. And whoever the opponent would be, you**

1 would -- you might be in far better stead but to
2 effectually -- effectively rubber-stamp a candidacy based
3 on the fact that there is no opposition in the face of
4 comments from your peers.

5 And I don't go to family court. And again I --
6 God bless you for wanting to do it, and loving it as you
7 say, but it is -- it's difficult for me as one of the
8 members of this commission to not give credence to two out
9 of the three.

10 And, again, if they're all important how do --
11 you know, it's probably rhetorical question, but we won't
12 see you again for six years if you are found qualified and
13 nominated.

14 A. Yes, sir.

15 Q. And so based on what we have before us,
16 effectively, you're saying, "Give me another chance." And
17 you're going to work to do better than you have for the
18 last seven years. We're not talking about -- or how many -
19 -

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

21 Q. It's seven years.

22 A. Yes, sir.

23 Q. So that you haven't come before us before, is
24 providential, perhaps, or unfair to you. But if again
25 Judge Abstance is the -- out one year and is already

1 hitting it with the objective criteria that you've
2 recognized we should consider, giving greater or lesser
3 weight perhaps, it's difficult for me -- and I guess you
4 could comment on this if you want, or not. But help me.

5 I'm really -- as the question was asked earlier,
6 what assurances beyond what you've said can you give me to
7 give me comfort in effectively saying, "Folks, we've heard
8 from her response to these comments, your findings, and
9 we're moving in a different direction?" Help me with that.

10 A. Mr. Chairman, I wish I knew what assurances to
11 give you, other than my commitment to do better. And I
12 think that I have done better. And I don't -- I don't know
13 what other assurances I can give you, sir.

14 Q. Have done better since the surveys --

15 A. Yes, sir. Since the -- yes, sir.

16 Q. Okay. And these are -- do you think these are
17 old surveys?

18 A. I really don't know, sir. I don't know. I can't
19 -- oh, I don't think the surveys are old. I don't know if
20 my interactions with certain attorneys, I don't know when
21 those interactions took place.

22 Q. But I mean, was there one bad case that you had
23 ten -- multiple attorneys that all anonymously have
24 gathered together to say, "Let's talk about her temperament
25 or impatience"?

1 A. You know, I can't -- I'm not sure --

2 Q. **There may be. If there was a --**

3 A. Again, sir, I can't comment on that. I did -- I
4 can tell you that I did have a very difficult case early on
5 in -- after my appointment. And I'm not sure if -- I was -
6 - I did what I thought was the right thing in that
7 difficult case, even though I had -- I believe that may
8 come back to haunt me. But I can't comment -- you know,
9 I'm not sure.

10 CHAIRMAN RANKIN: Mr. Hitchcock.

11 EXAMINATION BY MR. HITCHCOCK:

12 Q. Thank you, Judge. And I appreciate you being
13 here and, you know, answering these questions. And I know
14 that they're not the easiest questions to answer, but just
15 to kind of give you an idea of where I'm coming from and --
16 I mean, I've been on this commission for a while. And, you
17 know, what I've come to believe is that -- you know, we
18 evaluate nine criteria. It's my personal view that
19 judicial temperament is the -- one of the most, if not the
20 most important -- one of the most important criteria,
21 especially in family court, that we evaluate.

22 Because I think a judge with a -- if a -- if a --
23 you know, if the public interacts with a judge who has a
24 poor judicial temperament, I think that's the easiest way
25 for the public to lose confidence in the judiciary. And

1 the impartiality and the fairness of the process, you know,
2 if you -- if you have a case and go in front of a judge
3 who's pleasant and you lose, it doesn't feel quite as bad
4 or you don't feel like you were -- you don't feel like that
5 you were wronged by the quote/unquote system.

6 A. Yes, sir, I agree with that.

7 Q. And I understand that, you know, judges are in --
8 a lot of times are a -- live a little bit more of an
9 isolated existence, you know, they -- you have to -- you
10 have to stay removed a little bit. You know, there's a --
11 and that, you know, one of the things that you don't get
12 the benefit of is -- you don't really get the benefit of
13 kind of open, honest feedback in regards to your
14 performance on a regular basis.

15 A. Yes, sir.

16 Q. You get to come in front of us once every six
17 years --

18 A. Yes, sir.

19 Q. -- and you get this -- you know, you get all this
20 information. You know, for instance, I work for -- in my
21 civilian job -- I say "civilian," because it sometimes
22 feels like military duty. In my job I work for an eight-
23 member commission. And I have a yearly performance review,
24 and I can tell you that is the most awkward -- being
25 reviewed by eight people at one time is probably one of the

1 most awkward things that I ever have to go through. But I
2 find that it's beneficial because of the feedback in
3 regards to my performance, and I get it on a regular basis.

4 A. Yes, sir.

5 Q. You don't get that --

6 A. Yes, sir.

7 Q. -- on a regular basis. And as the chairman has
8 said, once we pass you -- you know, if we pass you along,
9 we don't see you for six years. And there's no other
10 entity that gives you kind of that performance update on a
11 -- on a -- on a more -- a much more regular and interim
12 basis.

13 And you've said that you are committing to do
14 better, and that you've made assurances that you will do
15 better, and you feel like you're doing better. The
16 question -- and all of this is leading up to the question
17 that I have for you is, how are you going to -- what's
18 going to be the barometer for you?

19 How are you going to judge whether or not that
20 you've made progress in this area, given your position,
21 given the reticence of potentially people that you interact
22 with on a daily basis to give you that open, honest
23 feedback?

24 How are you going to ensure that you are making
25 what -- you know, obviously, you knew about these comments.

1 You've had an opportunity to think about that. So kind of
2 five me what's your plan on "this is how I'm going to know
3 that my -- that I am progressing and I'm curing any, you
4 know, default of deficit that I have in this area."

5 A. I do appreciate that question. And, sir, I will
6 tell you that -- that my local Bar in Beaufort County just
7 recently -- this last month in October, they asked me to
8 give them a presentation, and for -- in continuing legal
9 educational presentation, I was asked to speak for my local
10 family court Bar in Beaufort County.

11 And I took that -- and I had recently met with
12 Ms. Crawford, I believe, and so I took that opportunity to
13 speak candidly in -- and though it was a legal setting, it
14 was not a judicial setting, I wasn't on the bench
15 presiding. But I was there speaking to them as a lecture
16 on family court topic.

17 And so I took that opportunity to be frank and up
18 front with my Beaufort County Bar, which is our -- the
19 largest county in my circuit, and commit to them to -- to
20 be more temperate. And my comments were well received, I
21 believe.

22 I've also -- and Mr. Safran has spoken frequently
23 of Judge Smoak, who is a wonderful judge and a wonderful
24 man, and a contemporary of mine, and I've spoken frankly
25 with him. And Jerry -- Judge Smoak doesn't see my

1 performance in the courtroom, and I don't see his. But I
2 certainly respect him from when I did practice before him.
3 And I've asked him to be my mentor and to help me.

4 And we talk frequently now. He's given me some
5 words of encouragement, and I have asked him to please let
6 me know if he has concerns that are brought to him by
7 attorneys or by clerks.

8 I've asked older attorneys in my county where I
9 live, that are not necessarily family court litigators, but
10 who probably hear word through the grapevine about how I'm
11 doing. And I've asked them candidly, as my friend, to
12 please -- to let me know what they're hearing about my
13 performance and my temperament, and to -- you know, to be
14 my guide and be my barometer. So those are the things that
15 I have recently put in place.

16 **Q. Do you see -- do you see yourself incorporating**
17 **that and making that a -- kind of a -- or a standard**
18 **operating procedure or regular course of business for you?**

19 A. Yes, sir. That is -- yes.

20 **Q. 'Cause I can tell you, you know, in your position**
21 **that the -- you know, the -- we all get -- we all get the**
22 **nice comments about, you know, the -- you know, my staff**
23 **will tell you, probably, that I'm the greatest person on**
24 **the world. But they all work for me.**

25 A. Sure. I've never -- I've never told a bad joke

1 in family court.

2 Q. Exactly. Yeah, everybody --

3 A. They're all funny.

4 Q. Yeah, I am the funniest person at the Retirement
5 Systems Investment Commission, I can tell you.

6 A. Right.

7 Q. But that is by far from the truth. So it's not -
8 - you know, for me the way that I look at it, it's not
9 those positive comments that really --

10 A. Sure.

11 Q. -- help shape me.

12 A. Sure. Yes, sir. Yes, sir.

13 Q. It's the negative -- it's the negative -- it's
14 the open, honest feedback. And I would say that -- you
15 know, editorializing, I would say that, you know, in your
16 position you're going to really have to make the effort to
17 seek that out and to find it. Because it's probably not
18 going to be as readily apparently or as readily available
19 to you as it may be if you weren't, you know, in the
20 position that you are.

21 A. Exactly. Yes, sir. And that is why I -- that's
22 why I've leaned on Judge Smoak to be a barometer for me.
23 And also older attorneys in my community, again, that don't
24 practice in front of me, but certainly hear the
25 scuttlebutt. And that is what I have done, I've asked them

1 to please keep -- let me know the feeling in the community,
2 negative more so than positive, you know. So, yes, sir,
3 that is what I've done.

4 CHAIRMAN RANKIN: Representative Smith

5 EXAMINATION BY REPRESENTATIVE SMITH:

6 Q. Judge, I appreciate you being here. I'm coming
7 on the back end of this, so I'm -- I guess I -- and so but
8 I want to take a little different track, 'cause you said --

9 A. Sure.

10 Q. -- something that caught my attention, and that
11 was, you know, when you were asking -- you were asked about
12 how these comments came to light, and you said something
13 about you decided a difficult case. And I just want to
14 make a comment to you.

15 You know, I understand this is not a comfortable
16 position you're in. And you're getting questions about
17 your temperament, and I appreciate you saying that you're
18 going to improve your temperament and you're going to work
19 to strive to be a better a judge. And we all work to
20 strive to be better -- I strive every day to try to be a
21 better lawyer, a legislator, husband, whatever it is --

22 A. Sure. Yes, sir.

23 Q. -- and a father. That's something we all need to
24 strive for. But I want to reassure you this, and this is
25 always my concern when I hear this question is that if you

1 are making -- we empower you to make difficult decisions,
2 and we want you to make those difficult decisions and never
3 -- well, I feel strongly about this. Never will I let some
4 disgruntled litigants who don't agree with the way you rule
5 control the process.

6 This is a fair, independent judiciary. And
7 that's what it has to be. And so I don't want you to walk
8 out of here today --

9 A. Thank you so much --

10 Q. -- saying --

11 A. -- for those comments.

12 Q. Well, and I appreciate that. But I say this, and
13 whenever I'm invited to speak at judicial conferences I say
14 this, and I mean it, I want you all to be a fair,
15 independent body. I don't want you to always think how is
16 the Judicial Merit Selection Commission going to interpret
17 this ruling or how is the -- how is the Legislature that I
18 have to come up to interpret this ruling.

19 We have a system. And there's a check and
20 balance on everything. And I think like Mr. Hitchcock
21 said, it's good to have performance reviews. But you also
22 are a judge, you're a -- you take an oath at the beginning
23 of your term to fairly and impartially hear and try cases.
24 In family court you are the judge and you're the jury.

25 A. Thank you.

1 Q. And so they're going to --

2 A. Thank you for those comments.

3 Q. Well, I appreciate it. But you're going to have
4 to make tough decisions. And I want you to continue to
5 make touch decisions. And if there's issues that you have
6 on how you treat people, I hope you improve on that. But I
7 don't ever want you to shy away from making a hard
8 decision.

9 Because you have to make -- you're almost playing
10 God sometimes. You're making a life-and-death decision as
11 to termination of parental rights sometimes, you're
12 deciding on who has custody sometimes, you're deciding on
13 whether alimony is granted.

14 And I don't -- and I really want the message to
15 be clear that we want judges who have a temperament that is
16 befitting to the bench. I think that's the most important
17 attribute of a judge. But also I don't want litigants or
18 lawyers who lose before you come and intimidating you into
19 ruling in a way.

20 So I just -- you know, if you could balance --
21 today, I missed a large portion of it, but if you -- my
22 comments I would echo -- if there's concerns with
23 temperament, I'd echo all those comments you heard. I
24 would urge you to improve those. But I will also ask you
25 not to shy away from making difficult decisions.

1 A. Thank you very much for those comments.

2 CHAIRMAN RANKIN: Ms. McIver.

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

4 EXAMINATION BY MS. MCIVER:

5 Q. I want to echo what Representative Smith said. I
6 was looking at one of your letters of reference, and it
7 says -- this is from Mr. Henderson, "Since she's been on
8 the bench, she has developed a reputation of having an even
9 temperament, a courteous demeanor, a superior knowledge of
10 the law, and a gift for making the right decisions even in
11 very hard cases."

12 As Representative Smith said, we appreciate your
13 willingness to --

14 A. I appreciate that letter he wrote for me. That
15 was very nice.

16 Q. -- even in very tough cases. And I also wanted
17 to point out a letter from the clerk of court, this ties
18 back into the question I was asking about the temporary
19 hearings and getting things done and moving people along.

20 And clearly based on the clerk, he gave you a
21 glowing record, you are moving cases along and are getting
22 things done. And we would just encourage you to consider
23 the comments with regard to how that is approached --

24 A. Thank you, ma'am.

25 Q. -- and how you get it done.

1 A. Thank you.

2 Q. Thank you very much.

3 A. Thank you.

4 CHAIRMAN RANKIN: Senator Young.

5 SENATOR YOUNG: Thank you, Mr. Chairman.

6 EXAMINATION BY SENATOR YOUNG:

7 Q. Judge, I want to just change the focus just for a
8 moment --

9 A. Sure.

10 Q. -- and ask you a question related to abuse and
11 neglect cases.

12 A. Yes, sir.

13 Q. You obviously have handled a number of those in
14 private practice, and then now being on the bench for seven
15 years you have extensive experience in that area. What
16 would you do, or what would you suggest be done to improve
17 the system for the children and the families in the abuse
18 and neglect system?

19 A. I really appreciate that question. I find that
20 so much of my frustration does -- or my desire to see
21 better is in our -- with our abuse and neglect, I clearly -
22 - I believe, though not all of -- not all family court
23 judges do, I think that it would be helpful -- in the abuse
24 and neglect cases, generally how a case goes is you have a
25 merits hearing and you come up with a treatment plan for a

1 family.

2 Generally, the treatment plan is to reunite
3 parents. And it would be -- and then there are review
4 hearings that are held during the pendency of that plan.
5 It would -- I think it would be helpful, and this is
6 something that we're looking at in the judiciary, is having
7 one judge -- when practical, one judge assigned to that --
8 to that one family and to that one case.

9 I think that, that would be very helpful in our
10 abuse and neglect arena. I don't think that the same judge
11 that heard the initial abuse and neglect case could then
12 preside over the actual -- which is a separate lawsuit --
13 the termination of parental rights, I think that perhaps
14 that would be a conflict.

15 But at least during the pendency of the treatment
16 aspect of the case, I think it would be helpful if we had
17 one judge in one case. Abuse and neglect, I feel so for
18 those -- the workers, they are -- they're overworked. They
19 have too many cases. And the -- when I first started
20 practicing law back in 1990, things have changed
21 drastically.

22 We used to have caseworkers in DSS, and we don't
23 call them that anymore. We call them case managers. So
24 the caseworkers are no longer -- they're not social workers
25 so much anymore, but they are managers. They plug these

1 families into, basically, either agencies instead of the
2 actual social worker going out and inspecting a home, say,
3 to see if changes have been made in terms of the physical
4 necessities in the home, water, power, those sorts of
5 things. The crib for a baby.

6 Instead of that caseworkers or social worker
7 doing that now, it's contracted out with other agencies and
8 non-profits to do that. And so there's so many times in
9 family court there is a -- there is a disconnect between --
10 we don't have the information.

11 And I'm the judge presiding and I want to know
12 whether they get a crib in the home for the baby, that the
13 social worker or the case manager that I have before me
14 isn't actually the person that has -- she may never have
15 been in the home to see -- you know, to see what's going on
16 in the home. It's some other non-profit agency that the
17 state's contracted with to provide those services.

18 So that is difficult. And I don't know what the
19 answer to those sorts of problems are in terms of the
20 agency itself. But more court time, I think would be
21 helpful. I think there has to be where we are more -- more
22 judicial management.

23 Which brings -- presents another realm of
24 problems, it's the -- mothers and fathers who are -- who
25 are indigent and who -- their representation oftentimes is

1 lacking, and then the burden that we're placing on those
2 attorneys that have been court-appointed.

3 So it's a complicated situation. And I think the
4 impact that we as judges can make in that arena would be
5 more court time and possibly the one judge, one case
6 scenario.

7 **Q. Thank you very much.**

8 CHAIRMAN RANKIN: Mr. Safran.

9 EXAMINATION BY MR. SAFRAN:

10 **Q. Judge, first of all, I admire the fact that you**
11 **hung in here. And you've been through a lot of**
12 **questioning. It's been a long kind of process. And,**
13 **again, I do appreciate the fact that you've been able to**
14 **stand through and respond.**

15 The last thing I just wanted to do is -- 'cause I
16 do not in any way want to, I guess, ignore what
17 Representative Smith said. I think I said to you earlier,
18 you set the tone in the room. And I think that, that
19 certainly means that you control the room.

20 And by no means does the fact that there is a
21 focus put on good temperament mean that you're ever
22 supposed to be a pushover. And I know earlier you made the
23 comment when we started, you may have had a reputation for,
24 you know, no-nonsense kind of being more or less --

25 **A. Get it done.**

1 Q. Get it done. And I don't think there's anything
2 wrong with getting it done. I mean, you plug away. You've
3 got a lot to do. But I echo what he said in that nobody
4 should ever come in there and feel like they should
5 intimidate you.

6 And you shouldn't be intimidated. That's not the
7 process. As the judge, again, you're the one kind of, you
8 know, in control of the circus, so to speak. And in family
9 court, unfortunately, it can be the circus.

10 And so I agree with him that our focus is not so
11 much coddling people, as opposed to just letting them walk
12 out of there and say, "You know what, I got a fair shake
13 and I didn't really feel like anybody beat me up in the
14 process. The result came back and that's the ruling. I'll
15 deal with it the way I'm supposed to deal with it."

16 But that they never have that question about, you
17 know, there were other reasons or that they were somehow,
18 you know, not allowed to do what they're actually being
19 paid. And, frankly, they're sworn to do, which is it come
20 in there and put up whatever the best representation they
21 can have. And I hope and I believe, you know, and you
22 understand that.

23 A. Yes, sir. Thank you, Mr. Safran.

24 Q. And thank you again for your service. And thank
25 you for the time here today.

1 A. Thank you, sir.

2 CHAIRMAN RANKIN: It's getting near 12:30,
3 so we're going to soon wrap up. And in the -- unless this
4 be perceived as a totally negative experience, as perhaps
5 you would say, I appreciate your candor. I appreciate your
6 recognizing the difficult role that we have, which is far
7 less difficult than the role you as a judge have. But
8 equally important in terms of whether -- what the message
9 is for the Bar --

10 JUDGE MALPHRUS: Yes, sir.

11 CHAIRMAN RANKIN: -- is what we want as a
12 General Assembly, for one of the equal branches of
13 government to be, held in high regard or low regard,
14 whether litigants and those representing them are -- or
15 unrepresented get their opportunity in court to be heard
16 fairly, patiently, and deliberatively is an incredible
17 struggle that you as a judge have had to encounter, and as
18 you are responsible to deliver day in and day out.

19 So I'm going to invoke this old Wall Street
20 Journal article that I found long ago, it was a letter to
21 the editor from somebody in California who's father -- and
22 they -- I think they were in California, and it was about
23 judicial selection and how to pick judges and effectively
24 judging judges, and the difficulty in the Bar's
25 participation, the Legislature's, the public and however

1 the model that -- that exists, the difficulty in your role
2 and those judging those judges. And that's what we're
3 doing here.

4 And so to the vein of the difficult case, how you
5 wear that and how you make the decisions. Again, the best
6 interests of the child, the family, and those who are
7 fighting over eight-track tapes, spoons, or whatever --

8 JUDGE MALPHRUS: It was a Kurig machine
9 yesterday, Chairman.

10 CHAIRMAN RANKIN: Or a Kurig. In the moment
11 in time that Kurig is --

12 JUDGE MALPHRUS: -- the most important.

13 CHAIRMAN RANKIN: The most important. In
14 the scheme of things, perhaps not. But fairness, wearing
15 the robe lightly, being respectful to those with the Kurig
16 or the whatever is --

17 JUDGE MALPHRUS: I don't mean to cut you
18 short. I don't -- and I'm not trying to make light of --

19 CHAIRMAN RANKIN: No, no.

20 JUDGE MALPHRUS: But that is -- you hit the
21 nail on the head. That is routinely -- and it is important
22 to people.

23 CHAIRMAN RANKIN: And it's important for the
24 judiciary to understand that as well.

25 JUDGE MALPHRUS: Yes, sir.

1 CHAIRMAN RANKIN: And seven years can be too
2 long, thirty years can be too long, a year can be too long
3 that you're willing to continue doing this. I hope with
4 the message that you are hearing and seeing, and giving
5 credence to as you have said repeatedly you will do, will
6 help you become a better judge over the next whatever
7 period of time you decide, again if you're willing and able
8 and deemed worthy, to continue serving.

9 So with that, unless you've got anything
10 else to say other than "amen," this will close this portion
11 of our screening process. You're welcome to --

12 JUDGE MALPHRUS: Amen.

13 CHAIRMAN RANKIN: I want to take this
14 opportunity to again remind you as we did at the outset,
15 about the criteria and the expectation that you maintain
16 both the spirit and the letter of the South Carolina law of
17 ethics.

18 Any violation of that or the appearance of
19 impropriety would be deemed very serious by us, and
20 deserving of us calling you back to inquire as to that
21 potential violation or appearance of impropriety. You're
22 aware of that, correct?

23 JUDGE MALPHRUS: Yes, sir.

24 CHAIRMAN RANKIN: All right. Judge, with
25 that, that will let us now close this record. We thank you

1 for your patience and your candor in your responses.

2 JUDGE MALPHRUS: Thank you, Mr. Chairman.
3 Thank you, committee members.

4 (Candidate excused.)

5 CHAIRMAN RANKIN: Judge, let's first start
6 by having you raise your right hand.

7 WHEREUPON,

8 THE HONORABLE JAN B. BROMELL HOLMES, being
9 duly sworn and cautioned to speak the truth, the whole
10 truth and nothing but the truth, testifies as follows:

11 CHAIRMAN RANKIN: Judge, you have prepared
12 two documents, a Personal Data Questionnaire and a sworn
13 statement. You've got those in front of you?

14 JUDGE HOLMES: I do.

15 CHAIRMAN RANKIN: Any changes that need to
16 be made to those?

17 JUDGE HOLMES: None.

18 CHAIRMAN RANKIN: All right. And you don't
19 object to them being made a part of the record, do you?

20 JUDGE HOLMES: I do not.

21 CHAIRMAN RANKIN: If you will hand those to
22 the court reporter to your left, kind of like what you do
23 in your courtroom, they will be marked as exhibits in the
24 record.

25 (EXHIBIT NO. 9 - JUDICIAL MERIT SELECTION

1 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
2 HONORABLE JAM B. BROMELL HOLMES)

3 (EXHIBIT NO. 10 - AMENDMENT TO PERSONAL DATA
4 QUESTIONNAIRE OF THE HONORABLE JAM B. BROMELL
5 HOLMES)

6 (EXHIBIT NO. 11 - JUDICIAL MERIT SELECTION
7 COMMISSION SWORN STATEMENT OF THE HONORABLE JAM
8 B. BROMELL HOLMES)

9 CHAIRMAN RANKIN: Judge, you're familiar
10 with this criteria that we look at in our -- as we
11 investigate our candidacy to be reelected for service. You
12 know that there are nine of them. Specifically including a
13 ballot box survey, a study of your application materials,
14 verification of your compliance with state ethics laws, a
15 search of newspaper articles in which your name appears,
16 past screenings, and a check for economic conflicts of
17 interest.

18 No one has signed up to testify for you or
19 against you, and no one has filed an affidavit in
20 opposition to your campaign. You are welcome at this point
21 to make a brief opening statement if you like. But you
22 don't have to. And if not, Ms. Riley will begin questions.
23 And there will be some from the Commission as well. You're
24 welcome to --

25 JUDGE HOLMES: I'm glad to be here. And I

1 just thank all of you for your service.

2 CHAIRMAN RANKIN: Thank you. Ms. Riley.

3 EXAMINATION BY MS. RILEY:

4 Q. Judge Holmes, after serving approximately eleven
5 years on the family court bench, why do you want to
6 continue to serve as a family court judge?

7 A. Because I love my job. I do. I look forward to
8 doing this job.

9 Q. Thank you. Please explain one or two brief
10 accomplishments that you feel you have completed during
11 your tenure, and then a goal you would like to
12 accomplishment if reelected.

13 A. Accomplishments? I believe that I have brought a
14 spirit of unity to my circuit. And what I would like to
15 accomplishment in the future?

16 Q. Yes, ma'am.

17 A. Just to continue to do well and to make my
18 circuit even better.

19 Q. Thank you. Judge Holmes, what do you think your
20 reputation is among attorneys that practice before you?

21 A. I think I have the reputation of being fair,
22 diligent, and a good listener.

23 Q. Thank you, Judge Holmes. The Commission received
24 321 ballot box surveys regarding you, with 15 additional
25 comments. The ballot box, for example, contained the

1 following positive comments:

2 "Judge Holmes is a model jurist and she is
3 dedicated in all respects to fair and just decisions and
4 complex and straightforward cases that come before her.
5 She is respectful to attorneys and to all parties appearing
6 before her. My personal observation, I believe Judge
7 Holmes is an excellent family court judge and well
8 qualified in all aspects."

9 A number of comments said, "Judge Holmes has
10 turned out to be one of the very best family court judges.
11 Unlike some other judges, she does not play favorites. She
12 does not always rule in my favor. But when she doesn't, I
13 understand why. Her rulings are based on the law and rules
14 of procedure. She is an asset to the bench and is well
15 respected in the 15th Circuit."

16 Five of the written comments expressed concerns.
17 The comments indicated that you have a poor judicial
18 temperament and can be rude to litigants and attorneys.
19 What response would you offer to this concern?

20 A. I note that concern. And I note that judges are
21 to be patient, dignified and courteous to all that appear
22 before them.

23 **Q. Thank you, Judge Holmes.**

24 MS. RILEY: I would note that the Pee Dee
25 Citizens Committee reported that Judge Holmes is qualified

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

7 BY MS. RILEY:

8 Q. And I just have a few housekeeping questions for
9 you. Since submitting your letter of intent have you
10 contacted any members of the Commission about your
11 candidacy?

12 A. I have not.

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

16 A. I am.

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

21 A. I have not.

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

1 A. I have not. And I am not aware.

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

5 A. I do.

6 MS. RILEY: Mr. Chairman, I have no further
7 questions.

8 SENATOR YOUNG: Thank you.

9 EXAMINATION BY SENATOR YOUNG:

10 Q. Judge, I have a couple of questions for you. One
11 is in the area of abuse and neglect cases.

12 A. Okay.

13 Q. You obviously -- it's my understanding from your
14 PDQ, you handled a number of family court matters. In
15 fact, I think it says 95 percent of your practice before
16 you were elected to the bench in 2007 was family court
17 matters.

18 Since you've been on the bench for the past
19 eleven years, you've presided over a number of abuse and
20 neglect matters involving DSS. One of the things that I
21 would like to know is if you could improve the system for
22 the children and the families in the abuse and neglect
23 system in family court, what change would you recommend?

24 A. There appears to not be a lot of consistency
25 within the agency, itself, with respect to the Department

1 of Social Services. So that certainly needs to be
2 reviewed.

3 **Q. Can you elaborate? What do you mean by**
4 **"consistency"?**

5 A. Well, the attorneys would certainly -- if they
6 know that they are seeking a position or presenting a
7 position to the court that's probably -- they know that the
8 court is not going to rule in their favor, they will
9 certainly say that, "These are just our marching orders,
10 and this is what we are told we need to do."

11 So rather than leaving it -- leaving the decision
12 to the attorney, that takes a look at the facts before him
13 or her, they have orders from the state office as to how
14 they are to proceed.

15 **Q. Do you have mediation of abuse and neglect cases**
16 **in Georgetown?**

17 A. Not in Georgetown. But in Horry, we do.

18 SENATOR YOUNG: Other questions?

19 EXAMINATION BY MS. MCIVER:

20 **Q. How are you?**

21 A. I'm good.

22 **Q. Good. We've been addressing the issue of**
23 **temporary hearings and whether fifteen minutes, thirty**
24 **minutes is sufficient to hear a temporary hearing to get**
25 **through all the affidavits that you need to get through and**

1 that type of thing.

2 Have you found it to be an issue where lawyers
3 are requesting fifteen-minute hearings when actually they
4 may need more, and have to balance that need for more time
5 with the need of their client to get before the court as
6 soon as possible?

7 A. Most of the hearings that I -- that I have are
8 set for thirty minutes. And it's actually taking us an
9 hour or sometimes an hour and a half to read all the
10 documents and the supporting exhibits that they submit. So
11 if they need more than fifteen minutes, and so they're
12 usually requesting thirty but then it takes an hour, which
13 then causes a backlog on our docket.

14 Q. How do you handle that when there's a backlog?

15 A. We just keep working until we get to each case.
16 And, hopefully, they have an agreement on some of the later
17 cases and we can get caught up. But I just -- I still hear
18 the cases.

19 Q. And you said you read through all the documents.
20 The affidavits, I presume?

21 A. I do.

22 Q. And do you typically rule from the bench or take
23 matters under the advisement? Or do you have a particular
24 practice?

25 A. Typically, I do rule from the bench. But if I'm

1 about an hour or so behind, I'll take the matter under
2 advisement so I can get caught up. And I usually give the
3 attorneys an opportunity to make statements to the court
4 when I take the matter under advisement so they'll -- so
5 the litigants will at least feel like they did have a voice
6 and that the judge did hear their position.

7 **Q. As far as where you are physically presiding, you**
8 **haven't heard it to be an issue with cases that are getting**
9 **backed up and attorneys are getting frustrated, waiting in**
10 **the waiting room for their turn if there is --**

11 A. It doesn't happen often. So no, there's not a
12 problem.

13 **Q. I have another unrelated question. It's noted**
14 **that you were named a defendant in a civil suit filed in**
15 **2000.**

16 A. That was an error. And I did have an opportunity
17 to check that. It was actually in -- the plaintiff
18 purchased property at a delinquent tax sale, and filed a
19 quiet title action and listed all of the heirs -- possible
20 heirs, and there were some minors.

21 I was appointed as the guardian ad litem in that
22 case, and our clerk's office did not enter that correctly.
23 So they have corrected it. They said that it should take a
24 couple of days. But they have me -- I was appointed to
25 represent the minors.

1 **Q. Thank you, Judge Holmes.**

2 A. You're welcome.

3 EXAMINATION BY SENATOR YOUNG:

4 **Q. Judge, the majority of the comments that the Bar**
5 **received were very favorable. There were a handful of**
6 **comments that were not favorable. Do you think that the**
7 **Commission should consider the Bar comments in its review**
8 **of judicial candidates?**

9 A. It would be helpful when we receive the comments
10 that are unfavorable -- and I -- and I realize that the
11 reason why it's anonymous, but sometimes if we -- if an
12 attorney, for example, has appeared before the court on a
13 continuous basis unprepared and we have to note that
14 they're unprepared, or either continue their case, there
15 could be some negative comments concerning that.

16 Or it could be negative comments concerning maybe
17 a ruling that they disagreed with. So it would help for us
18 to be able to address the negative comments.

19 **Q. What is your -- when you preside in court, what**
20 **is your goal in terms of how you're demeanor's going to be**
21 **and your temperament?**

22 A. I consider myself to be very patient. I've been
23 told that I have the patience of Job. In fact, I had a
24 mother, after I committed her child to the Department of
25 Judicial Justice for two 90-day consecutive sentences, she

1 told all of us to go to "h-e double l." I didn't hold her
2 in direct contempt because I realized that she was upset.
3 I did allow her to leave the courtroom.

4 So I have been dealt situations such as that, so
5 I think that my temperament is always appropriate. But as
6 I stated, I note that some of the negative comments, and I
7 note that how I am to conduct myself. And I consider
8 myself to have the appropriate temperament at all times.

9 Q. I mean, there were not many. I mean, there were
10 a handful. And there were also several that were very
11 favorable. But I just wanted to bring to your attention
12 there were a few that were not flattering about
13 temperament. So we wanted to bring it to your attention.
14 And we've done that with other candidates, and we want to
15 be consistent.

16 SENATOR YOUNG: Are there other questions?
17 Mr. Safran.

18 MR. SAFRAN: Thank you, Senator.

19 EXAMINATION BY MR. SAFRAN:

20 Q. Judge, you know, let me kind of take up where
21 Senator Young started. These ballot box surveys are part
22 of the process, it's not certainly the only thing we look
23 at. But it's one of the few opportunities that we have
24 for, you know, us to have any flavor of what the Bar sees
25 in terms of a judge's conduct. And, you know, so it's

1 certainly something we pay attention to, but it's not the
2 do all end all.

3 Let me ask this: You're not far removed from
4 being at attorney. Not by a long shot, are you?

5 A. I'm not.

6 Q. And you spent a good bit of time in the courtroom
7 before you became a judge, didn't you?

8 A. I have.

9 Q. Okay. And I am sure that during the time that
10 you were on the other side of the bench, there were
11 probably some times where you went in there and felt like,
12 "Wow, I don't know why that happened to me today" or "I
13 didn't necessarily deserve that."

14 I'm not saying it was often, but I'm not -- we've
15 all experienced it as lawyers, where maybe we got a bit of
16 a lash from a judge that we didn't necessarily feel was
17 coming. And I'm assuming if you're like me, it's happened.
18 Is that fair?

19 A. Yes, that would be a fair statement.

20 Q. And you remember how it felt, don't you?

21 A. I do.

22 Q. So I guess when we see these comments, the reason
23 we bring their -- being them to your attention is to simply
24 say, you know, you've been there, you know how it is, and
25 that I'm sure that sitting as a judge, when you're going in

1 there that day, whereas opposed to maybe you might have had
2 a case or two that you were really focused on going in as
3 the lawyer, where you're sitting there as a judge and you
4 may have forty during the course of a day, that things
5 probably can get to a point where people aren't ready if
6 they're not prepared.

7 Human nature says it does have a way of having an
8 impact. Because, you know, you're there for a reason, and
9 if everybody's there -- is not there with the same level of
10 preparation, it can be frustrating. And I think you would
11 agree with me about that, wouldn't you?

12 A. I do.

13 Q. And, you know, so it is absolutely human nature
14 that if things don't necessarily go that way, that,
15 frankly, you know, we can get a little upset. And maybe
16 that's sometimes what we see in this ballot boxes. And so
17 all we're simply pointing out is, is we're not saying,
18 "Hey, give up control of the courtroom," because that's
19 what you're there for is to control that courtroom, to make
20 sure you are running the proceeding and doing what you need
21 to do.

22 And from our standpoint is just something that we
23 feel the need to point it out. Because I've talked to
24 people recently, they don't do these comments because they
25 don't think they're anonymous. I mean, I had somebody tell

1 me last week, "Well, I don't do those. They're not -- I
2 don't believe they're anonymous. I think they know who's
3 giving them."

4 And so I'm sure we're only getting a smattering
5 of what maybe some people out there are saying, good or
6 bad. But what we're trying to basically say is this: We
7 don't ignore the good stuff too. And I mean, as they said,
8 "She has gotten better and better with experience." There
9 are others that say, "Pleasure appearing before her."

10 So we're not in any way, shape, or form trying to
11 say that, you know, there is this terrible crying hue out
12 there that says, you know, something is a major, major
13 problem. But I think what it all goes to is everybody
14 wants to make themselves better as time progresses.

15 A. Absolutely.

16 Q. And that, you know, sometimes criticism can be
17 taken constructively and things can improve with time.
18 And, you know, there's nothing here saying there's a
19 glaring issue, but I guess we feel like when we see you
20 that once every six years, that it's -- would be derelict
21 on our part if we didn't tell you that some of these things
22 happen, and that -- you know, if we're going to try to
23 improve the quality of the judges, everybody has an ability
24 to be better even if they're already good.

25 And so, frankly, that's really the purpose of it.

1 And we do thank you for your serve and thank you for being
2 here today.

3 A. Thank you for having me.

4 CHAIRMAN RANKIN: Judge, I want to make a
5 couple of comments, unless there are other questions or
6 comments from other members of the commission.

7 (Hearing none.)

8 EXAMINATION BY CHAIRMAN RANKIN:

9 Q. That being one of admiration for what you're
10 doing, what you're trying to do, and the -- as you said
11 from the very outset with, I think, unadulterated purity
12 and honesty and passion, loving what you do.

13 God bless you for doing it. Because these are
14 not easy cases that you're deciding. You've got affidavits
15 in front of you, you've got a little bit of time to handle
16 it. I think you've addressed with Ms. McIver how you
17 handle that, and the roster itself. But being fair to
18 those who appear before you, whether represented or not,
19 and looking out for those who don't have a voice.

20 And those, obviously, children that are affected
21 and torn between -- tugs of war between families and
22 marital assets, etc., etc. So it is a tinderbox of
23 emotions that you deal with, so in that you love it is a
24 wonderful thing.

25 The good and the bad, you're going to grow from

1 the negative. And keep up the positive and hopefully, when
2 you come back the next time, it will take .008 seconds to
3 get out, why do you want to do it that you continue to love
4 it. I appreciate your service.

5 CHAIRMAN RANKIN: With that, unless there
6 are other questions, that will close this portion of your
7 screening. And I want to remind you that, as you know,
8 part of the evaluative criteria is the South Carolina laws
9 of ethics. Any violation of those or -- either in letter
10 or spirit would be deemed very serious. Of course we're
11 talking about your violation of that, which would expect
12 will not be the case. But again for the record, we have to
13 put on there. And you understand that we could call you
14 back, correct?

15 JUDGE HOLMES: I do.

16 CHAIRMAN RANKIN: And we surely don't expect
17 that to be the case. But with that, that will close this
18 portion of the record. And we appreciate your service and
19 willingness to continue serving on the bench.

20 JUDGE HOLMES: Thank you for having me.

21 (Candidate excused.)

22 CHAIRMAN RANKIN: And now a motion of
23 Representative Smith, seconded by Representative
24 Rutherford, we're going to go into executive session.

25 (Off the record from 3:09 p.m. to 4:07 p.m.)

1 REPRESENTATIVE SMITH: Mr. Safran moves we
2 lift the veil and come out of state ethics laws. All in
3 favor say "aye."

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

5 REPRESENTATIVE SMITH: And let me state,
6 once we're out of executive session that there were not
7 votes taken and no decisions made. We were in there for
8 the benefit of legal advice.

9 Judge Guyton, I appreciate you being here
10 today. And I see you have someone with you. Would you
11 like to introduce them to the committee?

12 JUDGE GUYTON: I would love to introduce you
13 to my wife, Chrystal.

14 REPRESENTATIVE RUTHERFORD: Crystal, how are
15 you doing? I appreciate you being here today. Judge
16 Guyton, will you raise your right hand, please, sir.

17 WHEREUPON,

18 THE HONORABLE DAVID G. GUYTON, being duly
19 sworn and cautioned to speak the truth, the whole truth and
20 nothing but the truth, testifies as follows:

21 REPRESENTATIVE SMITH: Judge Guyton, as you
22 know in front of you, your Personal Data Questionnaire and
23 your sworn statement. Are both of these correct?

24 JUDGE GUYTON: Yes, they are.

25 REPRESENTATIVE SMITH: Are there any

1 amendments that you need make at this time?

2 JUDGE GUYTON: I have the exhibits marked as
3 12, 13 and 14. And I think the amendments that were
4 previously made to the original PDQ are included and are
5 correct. I don't think I need any additional amendments.

6 REPRESENTATIVE SMITH: Okay. Do you have
7 any objection to us making this as an exhibit to your
8 record?

9 JUDGE GUYTON: I do not.

10 REPRESENTATIVE SMITH: So if you'll hand
11 that to Lindi for me, please, sir. And we'll mark that as
12 an exhibit.

13 (EXHIBIT NO. 12 - JUDICIAL MERIT SELECTION
14 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
15 HONORABLE DAVID G. GUYTON)

16 (EXHIBIT NO. 13 - AMENDMENT TO PERSONAL DATA
17 QUESTIONNAIRE OF THE HONORABLE DAVID G. GUYTON)

18 (EXHIBIT NO. 14 - JUDICIAL MERIT SELECTION
19 COMMISSION SWORN STATEMENT OF THE HONORABLE DAVID
20 G. GUYTON)

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

1 application materials, verification of your compliance with
2 state ethics laws, a search of newspaper articles in which
3 your name has appeared, a study of previous screenings, and
4 also a check for economic conflicts of interest.

5 We have received no affidavits, today, filed
6 in opposition to your election. There are no witnesses
7 present to testify. And you are welcome to make a brief
8 opening statement if you like, but you're not compelled to
9 do so.

10 JUDGE GUYTON: Given the time frame today
11 with the delay, especially for your benefit, I'll decline
12 to do so.

13 REPRESENTATIVE SMITH: Thank you. That's
14 the best opening statement we've had so far today. Please
15 answer any questions that Mr. Appleby may have.

16 EXAMINATION BY MR. APPLEBY:

17 **Q. Judge Guyton, after serving eight years on the**
18 **family court, why do you want to continue serving as a**
19 **family court judge?**

20 A. I think that's really what I was called to do.
21 It is sometimes a very difficult and challenging job, but I
22 think it's where I'm supposed to be. And I will say that I
23 did have, I believe, an opportunity to move on up to
24 circuit court, and I declined that to stay in family court.
25 That, and I do want to enjoy the brand new courthouse that

1 is being built in York County.

2 Q. Judge Guyton, please explain one or two brief
3 accomplishments that you feel you have completed during
4 your tenure, and a goal you would like to accomplish if
5 reelected.

6 A. I want to continue our adoption days that we have
7 in December, typically, the last court date of the year in
8 which we can get as many adoptions done in a particular day
9 as we can.

10 We're also trying to increase legal access to the
11 courtroom without it being necessarily legal assistance,
12 without it becoming a burden on our clerk of court's office
13 or our staff.

14 Q. Judge Guyton, your SLED report indicated that
15 since your last screening there was a lawsuit filed by
16 Clark Thomas a/k/a George Nichols against you, Charleston
17 County, and numerous other judges and clerks of court.
18 Please explain the nature and the disposition of this
19 lawsuit.

20 A. All right. Several years ago, when I was a
21 visiting judge assigned to Charleston County, I had a
22 approximately two-hour motions hearing involving this man.
23 And it's my understanding -- he came in, in shackles. He'd
24 already been sentenced to -- for some time for a General
25 Sessions case related to his family court case.

1 And the motions had to do with the family court
2 case, and he disagreed with something I had done and he --
3 he had already conflicted out several of the local judges
4 in Charleston, so as a visiting judge I was the next judge
5 in line to get his case.

6 So I think that's what happened, and that's why
7 other judges such as Judge Woods, the clerk of court, the
8 solicitor have all been named in that suit.

9 **Q. Judge Guyton, what do you think your reputation**
10 **is among attorneys that practice before you?**

11 A. I believe that they feel that I'm -- can be tough
12 but fair and impartial, that they're going to get a chance
13 to have their case heard, and that I'm going to listen to
14 what they have to say or read the materials that they have
15 and consider them.

16 **Q. The Commission received 367 ballot box surveys**
17 **regarding you, with 30 additional comments. The ballot box**
18 **survey, for example, contained the following positive**
19 **comments:**

20 "Judge Guyton has an excellent temperament for
21 the family court and is extremely knowledgeable. Judge
22 Guyton is extremely knowledgeable in all areas of family
23 law, evidentiary rules, and procedural rules. Judge Guyton
24 is always fair and does what is in the best interest of
25 children. He has the ethical fitness, professional

1 ability, reputation, experience and judicial temperament to
2 serve as an excellent family court judge."

3 Four of the thirty written comments expressed
4 concerns. Three of these mentioned poor judicial
5 temperament, and one stated you had no business being a
6 family court judge. What response would you offer to these
7 concerns?

8 A. I would say that obviously, overwhelmingly, the
9 Bar in general feels that I am very patient and fair. But
10 there will always be two or three that I simply can't make
11 happy. And I will be impatient at times if it's an
12 attorney that knows better but consistently shows up late,
13 or who wants to argue with me after I've made my ruling.

14 Q. Just a few housekeeping issues. Since submitting
15 your letter of intent have you contacted any members of the
16 Commission about your candidacy?

17 A. I have not.

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

21 A. That's the 48-hour limit? I am.

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

1 A. I have not.

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

6 A. I have not.

7 Q. Have you reviewed and do you understand the
8 Commission's guidelines on pledging and South Carolina Code
9 Section 2-19-70(E)?

10 A. I do.

11 MR. APPLEBY: I would note that the Piedmont
12 Citizens Committee reported Judge Guyton to be well
13 qualified in the evaluative criteria of ethical fitness,
14 professional and academic ability, character, reputation,
15 experience and judicial temperament, and qualified in the
16 remaining evaluative criteria of constitutional
17 qualifications, physical health and mental stability.

18 The Committee included the following summary
19 statement: "The Committee was particularly impressed by
20 Judge Guyton's diligence and commitment to service,
21 especially his willingness to make himself available
22 whenever necessarily to meet litigant's needs."

23 I would note for the record that any
24 concerns raised during the investigation regarding the
25 candidate were incorporated into the questioning of the

1 candidate today. Mr. Chairman, I have no further
2 questions.

3 REPRESENTATIVE SMITH: Senator Hayes.

4 MR. HAYES: Thank you.

5 EXAMINATION BY MR. HAYES:

6 Q. I've been waiting a long time to get him under
7 oath. But no, I think that would be more dangerous to me
8 to hear, to put you under oath. But I just want to thank
9 you for your service. And I just wanted to ask you just a
10 few questions.

11 I noticed you had extensive military service.
12 Could you explain a little bit of that, and why that may
13 make you a better judge?

14 A. I've been fortunate to have served in the Marine
15 Corps for three years on active duty from '88 to '91. And
16 that was as a judge advocate, including time in Desert
17 Shield and Desert Storm. And then after coming back and
18 joining the law firm with Wes Hayes and Hugh Harrelson, Wes
19 asked me to consider becoming a judge advocate with the
20 National Guard. And so I started that in March of 1992,
21 and served through retirement in August of 2017.

22 So it's about thirty-two years altogether, and
23 that included some time as a prosecution defense, also as a
24 military judge for about three years. A lot of different
25 capacities. And I think the structure of the military and

1 the courtroom experience, the management, organizational
2 requirements certainly all prepared me to be a better
3 judge. I have no doubt I'm a better judge today because of
4 my time in the military.

5 Q. Just one other question. I noticed just looking
6 at the different involvements you have in the community,
7 that you seem to have a passion for mental health and
8 children's issues. Could you maybe explain just a few of
9 those things?

10 A. Definitely, I've been involved with the Kiwanis
11 Club for many, many years, terrific kids programs. I'm
12 currently involved -- I had a meeting this morning with the
13 ACE Task Force, that's Adverse Childhood Experiences. And
14 I'm trying to look at the trauma that kids suffer, and how
15 and why that leads to some of the juvenile behavior that
16 they express later on.

17 I'm currently on a committee that's looking at
18 the dual status kids, which are the kids who are all in DJJ
19 and DSS at the same time, and how to maybe better handle
20 some of those. But I've also been on the Status Offender
21 Task Force, which just looks at some of the status
22 offenses, and trying to make sure that we're not sending
23 kids to jail for things like not -- just not going to
24 school, or something simple. And so there's a --

25 A. -- a lot of different programs, and I was

1 involved with the Jaycees and other Children's Attention
2 Home -- the Palmetto School at the children's Attention
3 Home for the abused and neglected kids. And the Rock Hill
4 School District Foundation, my wife's a principal, so I
5 certainly understand the needs of the schools.

6 And it's just -- it has been a passion to try to
7 do the right thing for kids. And not just from a judicial
8 standpoint, but to look and try to find resources to help
9 the families out as well.

10 MR. HAYES: No further questions.

11 REPRESENTATIVE SMITH: Senator Young.

12 SENATOR YOUNG: Thank you, Mr. Chairman.

13 EXAMINATION BY SENATOR YOUNG:

14 Q. Judge, thank you for your interest in continuing
15 your service to our state. My question for you is in the
16 area of abuse and neglect -- abuse and neglect cases. And
17 the question is: Based on your experience on the family
18 court bench, and your observations from presiding over
19 abuse and neglect cases, if you could improve the system
20 for the children and the families involved in the abuse and
21 neglect cases in the family court and DSS system, what
22 would you suggest be done to improve that for those folks?

23 A. For the kids and the families themselves is
24 trying to make as many resources as possible available to
25 the -- to those families as early on as possible. One of

1 the things that I see with the Department of Social
2 Services -- and everybody thinks that DSS is the bad guy.
3 Parents don't like them.

4 And, you know, they -- they have such a high
5 turnover in a lot of their positions, whether it be
6 caseworkers or whether it be the attorneys themselves, it
7 would be nice to have more consistency with the experience.
8 And in York County, we've been fortunate to have a couple
9 of good attorneys who have been there for a long time.

10 But I think in the smaller counties, especially
11 the lack of resources often make it difficult when it comes
12 to actually giving the physical, not just legal assistance,
13 to the families themselves. And there is -- it is truly a
14 complex problem.

15 I've told many groups that I've spoken with, if
16 you're not in DSS, you're not in law enforcement, if you're
17 not in the education system or in court, there is this
18 whole other lifestyle for impoverished families with
19 generational dysfunctions that become so hard to break.

20 And I think if there were an easy -- any easy
21 answers, we would have done so. I just think the more
22 options and resources that we can give to the families
23 themselves, to try to intervene and stop the cycle of
24 dysfunction, the better.

25 **Q. Thank you, sir.**

1 REPRESENTATIVE SMITH: Judge, let me just
2 thank you for your service. Did I hear you say your wife
3 is also a principal in Rock Hill?

4 JUDGE GUYTON: She is.

5 REPRESENTATIVE SMITH: So thank you for your
6 service also. I appreciate it.

7 EXAMINATION BY REPRESENTATIVE SMITH:

8 Q. I just want to remark on a couple of issues. And
9 I look at your ballot box surveys and they are
10 overwhelmingly positive, which means if you've served on
11 the bench for seven years as a family court judge --
12 obviously you don't make people happy most of the time, but
13 this is a reflection on the type of judge and the character
14 and the way you carry yourself in the courtroom.

15 So I appreciate your service and the way you
16 handle your courtroom and the way you are -- you're widely
17 respected among the members.

18 You know, we sit up here and we have talks with
19 the judges about these ballot box surveys, whether they're
20 helpful or not helpful, I put a lot of credibility in them
21 because they're anonymous. And for the people who are
22 generally in front of you, and people don't have to -- you
23 know, to your face they're only going to tell you good
24 things, I presume.

25 A. Right.

1 Q. But this is an opportunity for us to see what
2 people are saying behind the curtain, so to speak. And you
3 have hardly no negative comments. And you are just -- it's
4 overwhelmingly well qualified, and so that is a -- that's a
5 good indication that you're doing your job and you're doing
6 it with dignity. And I appreciate that.

7 A. Thank you very much.

8 Q. You know, also let me say I appreciate your
9 passion for mental illness and for DJJ, that I just heard
10 you talk about for children in general. And I appreciate
11 the adoption day. That was started in Sumter by Judge
12 McFadden years ago.

13 And I just -- it just makes me proud to see it
14 going statewide and family court judges investing in the
15 lives of children and helping better their lives. And I
16 appreciate you being involved in that in York County.

17 A. Thank you.

18 Q. Judge, lastly, I'm going to say this is -- we've
19 been having these debates as we're going forward about, you
20 know, people bringing a wealth of experience, both from the
21 legal profession as well as personal experience to the
22 bench. And it looks like you're the type of judge that we
23 are looking for, someone that has a career, life
24 experiences, and gives back to the legal community,
25 following being a judge.

1 I would encourage you all -- we've been telling
2 the judges up here, and you're nowhere near the retirement
3 age, or I wouldn't -- you're just a few years older than
4 me, so I'm not going to call you old either. But I would
5 encourage you to continue to tell the family court lawyers
6 in your circuit, and in other areas that you may visit,
7 about what a wonderful opportunity this is, how it's a --
8 it's rewarding and how it's nice to have seasoned
9 practitioners become judges.

10 And I hope we can continue having that tradition
11 that's been set in the state for a long, long time. And
12 you're fulfilling that, and I appreciate that.

13 A. Thank you very much.

14 REPRESENTATIVE SMITH: Any other questions
15 for the judge?

16 (Hearing none.)

17 REPRESENTATIVE SMITH: Judge, thank you so
18 much for being here today. I want to take this opportunity
19 to remind you that pursuant to the Commission's evaluative
20 criteria, we expect candidates to follow the spirit as well
21 as the letter of the ethics laws. And we will view
22 violations or the appearance of impropriety as serious and
23 potentially deserving of heavy weight in the screening
24 deliberations.

25 On that note, and as you know the record

1 will remain open until the formal release of the report of
2 qualifications. And you may be called back at such time as
3 the need arise -- the need may arise. Hopefully, we won't
4 have that occur. And you understand all that, correct?

5 JUDGE GUYTON: I do. Thank you.

6 REPRESENTATIVE SMITH: I appreciate you
7 being here today. I appreciate you all driving and your
8 patience as we run way behind, which has become the new
9 normal over here. But I wish you all safe travels back to
10 York County.

11 JUDGE GUYTON: Rock Hill. Right.

12 REPRESENTATIVE SMITH: And you all are going
13 to beat the five o'clock traffic, barely. But you're going
14 to beat it, so run.

15 JUDGE GUYTON: Thank you. And I appreciate
16 what you all do. I know you're giving me the last lap of
17 your marathon, and while we're still on the record so I can
18 get brownie points, I do want to thank my wife for being
19 here with me. Because she has to support me. And this is
20 a very difficult job, and I appreciate very much her
21 support as well.

22 REPRESENTATIVE SMITH: Yeah, thank you.
23 Thank you for your support.

24 (Candidate excused.)

25 REPRESENTATIVE SMITH: Judge, how are you

1 doing today?

2 JUDGE JONES: I am fine, sir. Thank you.

3 REPRESENTATIVE SMITH: Raise your right
4 hand, please, sir.

5 WHEREUPON,

6 THE HONORABLE TONY M. JONES, being duly
7 sworn and cautioned to speak the truth, the whole truth and
8 nothing but the truth, testifies as follows:

9 REPRESENTATIVE SMITH: Judge, you have
10 before you, your Personal Data Questionnaire and your sworn
11 statement. Is both of those before you, true and correct?

12 JUDGE JONES: Yes, sir.

13 REPRESENTATIVE SMITH: Is there any
14 amendments or changes that you need to make to it at this
15 time?

16 JUDGE JONES: No, sir.

17 REPRESENTATIVE SMITH: Do you have any
18 objection to us making that as a part of the record of this
19 hearing?

20 JUDGE JONES: I do not.

21 REPRESENTATIVE SMITH: All right. If you'll
22 hand that to Lindi for me, please, sir.

23 (EXHIBIT NO. 15 - JUDICIAL MERIT SELECTION
24 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
25 HONORABLE TONY M. JONES)

1 (EXHIBIT NO. 16 - JUDICIAL MERIT SELECTION
2 COMMISSION SWORN STATEMENT OF THE HONORABLE TONY
3 M. JONES)

4 REPRESENTATIVE SMITH: Judge, the Judicial
5 Merit Selection Commission has thoroughly investigated your
6 qualifications for the bench. Our inquiry is focused on
7 nine evaluative criteria that has included a ballot box
8 survey, a thorough study of your application materials,
9 verification of your compliance with state ethics laws, a
10 search of newspaper articles in which your name may appear,
11 a study of previous screenings, and checks for economic
12 conflicts of interest.

13 There are no affidavits filed in opposition
14 to your election. No witnesses are here today to testify.
15 Do you wish to make a brief opening statement to the
16 Commission? You do not have to, but you're welcome to if
17 you'd like.

18 JUDGE JONES: Well, all I would like to say
19 is that I enjoy what I do. I do consider it public
20 service. I do consider it giving something back. The
21 practice of law was very good to me, and I think this is my
22 way of giving something back. And I enjoy it. And it
23 gratifies me more than anything, is working with our
24 children in our judicial drug court, and being able to --
25 our children -- our children are South Carolina's most

1 precious resource. And I enjoy what I do. And I want to
2 do it another six years.

3 REPRESENTATIVE SMITH: Thank you, Judge. I
4 appreciate those comments. Please answer any questions
5 that Counsel may have.

6 JUDGE JONES: Yes, sir. I stand ready to
7 answer any questions.

8 EXAMINATION BY MS. SIMON:

9 **Q. Judge Jones, after serving five years on the**
10 **family court, why do you want to continue serving as a**
11 **family court judge?**

12 A. Because I think it is a public service. I do
13 find it's a way of giving something back to our community.

14 **Q. Please explain one or two accomplishments that**
15 **you feel you have completed during your tenure, and then a**
16 **goal you would like to accomplishment if reelected.**

17 A. Okay. Well, I go back to the judicial drug
18 court. The candidate who was just in here in front of me,
19 Judge Guyton and I, we are the judges from York County, and
20 we have a judicial drug court. And in that drug court, we
21 get to work hand-in-hand with these -- it's a diversion
22 program, that if they can successfully complete the
23 judicial drug court and graduate, that their record is
24 wiped clean.

25 Well, on the grounds of the courthouse, we have a

1 judicial -- I started this judicial drug court garden.
2 It's a gardening project where the children can come out
3 there, the juveniles, and they can work in the garden and,
4 you know, satisfy some of their community service hour
5 requirements.

6 And I get out there with them on Saturdays in the
7 afternoons. I mean, they see me in a tee-shirt and shorts.
8 They don't just see me in a robe. They see -- it humanizes
9 the court to them. And we get to -- you know, we grow
10 vegetables and we grow things. And we took the harvest and
11 took it to Bethel Methodist Church, where there's a
12 homeless shelter, and we had some of the people at the
13 church prepare the food.

14 And we let our juveniles serve the homeless, so
15 we would tell them, you know, "This is what we're trying to
16 keep you from becoming."

17 And it was very gratifying to see the children,
18 the juveniles, the expression on their face to see them
19 looking like "wow." They were able to come face-to-face
20 with it. I found that to be -- that was a very gratifying
21 moment as a family court judge.

22 You know, going forward -- you know, I want to
23 continue in the capacity working with these children. I've
24 always taken a great interest in children who are not quite
25 as fortunate. I was a foster parent and raised two boys.

1 And they're still my family. And if I could touch the
2 lives -- you know, I'll just tell you this, quickly.

3 I had a -- I was in Union a couple of weeks ago,
4 and they brought a juvenile in for contempt. He missed
5 some school -- he was on a school attendance sort of last
6 year and he had missed three days this year. And they
7 brought him in on a contempt, which I thought was a little
8 excessive to begin with.

9 But I asked the young man why did he -- "Why did
10 you miss the days?"

11 He said -- his momma spoke up, and she said, "He
12 was sick two days. But we didn't have enough money to take
13 him to the doctor."

14 And then I said, "Well, what about the third
15 day?"

16 And he said, "Well, my class had a field trip and
17 I didn't have the money to pay. And I was ashamed to go to
18 school."

19 I just -- that just broke my heart. So I threw -
20 - I just threw the case out. I just threw it out. They
21 wanted to give him nine months probation. And I'm like,
22 "What?" So I threw it out.

23 And the solicitor says, "How can you throw that
24 out?"

25 And I said, "Cause it's not a crime to be poor."

1 It wasn't willful. And this year my Christmas donation is
2 going to be to the Union County School District, to make
3 sure that those children don't get left behind 'cause they
4 don't have money.

5 **Q. Judge Jones, what do you think your reputation is**
6 **among attorneys that practice before you?**

7 A. I'm fair but firm. I run a tight ship. I run on
8 time. I try to treat everybody that comes in front of me
9 with courtesy and respect. But I also work hard to
10 maintain the dignity of the court. I think I've got a
11 pretty good -- there's some that don't like me. I mean,
12 sure. I mean, that -- that's -- you can't do your job
13 right without that happening some.

14 But I know lawyers like to come in front of me,
15 because they say I'm predictable. And I think for the most
16 part, I'm well received by the Bar.

17 **Q. The Commission received 290 ballot box surveys**
18 **regarding you, with 23 additional comments. The ballot box**
19 **survey, for example, contained the following positive**
20 **comments:**

21 "Outstanding judge." "Runs the best docket in
22 the state." "Another outstanding judge that truly cares
23 about children that have cases before him." "He shows
24 tough love to juveniles, but he makes clear to them that he
25 cares about them succeeding in life." "Judge Jones is in

1 all respects what a judge should be: Experienced, fair,
2 humble, devoted, firm yet compassionate."

3 Eight of the written comments expressed concerns.
4 All of them relate to temperament or premature judgement.
5 As an example of temperament, words like "erratic,"
6 "offensive," "bully," "hostile," and "profanity" were used.
7 What response would you offer to these concerns?

8 A. Well, first of all -- and you had mentioned this
9 to me in our interview, about the comment about profanity,
10 which just struck me. Because by my nature, I'm not a
11 profane person. I'm just not.

12 The only time -- and I tried to think back about
13 what in the -- when could that have happened. And the only
14 thing I can think of -- you know, sometimes these family
15 court cases, they're so emotionally charged. And I tell
16 the litigants, "Sometimes it appears that you hate each
17 other more than you love your children. And your conduct
18 is contrary to the best interest of the children," and that
19 they are destroying their children in the course of their
20 fight.

21 And I've told them, "That if you continue this
22 type of conduct, then hell's going to be in session." And
23 I meant it. Because if you're not going to look out for
24 the best interest of your children, the court is. And
25 that's the only time I can remember.

1 Now, as far as being erratic, I disagree with
2 that. I think I'm very predictable and -- you know, I
3 mean, I just -- I don't know how to respond to it other
4 than say I don't agree with it.

5 **Q. As an example of premature judgement phrases like**
6 **"quick to make assumptions" or "judgement without allowing**
7 **full argument" and "knee-jerk decisions and assessments"**
8 **were used. What response would you offer to those**
9 **concerns?**

10 A. Well, I totally disagree. Yes, I will cut off
11 argument at times. Because I mean, you know, like at a
12 temporary hearing you just -- I've got fifteen minutes set.
13 And I mean, I've got to consider everything. And I mean, I
14 consider the affidavits that are submitted, and I will cut
15 somebody off when they're arguing. I give them five to six
16 minutes and that's it.

17 And typically the -- we don't have opening and
18 closing remarks in family court, and arguments. We don't.
19 And I don't think my judgements are knee-jerk. I spend a -
20 - I devote a lot of time into making my decision. As part
21 of my packet in my application, I submitted not only orders
22 that I personally prepared in complicated cases, but also
23 the detailed set of instructions that I -- as another
24 example that I give to the attorneys for preparation of the
25 order.

1 Because every day -- I take copious notes. And
2 when I go back to my chambers after the court, I dictate
3 those notes and my secretary types them for me so I can add
4 -- if I got a little asterisk, I can't write fast enough, I
5 can add in. And so my thought -- I'll remember it so I can
6 have the detailed notes.

7 My decisions are -- I spend a lot of time working
8 on them. And I think the examples of my written
9 instructions that I supplied would be evidence of that.
10 Just because somebody doesn't like the decision, doesn't
11 mean it's a knee-jerk decision, I promise you.

12 **Q. Judge Jones, during your last screening when**
13 **asked about the legacy you would like to leave, you said,**
14 **"He was fair and you had better been prepared." Does that**
15 **still hold true?**

16 A. Yes, ma'am.

17 **Q. Now for a few housekeeping issues. Since**
18 **submitting your letter of intent have you contacted any**
19 **members of the Commission about your candidacy?**

20 A. No, ma'am.

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

24 A. Yes, ma'am.

25 **Q. Since submitting your letter of intent have you**

1 sought or received the pledge of any legislator either
2 prior to this date of pending the outcome of your
3 screening?

4 A. No, ma'am.

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

9 A. No.

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

13 A. I do.

14 MS. SIMON: I would note the Piedmont
15 Citizens Committee reported Judge Jones to be well
16 qualified as to the evaluative criteria of ethical fitness,
17 professional and academic ability, character, reputation,
18 experience and judicial temperament, and qualification as
19 to constitutional qualifications, physical health and
20 mental stability.

21 The Committee commented that, "Judge Jones'
22 direct no-nonsense manner confirms his impartiality and
23 conscientiousness." The Committee was also moved by his
24 compassion and commitment to the children and families whom
25 he serves in the family court.

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

5 REPRESENTATIVE SMITH: Thank you. Any
6 questions of the committee? Senator Hayes.

7 EXAMINATION BY MR. HAYES:

8 Q. Judge Jones, I was just telling Judge Guyton that
9 I was looking forward to getting him under oath. Now is a
10 good chance for me to get you under oath as well. We go
11 way back.

12 A. Right.

13 Q. And I just appreciate your willingness to serve,
14 and the service that you rendered over the years to the
15 people in our area of the state. And we were talking
16 earlier about how we -- we're seeking to get experienced
17 lawyers -- family court lawyers to become family court
18 judges. And that's kind of a challenge nowadays.

19 A. It is.

20 Q. What ideas do you have on how to -- to try to get
21 others -- 'cause I -- you know, you probably wouldn't say
22 this, but you probably were looked up to while you were in
23 the practice of law as probably the most knowledgeable
24 family court lawyer before you became a judge. And you
25 gave that up to become a family court judge.

1 **What advice would you have on how to get good**
2 **people to become family court judges?**

3 A. That's hard to say, Senator. You know, you've
4 got to want to do it. You've got to -- it's not a -- I
5 don't mean to make this sound funny, but I know when I was
6 a judge, when I got my first paycheck I said, "What in the
7 world is this? Good Lord."

8 But it's not about money. We've got some good
9 family court lawyers out there. You've just got to have it
10 within you to want to do it. I wanted to do it. I just --
11 and it certainly wasn't for money. And it's not for power
12 or prestige or anything like that. It's something you've
13 got to want. It's got to be within you and you got to want
14 to do it. You've got to want to serve.

15 Like all those years you served, every week
16 coming down here and -- as you know, it's got to be within
17 you.

18 REPRESENTATIVE SMITH: Senator Young.

19 SENATOR YOUNG: Thank you, Mr. Chairman.

20 EXAMINATION BY SENATOR YOUNG:

21 **Q. Judge, thank you so much for wanting to continue**
22 **your service to our state and to your circuit, to all the**
23 **children and families that are impacted by your service.**

24 I was particularly struck by your testimony today
25 about the situation -- or the child in Union. It's very

1 evident that you have a passion for your job. A question I
2 have for you is in the abuse and neglect area. If you
3 would improve the situation for the children and the
4 families in the system, as it relates to the family court
5 system for abuse and neglect cases, what would you
6 recommend that be changed?

7 A. Well, I think a change recently came about that's
8 going to be instrumental, and that was the -- up in our
9 neck of the woods we call it the Dawson line of cases, it's
10 foster parents having the ability to intervene in these
11 termination of parental rights cases. It's pretty
12 complicated, you know, when the department is on a TPR
13 path, as we call it, and then you have foster parents who
14 want to intervene in the action, to be adoptive parents.

15 The law has been very unclear. And as family
16 court judges, we would just seek -- try to find guidance,
17 you know, from the appellate court system, what to do. We
18 finally got it from the Supreme Court, saying that foster
19 parents have a right, have a standing to intervene in a
20 termination of parental rights case, and as a perspective
21 adoptive parent.

22 Because it brings closure -- I mean, that's what
23 we've got to do is get -- you know, people are either going
24 to have to complete their treatment plan as prescribed by
25 the Department of Social Services for reunification, or

1 they need to get off and let us find closure for these
2 children. 'Cause they don't need to have their lives
3 hanging in the balance for years and years while we're
4 trying to rehabilitate parents who are making half-hearted
5 efforts.

6 And if it's going to be TPR, let's get on with
7 it. And I think now, you know, the kids are -- children
8 are in a foster care environment that is typically an
9 excellent environment, and these foster parents want to
10 adopt these children. And now I think we've got a vehicle
11 in place to allow this to happen.

12 Q. Thank you very much.

13 REPRESENTATIVE SMITH: Any further
14 questions?

15 EXAMINATION BY REPRESENTATIVE SMITH:

16 Q. Judge Jones, let me just say thank you for your
17 service. I remember when you ran, I got a lot of
18 recommendations from the family court practitioner in my
19 circuit when you were nominated last time for this
20 position. And let me tell you, you represent what we're
21 looking for on the family court bench.

22 A. Thank you.

23 Q. Somebody that has brought a wealth of experience
24 in the legal community and lifetime experience to the
25 court. I wish we had more candidates like you and more

1 judges like you on the bench. We've got a great set of
2 family court judges, but as we're seeing candidates they're
3 becoming more younger and younger. And I think we're
4 benefitted by your years of practice, your wisdom and your
5 experience.

6 And so I really appreciate that. And I would
7 encourage you to try to always tell lawyers what a great
8 job it is you -- you know, I wish they had your passion and
9 -- you know, one day you're going to have to retire, and we
10 need judges of similar ilk as you, replacing you.

11 So I appreciate your service and appreciate what
12 you do in that regard.

13 A. Well, I'm fortunate to be here. I'm fortunate to
14 serve with David Guyton. You know, David Guyton -- it's a
15 pleasure to come to work with him. David Guyton and I both
16 work hard, but it's nice to have him there. And we're very
17 consistent. And our reputation is very consistent in his
18 courtroom and my courtroom.

19 But I have to tell you this before I go. It's
20 just funny because we had some juveniles -- and this is
21 before I -- I've lost a lot of weight over the last three
22 or four years, about 150 pounds. And I was really heavy.
23 But anyway, we had a juvenile being brought up from
24 Columbia, and he asked the driver, the deputy, he said,
25 "Who's our judge, that big fat one or the man with the flat

1 head?"

2 He said, "Son, it don't matter."

3 Q. Well, as a lawyer who appears in front of courts,
4 consistency is a good thing whether it -- no matter how you
5 are, as long as you're consistent we know how to plan our
6 case --

7 A. Exactly.

8 Q. -- accordingly.

9 A. As long as you can tell them what to expect.

10 Q. That's exactly right.

11 A. Thank you for the opportunity to be here.

12 REPRESENTATIVE SMITH: Judge, thank you so
13 much. And this will now -- with no more questions, this
14 now concludes your hearing and the record will be closed.
15 And I want to take this opportunity to remind you that
16 pursuant to the Commission's evaluative criteria, the
17 Commission expects the candidates to follow the spirit as
18 well as the letter of the ethics law. And we will view any
19 violations of the appearance of impropriety as serious and
20 potentially deserving of heavy weight in the screening
21 deliberations. Do you understand that?

22 JUDGE JONES: I certainly do.

23 REPRESENTATIVE SMITH: On that note, and as
24 you know the record will remain open until the formal
25 release of the report of qualifications. And you may be

1 called back at any time if the need arises.

2 JUDGE JONES: Yes, sir.

3 REPRESENTATIVE SMITH: All right. I
4 appreciate your service. I appreciate you being here.
5 Thank you for your patience as we're running way behind,
6 which is the new normal. Have a safe trip back to Rock
7 Hill.

8 JUDGE JONES: Yes, sir. You all have a good
9 evening.

10 (Candidate excused.)

11 REPRESENTATIVE SMITH: Judge McGee, will you
12 please raise your right hand.

13 WHEREUPON,

14 THE HONORABLE THE HONORABLE JAMES G. MCGEE
15 III, being duly sworn and cautioned to speak the truth, the
16 whole truth and nothing but the truth, testifies as
17 follows:

18 REPRESENTATIVE SMITH: I got you under oath.

19 JUDGE MCGEE: Yes, sir.

20 REPRESENTATIVE SMITH: Judge McGee, you have
21 before you the Personal Data Questionnaire and the sworn
22 statement. Are these documents you submitted to the
23 Commission?

24 JUDGE MCGEE: Yes, they appear to be.

25 REPRESENTATIVE SMITH: Do you have -- do you

1 have any amendments or changes that you need to have made?

2 JUDGE MCGEE: Let me look for a second,
3 Representative Smith. Was the financial stuff in here?

4 REPRESENTATIVE SMITH: No, that's separate.

5 JUDGE MCGEE: Okay. No changes. I bought a
6 new truck. That's all I was going to tell you.

7 REPRESENTATIVE SMITH: Okay.
8 Congratulations. Do you have any objection to us making
9 those part of the record of your hearing today?

10 JUDGE MCGEE: No, sir.

11 REPRESENTATIVE SMITH: Will you give those
12 to Lindi, please, sir?

13 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION
14 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
15 HONORABLE JAMES G. MCGEE III)

16 (EXHIBIT NO. 18 - JUDICIAL MERIT SELECTION
17 COMMISSION SWORN STATEMENT OF THE HONORABLE JAMES
18 G. MCGEE III)

19 REPRESENTATIVE SMITH: The Judicial Merit
20 Selection Commission has thoroughly investigated your
21 qualifications for the bench. Our inquiry has focused on
22 nine evaluative criteria. It has included a ballot box
23 survey, a thorough study of your application materials,
24 verification of your compliance with state ethics laws, a
25 search of newspaper articles in which your name appears, a

1 study of previous screenings, and checks for economic
2 conflicts of interest.

3 Surprisingly, we've had no affidavits filed
4 in opposition to your election, and no witnesses are here
5 to testify. Do you have a brief opening statement? We
6 would strongly encourage you not to, for the interest of
7 time. But do you have a brief --

8 JUDGE MCGEE: No, I do not.

9 REPRESENTATIVE SMITH: All right. Thank
10 you, Judge McGee. Will you answer any questions that
11 Counsel may have for you.

12 JUDGE MCGEE: Yes, sir.

13 EXAMINATION BY MS. RILEY:

14 **Q. Judge McGee, after serving for approximate six**
15 **years on the family court bench, why do you want to**
16 **continue to service as a family court judge?**

17 A. I really like this job a lot. I feel like it's,
18 you know, what I'm supposed to be doing. And I'm much more
19 experienced as a judge now. I appreciate the appointment
20 for six years, so you're getting a better judge now,
21 hopefully, for the next six years, because I've got six
22 years of experience.

23 But I really enjoy it. I get up every morning,
24 you know, you can't wait to get to work. If I ever don't
25 feel that way, I'll let you all know. But I'm still --

1 really like the job a lot. All aspects of it. And it's
2 tough sometimes. There's some tough things you have to
3 deal with, but I'm glad to be there. I'm glad to do it.

4 **Q. Thank you, Judge. Can you please explain one or**
5 **two brief accomplishments that you feel you have completed**
6 **during your tenure, and then a goal that you would like to**
7 **accomplishment going forward?**

8 A. I guess the accomplishment would be, you know,
9 familiarizing myself with aspects of family law that were
10 not part of my practice when I was an attorney. The
11 Department of Juvenile Justice cases, although I did have
12 some acumen with that, based on my criminal law practice
13 when I practiced law, there's a lot more to it than that.

14 So I feel like I've been able to just learn more
15 about that process, and I feel much better in that process.
16 And I think that's a very important aspect of what we do as
17 a family court judge. Juvenile court kind of gets looked
18 over sometimes. But so that would be an accomplishment.

19 And a goal would be just to be more efficient in
20 what I do, making sure I get my orders out on time, making
21 sure that I'm available to the attorneys when they need to
22 be. I've strived to do that.

23 As you may know, I served as a legislator at some
24 point, so the value of having a former legislator as a
25 judge is that it is -- you recognize that this is a officer

1 of service at the end of the day, that you're serving the
2 public in what you do. So being able to -- my goal would
3 be to be more like that. I think I've done that. And
4 that's based on my legislative service. But also be better
5 at that as well, to continue to hone that. Did I make any
6 sense?

7 **Q. It does. Thank you, Judge. What do you think**
8 **your reputation is among attorneys that practice before**
9 **you?**

10 A. Probably the most brilliant jurist they've ever
11 been in front of. Probably just one that -- I'm teasing,
12 of course. You know, that I'm going to help them get to a
13 solution, if we can. And that if we have to try a matter,
14 then it's really something that needs to be tried.

15 But a lot of times in family court especially --
16 this is not so much in common pleas or things like that --
17 family court's a very different environment. And I've got
18 very emotional people, sometimes they're lawyers are
19 emotional because of their clients have put them under
20 that.

21 So if I can help them come to some kind of
22 resolution that both sides are satisfied with, then that's
23 what they're probably seeing: I'm going to try that before
24 we try a case. But if we have to try it, we'll just go
25 ahead and do that as well.

1 And I don't mind trying cases either. I like
2 that part of it. But I do think I have a responsibility to
3 try to assist them in some way, if I can. And that's in
4 the canons to do that.

5 Q. Thank you. Judge McGee, the Commission received
6 357 ballot box surveys regarding you, with 23 additional
7 comments. All of which were overwhelmingly positive. The
8 ballot box survey, for example, contained the following
9 positive comments:

10 "Judge McGee is another judge who takes his time
11 to understand cases from beginning to end. His decisions
12 are thoughtful and follow the letter of the law. He has
13 never been rude or unapproachable."

14 Another comment said, "In all of my appearances
15 before Judge McGee, I have been consistently impressed with
16 his judicial temperament. He is an excellent
17 representative of the judicial system."

18 One comment, however, said that they found you --
19 or voted you qualified rather than well qualified because
20 you're too nice. What response would you have to the
21 mention that you were too nice?

22 A. I was suite-mates with Representative Murrell
23 Smith for several years, and he probably rubbed off on me,
24 is what I'm thinking.

25 REPRESENTATIVE SMITH: You mean the

1 opposite.

2 A. Let the record reflect that was my joke answer,
3 like on Hollywood Squares. But I go back to, again, the
4 way you're brought up. And my grandmother always told me,
5 and I've always tried to do this, "Treat everybody the way
6 you want to be treated."

7 And that goes for the way you treat people when
8 you meet them on the street, and it goes all the way up to
9 being a judge, you know. And so if you keep that mind set,
10 then I -- it makes you successful, I believe. And that --
11 my Granny gave me that, and it stuck with me.

12 Q. Thank you, Judge. I want to ask you a few
13 housekeeping questions.

14 A. Okay.

15 Q. Since submitting your letter of intent have you
16 contacted any members of the Commission about your
17 candidacy?

18 A. No.

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

22 A. Yes.

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

1 screening?

2 A. No.

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

7 A. No.

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

11 A. Yes.

12 Q. Thank you.

13 A. Thank you.

14 MS. RILEY: I would note that the Pee Dee
15 Citizens Committee reported that Judge McGee is qualified
16 in the evaluative criteria of constitutional
17 qualifications, physical health and mental stability. The
18 Committee found Judge McGee is well qualified in the
19 evaluative criteria of ethical fitness, professional and
20 academic ability, character, reputation, experience and
21 judicial temperament.

22 I would note for the record that any
23 concerns raised during the investigation regarding the
24 candidate were incorporated into the questioning of the
25 candidate today. Mr. Chairman, I have no further

1 questions.

2 REPRESENTATIVE SMITH: Thank you, Daina.
3 Any questions of Judge McGee? Senator Young.

4 SENATOR YOUNG: Thank you, Mr. Chairman.

5 EXAMINATION BY SENATOR YOUNG:

6 Q. Judge McGee.

7 A. Yes, sir.

8 Q. Thank you for your service to our state on the
9 family court bench, and for your interest in continuing
10 your service. My question to you is in the area of abuse
11 and neglect cases.

12 A. Yes, sir.

13 Q. The question is: As far as the children and the
14 families that are impacted by that, those types of cases,
15 how would you improve the system in the family court, if
16 you could, and make a recommendation in terms of what you
17 think would work better from your vantage point from having
18 presided over those cases?

19 A. I've told somebody that I believe more time.
20 Just more time is needed. It becomes a process, Senator
21 Young. I see -- I go into counties and they're ready to
22 move these cases, and I hardly get a chance to know who the
23 parties are before they get beyond me.

24 And I'm slowing it down. They're trying to meet
25 all these statutory deadlines, and rightfully so. But I

1 think we just need to spend -- slow down and spend more
2 time on each one of these cases, in my opinion. In several
3 of the cases, I would say.

4 That would be my recommendation is just -- every
5 county generally has a day set aside for DSS, some half
6 days. And, again, it's -- there's a lot that could be
7 improved in that process, and time would be one of them.

8 I would also state that I -- that the attorneys
9 there is -- well, I'll save that. I'll save that. I'll
10 tell you all privately.

11 Q. Thank you, sir.

12 REPRESENTATIVE SMITH: Mr. Safran.

13 EXAMINATION BY MR. SAFRAN:

14 Q. Judge, thank you for being here.

15 A. Yes, sir.

16 Q. Let me just ask a couple of questions. How can
17 you be too nice?

18 A. I don't know.

19 Q. Well, I think it -- I know you. And I know,
20 frankly, it comes, you know, well deserved.

21 A. Well, thank you.

22 Q. On the other hand, I've seen a few that I could
23 see that when they compare it to anybody, they're probably
24 thinking anything else is Santa Claus. Let me just ask you
25 -- you hit on one thing, and otherwise I would have -- you

1 know, deferred to my chairman here, and moved on.

2 But I've been very concerned, listening to some
3 of the family court judges who -- and I'm not blaming them.
4 But they seem very preoccupied with, "I got a schedule. I
5 got to go. I got to go." And my problem is it seems like
6 there's more trouble or -- there's more of a concern for
7 the meeting the clock than it is to getting a case worked
8 out.

9 And that's troubling. And I'm not blaming
10 anybody personally. I mean, I was going to ask Judge
11 Jones, but I was afraid he might look at me like I was kind
12 of fool or something. But is it somehow -- 'cause again,
13 I'm asking. I'm showing my ignorance. Is there somehow
14 like a rule that says that those hearings have to be only
15 fifteen minutes?

16 A. Yeah, the docketing clerk generally is setting
17 the time. So when you -- like I go into Charleston County,
18 I've got this docket. And I may have eight cases in two
19 hours, you know. Now, they're anticipating some of those
20 being settled and things like that. And you get to a
21 probably if they're not.

22 But so that's -- that's -- you're right. That's
23 the -- it's the docketing issue, getting all these cases --
24 if they all go through, then you've got a real problem.
25 The court system's sort of like infrastructure, it's like

1 roads. You know, the more people that move to South
2 Carolina, the more roads you have. Well, courts are
3 infrastructure as well. They're -- you know, we settle
4 disputes. And the more people you have, the more disputes
5 you have.

6 So when you get into some of these real growing
7 counties, I mean it just -- you can go down there and you
8 say, "I don't want to be there." But you've got to go.
9 And I think York is -- I was talking to Tony, outside, it's
10 extraordinarily busy. And there's a lot of growth up
11 there.

12 Charleston, of course. Lexington is growing a
13 great deal. It's been a long time since I've been in
14 Lexington, but I remember going -- I remember the docket.
15 You know, and it was tough.

16 But I think, Mr. Safran, the best thing that a
17 judge can do is say, "Look, I'm going to take my time on
18 this case, be doggone what happens." And get it right.
19 And if I have to continue some things, or I have to set it
20 for another day when there's more time available, then I'll
21 do it that way, instead of it being a checkmark. You know
22 what I'm saying? "I got through with this. I'm done, you
23 know."

24 Because these are people's lives, these are
25 important decisions that you're making, and they deserve a

1 fair hearing and that they be heard.

2 Q. Well, and what really gratifies me, and I'm not
3 surprised in the least, is what I'm hearing from you,
4 literally mirrors what Judge Sinclair said. And, you know,
5 I know the two of you all came from a similar environment,
6 and you came basically with similar personalities. And
7 obviously values.

8 And from what he told me, and I'm assuming your
9 answer's going to be the same, you're not exactly staying
10 there, you know, every night till midnight to get these
11 cases done. So I mean, things are still moving along.

12 A. Yes.

13 Q. And, you know, kind of take a page from Senator
14 Young's questioning, what can we do to make it to where the
15 mind set of the judges are more in line with what I'm
16 hearing from you and Judge Sinclair, as opposed to, "I got
17 to get there. It's fifteen minutes. Next."

18 You know, I asked one of the judges earlier
19 today, we as lawyers are by nature talkers. We're
20 advocates.

21 A. Right.

22 Q. We're in here to pursue a position. And I'm
23 hearing family court judges saying, "I'm not even letting
24 the lawyer open their mouth."

25 And, you know, that strikes me as being not only

1 difficult, but offensive. And, you know, these folks are
2 paying their attorneys to come in there and do a job for
3 them, and you have to do it -- you know, the lawyers walk
4 in and effectively being gagged and told, "Don't say
5 anything"?

6 A. Yeah.

7 Q. I mean, to me that just doesn't seem to be
8 consistent with what the whole purpose of this process is.
9 And I'm glad to know that it's not uniform, but how do we
10 change it to where everybody doesn't maybe feel so
11 compelled to say, "Okay. Fifteen minutes. Next. No,
12 don't open your mouth. I'll read this later and get with
13 you"?

14 That to me just ain't the way to run the
15 railroad.

16 A. Right. And I would -- like you say, the
17 temporaries are where a lot of it gets bogged down at.
18 I'll spend a lot of time on temporaries if I have to, well
19 more than fifteen minutes, and that's generally what's
20 docketed for a temporary hearing.

21 So I think if a -- and I don't know where that
22 came from, the fifteen minutes is used across the system.
23 I would do thirty minutes, probably, for a temporary, every
24 one of them.

25 Especially if there's children involved. And

1 this is when the emotions are the hottest is at a
2 temporary. These people are just separated, somebody's
3 filed a temporary hearing, they're in court. And it's
4 tough, man.

5 I mean, I can see it on the faces out there. And
6 I'm trying to tamp all this down, you know. I'm trying to
7 get everybody on an even keel, trying to heal whatever I
8 can heal between these two parties. Especially if they
9 have children. I say if they don't have children, go ahead
10 and fight it out. You know, that's fine.

11 But if you've got children, these are resources
12 of the state of South Carolina. It's my job to make sure
13 that they're -- they're not a byproduct of you all's
14 fighting between one another, you know, that your ill will
15 towards one another is going to affect these children, and
16 that's going to -- it's not moral, but from a public policy
17 standpoint it's not good for the state of South Carolina
18 either, to have these children in these situations where
19 they grow up and they think this kind of behavior is
20 normal. So more time would be my answer.

21 Now, that's going to stretch the docket out, and
22 they're going to need maybe more judges or things like
23 that. I don't know where that goes, Mr. Safran, from what
24 I've said. But I've always -- just give me more time. If
25 I have some down time, don't think of that as being a bad

1 thing. I may have gotten through things quickly. I'd
2 rather be on that end, having a little extra time than
3 being on the rushed end of it.

4 If I'm going to make a decision about how I'm
5 going to docket, I'd rather be twiddling my thumbs for
6 fifteen minutes than trying to squeeze in a very improve
7 hearing in ten.

8 **Q. Well, and I think you really hit the nail on the**
9 **head in the sense that because of the highly emotional**
10 **nature of family court litigant, that what happens at that**
11 **temporary hearing could set the tone for the entire case,**
12 **and that if you really want to get things moving in the**
13 **right direction, that's where you put your focus to maybe**
14 **kind of diffuse it, get everybody thinking a little more**
15 **rationally, as best you can.**

16 But I get the sense that you're kind of in the
17 minority in terms of doing that, when in fact that ought to
18 be the rule.

19 A. Well, I don't know. You know, where I practice
20 at is a -- Judge Morehead and Judge Vinson is primarily the
21 two judges that I went in front of.

22 **Q. Then you had two very good ones.**

23 A. I did. And, you know, I learned a lot from both
24 of them. Judge Vinson is one of my contemporaries. I
25 really learned a lot from his as a lawyer. He set the

1 right tone even -- you know, he did a lot of my -- what I
2 do is really modeled after the way he did it. 'Cause I
3 liked it as a lawyer. I liked the way he did it a lot.
4 And so, you know, there's some -- there's a lot of us out
5 there.

6 And I don't want to -- you know, you do have that
7 time pressure. And, you know, I'm not saying that --
8 again, I guess we need to not treat it like a checklist,
9 would be the bottom line. Don't treat it like a checklist,
10 something you have to get through, didn't you have to do.

11 So I was not a brilliant student in any school I
12 ever went to, so I was never one of those checkbox
13 students, you know what I mean, and I made straight A's and
14 all of that stuff. I was -- I was good just to get along,
15 you know. I was good just to pass.

16 So I've never been that way, you know, I've got
17 to -- I feel real uptight about it. I'm going to take my
18 time and hopefully make a good decision.

19 **Q. Well, you're obviously doing that, because these**
20 **ballot box surveys are exemplary. We have seen it from**
21 **time to time, and I think it's absolutely incumbent upon us**
22 **when we do, to say you're doing a super job.**

23 A. Thank you.

24 **Q. And we appreciate all you're doing. Thank you.**

25 A. Thank you. No, I appreciate it. I thank you

1 all. That makes me feel good.

2 REPRESENTATIVE SMITH: Any further
3 questions?

4 EXAMINATION BY REPRESENTATIVE SMITH:

5 Q. Judge, let me just follow along with what Mr.
6 Safran said. In all sincerity is I -- you know, I pay a
7 lot of attention to these ballot box surveys. These are
8 survey -- these are surveys which everyone comes to your
9 face is going to tell you you're a great judge, and whether
10 you're a good judge or not. But when you pull the curtains
11 back -- close the curtains, you see what type of judge they
12 are by these ballot box surveys.

13 And the one thing I believe is probably the most
14 important attribute of a judge is the judicial temperament.
15 And you had no people complain about your -- about your
16 temperament. And that's to be commended.

17 A. Thank you.

18 Q. I appreciate that, Judge. The one thing, while I
19 do have you under oath, and you talked about your grades,
20 you always bragged when you were in the House about being a
21 member of MENSA. Was that not true?

22 A. Well, see, that didn't have anything to do with
23 grades.

24 Q. Oh, okay.

25 A. No, that was a -- something that Lucas came up

1 with.

2 **Q. Oh, okay.**

3 A. But I did --

4 **Q. Speaker Lucas to you.**

5 A. Well, thank you, Representative Smith. I
6 appreciate what you all do. I think this process is
7 important. What we do in South Carolina, the way we elect
8 judges, is unique. I told somebody outside, that I had a
9 law school mate who was going to write a letter -- write a
10 law school paper on how we elect judges in South Carolina,
11 and how stupid it is. And after the third year, I said,
12 "How did that paper go?"

13 He said, "I determined it was the best way to do
14 it." He said that South Carolina has it right. And so
15 it's a process. Did I like filling out all these financial
16 things and giving you all this stuff? No. It's hard. But
17 in all these surveys and things like that, it's important
18 to the process. I realize that.

19 And I appreciate what you all do. And the
20 Citizens Committee and the Bar, you know, that's all part
21 of the process. That's what keeps the integrity in this.
22 And I appreciate it very much. I served as a legislator.

23 As you all know, I served on this commission at
24 one time for about a year. So I know, it's hard work. I
25 appreciate it very much. And I'm very pleased with the

1 staff that you all have here, they've been very helpful.
2 And they're just very professional.

3 So thank you all for what you do.

4 Q. Judge, thank you. And, you know, the last remark
5 I'll make is that what we've been talking about with judges
6 of similar ilk as you, who bring a lifetime of practical
7 experience, a lifetime experience and judicial experience,
8 and decide "it's time for me to give back to the legal
9 community and serve as a judge."

10 So I appreciate you doing that. You're probably
11 one of the few lawyers is a former newscaster and a lawyer,
12 now judge, so I'm sure that's a small fraternity of people
13 around the state.

14 A. We can get David Stanton to do it would be --

15 Q. Okay. So I appreciate that. And, you know, I
16 would make this remark, as we've been telling the judges
17 who have these exemplary ballot box surveys, and bring a
18 wealth of experience to the bench is, I would encourage
19 you, as you go around to mentor lawyers and tell them what
20 important -- how important it is to have experienced,
21 trained judges, rather than judges that are beginning their
22 career -- legal career becoming a judge, but people who are
23 ending their legal career.

24 'Cause I think that's what you expect, if you're
25 a litigant and you walk into the courtroom, what you expect

1 to see. So --

2 A. Yes, sir.

3 Q. I would appreciate as you go forward, before you
4 retired just -- you know, extol the virtues of your -- of
5 your position.

6 A. Thank you, Mr. Smith -- Representative Smith. I
7 appreciate that.

8 REPRESENTATIVE SMITH: Any further questions
9 of Judge McGee?

10 (Hearing none.)

11 REPRESENTATIVE SMITH: All right. Judge
12 McGee, this concludes this portion of your hearing. I want
13 to take this opportunity to remind you that pursuant to the
14 Commission's evaluative criteria, we expect candidates to
15 follow the spirit as well as the letter of the ethics law.
16 We will view any violations or the appearance of any
17 impropriety as serious and potentially deserving of heavy
18 weight and screening deliberations. Do you understand
19 that?

20 JUDGE MCGEE: Yes, sir.

21 REPRESENTATIVE SMITH: On that note, and as
22 you know the record will remain open until the formal
23 release of the report of qualifications. And you may be
24 called back at such time of the need arises. I thank you
25 for being here. I thank you for your patience. I know

1 we're running well behind. And I thank you for your
2 service to the state of South Carolina.

3 JUDGE MCGEE: Thank you, Representative
4 Smith. I thank all of you all. I appreciate it.

5 REPRESENTATIVE SMITH: Thank you.

6 (Candidate excused.)

7 CHAIRMAN RANKIN: All right. Mr. David
8 Michael Collins; is that right?

9 MR. COLLINS: Yes, sir.

10 CHAIRMAN RANKIN: If you will please raise
11 your right hand.

12 WHEREUPON,

13 DAVID MICHAEL COLLINS, being duly sworn and
14 cautioned to speak the truth, the whole truth and nothing
15 but the truth, testifies as follows:

16 CHAIRMAN RANKIN: You have before you, two
17 documents that you've prepared, a Personal Data
18 Questionnaire and a sworn statement; is that right?

19 MR. COLLINS: Yes, sir.

20 CHAIRMAN RANKIN: Any changes that need to
21 be made to those? Or are they good to go into the record
22 without objection.

23 MR. COLLINS: My understanding is they're
24 good to do as they are.

25 CHAIRMAN RANKIN: All right. So if you'll

1 hand those to Lindi, she'll hand those to the court
2 reporter.

3 (EXHIBIT NO. 19 - JUDICIAL MERIT SELECTION
4 COMMISSION PERSONAL DATA QUESTIONNAIRE OF DAVID
5 MICHAEL COLLINS)

6 (EXHIBIT NO. 20 - AMENDMENT TO PERSONAL DATA
7 QUESTIONNAIRE OF DAVID MICHAEL COLLINS)

8 (EXHIBIT NO. 21 - JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT OF DAVID MICHAEL
10 COLLINS)

11 CHAIRMAN RANKIN: Mr. Collins, we have
12 thoroughly screened your -- and investigated your
13 qualifications. And as you are well aware there are nine
14 evaluative criteria which we rely upon, which include the
15 ballot box survey, a study of your application materials,
16 verification of your compliance with state ethics laws, a
17 search of newspaper articles in which your name appears,
18 and a check for economic conflicts of interest.

19 No one has signed or submitted an affidavit
20 in opposition to your campaign, and no one has signed up to
21 testify against you or for you. You are welcome to answer
22 any -- or to make brief remarks if you'd like. Given the
23 hour and the late start of your 3:45 hearing, you can waive
24 that. But again, I'll leave that to you.

25 MR. COLLINS: I will waive that, sir. I

1 would not subject the committee to any comments from me at
2 this late hour.

3 CHAIRMAN RANKIN: I will have many
4 questions, perhaps later. And you'll have opportunities to
5 make any comments you want to. Mr. Fiffick will ask
6 questions, and then we'll go from there.

7 MR. FIFFICK: Thank you, Mr. Chairman. Mr.
8 Collins, please state for the record, the city and circuit
9 in which you reside.

10 MR. COLLINS: I live in Landrum, South
11 Carolina, which is the 7th Judicial Circuit.

12 MR. FIFFICK: Mr. Chairman, I note for the
13 record that based on the testimony contained in the
14 candidate's PDQ, which has been included in the record
15 with the candidate's consent, Mr. Collins meets the statutory
16 requirements for this position regarding age, residence,
17 and years of practice.

18 EXAMINATION BY MR. FIFFICK:

19 **Q. Mr. Collins, why do you want to serve as a family**
20 **court judge? And why do you feel your legal and**
21 **professional experience qualify and will assist you to be**
22 **an effective judge?**

23 **A.** I want to be a family court judge, I have for
24 several years, because I got to see the difference that a
25 good judge makes for our families and our children and our

1 state. I grew up with Judge Jim Fraley and Judge Georgia
2 Anderson, Buddy Brown out of Cherokee, and those were the
3 judges that I grew up as a baby-lawyer with.

4 And I got to see what a difference they made for
5 families when they did the right thing. And I wanted an
6 opportunity, hopefully, to do the same thing for the folks
7 of South Carolina.

8 I've been doing this for twenty years. The first
9 case had ever landed on my desk, once I was sworn in, was a
10 divorce case. And I've been in family court ever since.
11 And I hope after twenty years, and teaching other lawyers
12 how to do this, working with clients, that maybe a chance
13 to work from the bench may be what's next for me.

14 **Q. Thank you, sir. Mr. Collins, are there any areas**
15 **of the law which you feel you would need additional**
16 **preparation in order to serve as a family court judge? And**
17 **how would you handle that additional preparation?**

18 A. The one area that I'm weakest in, in family court
19 right now is juvenile delinquencies. It's an area that I
20 have done very little work in. I've done some. A lot of
21 times it was because I was standing in the hallway when a
22 guardian ad litem was needed in a juvenile case. But that
23 is one of those areas that I have lawyers around that do
24 that type of work, that I can talk to, to learn the
25 statutes, learn what the procedures are and what the norms

1 are.

2 And then I have access to experienced family
3 court judges that I'm sure would help guide me and put me
4 in the right direction.

5 **Q. Thank you, sir. Mr. Collins, please briefly**
6 **describe your experience in handling complex contested**
7 **family court matters. And specifically, discuss your**
8 **experience with the financial aspects of family court work.**

9 A. Like I said, I've been doing this for twenty
10 years. I was licensed in November of 1998. And the first
11 case that crossed my desk in the little town of Landrum,
12 where I was practicing at the time, was a divorce case.
13 I've been there ever since.

14 I have worked in contested adoptions. I have
15 done contested custody cases for those twenty years. I
16 have taught other lawyers for both private companies, MBI
17 as well as the Bar, topics on custody, business valuation.
18 I have attended additional training, both in custody
19 evaluations and business valuations at the Houston Trial
20 Academy, which is held annually in Houston.

21 Several of our lawyers from South Carolina teach
22 there. So I've attended that, both their business
23 valuation course and their basic -- their basic trial
24 advocacy course.

25 And so between twenty years of doing it, dealing

1 with these folks, their families on a day-to-day basis, and
2 that additional studying and then teaching other lawyers as
3 well, I think that prepares me to do -- at least handle the
4 divorce aspects and the custody and financial aspect.

5 Q. Thank you, sir. Mr. Collins, the South Carolina
6 Bar Judicial Qualifications Committee found you well
7 qualified in the evaluative criteria of ethical fitness,
8 character and professional and academic ability, reputation
9 and experience, but they only found you qualified in the
10 evaluative criteria of judicial temperament. To what do
11 you attribute this finding of qualified as opposed to well
12 qualified?

13 A. My understanding is that there were some comments
14 made during the evaluations, that I may be a little harsh
15 or that I may be, I guess, short with -- coming from the
16 bench. There is no doubt that I oftentimes see things in
17 black and white. And there's a certain standard of
18 behavior that I expect lawyers that I participate with to
19 meet, certain behaviors that I just think are inappropriate
20 from lawyers.

21 And so I can see where some of those lawyers
22 might think that my standards may be a little tough or
23 rigid. But aside from that -- that's the only thing I can
24 think of is I have -- I have very high standards for
25 myself. And I expect those around me -- I think the legal

1 profession is one of those places where it's a privilege to
2 practice law. And if you're going to practice law, you
3 need to meet certain standards of behavior and
4 preparedness.

5 Q. Thank you, sir. Mr. Collins, the Commission
6 received 73 ballot box surveys regarding you, with 8
7 additional comments. One ballot box survey said, for
8 example:

9 "Mr. Collins is extremely well suited for this
10 position. He has a terrific demeanor, is extremely
11 intelligent, and has shown himself to be fair and impartial
12 in many settings. I think he would make an outstanding
13 family court judge."

14 Three of the written comments expressed concerns.
15 One comment indicated you are a very difficult person to
16 deal with as an attorney, and would be difficult and
17 excessively authoritarian as a judge. What response would
18 you offer to this concern?

19 A. I guess that goes back to that -- the same
20 comment as before, in that I have certain standards for
21 myself and I have certain standards for the folks that I
22 work with, I guess is the best way to put it.

23 And when I think a lawyer or a client for that
24 matter, a litigant in family court is acting
25 inappropriately or not doing the right thing, then I make

1 it known. That is not something -- if you would ask me to
2 describe myself, "authoritarian" or "overbearing" would not
3 be the words that I would describe.

4 But I can see where that particular individual,
5 had they been a lawyer in a case where I took a very strong
6 stance or a strong position, had felt that something needed
7 to be done a certain way, I can see where they took that --
8 where they took that away from that position.

9 **Q. In addition to the concern about your status as**
10 **an attorney and being difficult, one comment also indicated**
11 **that you have a questionable reputation and poor demeanor**
12 **also outside of court. How would you address that concern?**

13 A. I have no idea. Without more specifics as to
14 what they're talking about, I frankly would have no idea as
15 to why I would have a poor reputation with anyone.

16 **Q. Thank you, sir. Another comment said that you**
17 **might not be prepared to serve on the bench, and that you**
18 **lack the level of knowledge possessed by many other**
19 **judicial candidates. What response would you offer to this**
20 **concern?**

21 A. I would say that having taught for several years
22 for the Bar in the Hot Tips Series, having taught several
23 times a year for MBI and other local bar associations, I've
24 taught for Lexington County and I've taught for Spartanburg
25 County, at least, if not others as well.

1 I would think that very extensive list of topics
2 and seminars that I've taught at would show otherwise.

3 Q. Thank you, sir. Mr. Collins, a fourth concern
4 questioned your many law partners and associates over the
5 years, and the fact that you seem to move on from jobs and
6 working relationships frequently. What response would you
7 have to this concern?

8 A. I have had a couple of law -- several law
9 partners over the years. The one that frankly lasted the
10 longest, and was the best suited, was Phil Sinclair. For
11 some reason he decided he wanted to leave and go be a
12 family court judge after -- I think it was four or five
13 years that we had spent together.

14 But for him becoming a family court judge, I
15 expect that Phil Sinclair and I would have still practiced
16 together. This is one of those things where you are able -
17 - either able to work well together or you're not. And if
18 it doesn't work, sometimes it's -- you can't find that out
19 until you've practiced together. And if it doesn't work,
20 then you move on.

21 I'm still friends in both in a professional
22 setting, and for some of them in a social setting, with
23 every lawyer that I've ever practiced with.

24 Q. Thank you, sir. Mr. Collins, you've been
25 involved in six lawsuits. The first lawsuit from 1994 is

1 **Larry Evans, Sr. v. Mr. Collins, Jr. It was filed as a**
2 **result of an automobile accident. Please explain the**
3 **nature and the disposition of this lawsuit, and a second**
4 **related suit in 1995.**

5 A. Yes, sir, that -- there was a automobile
6 accident. I was a college student, I think, still at that
7 time. It was dismissed during the discovery stage,
8 initially. There was a second action with that same
9 caption for a transcript of judgement.

10 I actually talked to the clerk's office in
11 Spartanburg County, and they couldn't tell me why there was
12 a second case number attached to it. But there was no
13 second actual lawsuit filed. The second one was just for a
14 transcript of judgement, showing that it had been dismissed
15 with prejudice.

16 **Q. Thank you, sir. Mr. Collins, a third action**
17 **occurred in 2000, Kelly Gosline Collins v. Mr. Collins, Jr.**
18 **This was a divorce action. Please explain its nature and**
19 **disposition.**

20 A. Kelly and I had married shortly after college.
21 And this was -- we were divorced -- we separated in 1999,
22 and divorced in 2000. It was a peaceful divorce. We
23 reached what I call a "kitchen table agreement." And that
24 was approved by Judge Buddy Brown just shortly after our
25 one-year separation.

1 Q. Thank you, sir. A fourth lawsuit David M.
2 Collins v. William Douglas Patten was filed in 2008 as a
3 result of an automobile accident. Please explain the
4 nature and disposition of this lawsuit.

5 A. That action -- that was actually filed, I think,
6 in magistrate court. Mr. Patten crossed the centerline in
7 Downtown Spartanburg, hit me and -- it was almost a head-
8 on. But thankfully, at a very low speed. I filed the
9 lawsuit to help the process along, to get the property dam
10 settled. There were no physical injuries. It was
11 dismissed once it was settled by the insurance companies.

12 Q. Mr. Collins, a fifth lawsuit Billy Koon Wood v.
13 David M. Collins, Jr., was filed in 2012 by a perspective
14 client. Please explain the nature and disposition of this
15 lawsuit.

16 A. Mr. Wood came to see me, it was either late 2011
17 or early 2012, I believe it was. At that point he wanted
18 me to represent him in probate court. I quoted him a fee.
19 He declined to hire me at that point. He then went to
20 probate court and lost and turned around and sued me for, I
21 guess, malpractice for not agreeing to take his case at a
22 reduced rate and not represent him, even though he hadn't
23 hired me.

24 It went to trial and was dismissed after the
25 plaintiff's presentation.

1 Q. And, Mr. Collins, a final sixth lawsuit, TLC
2 Accounting and Tax Incorporated v. David Michael Collins.
3 It's filed by an accountant you hired to assist you with
4 your truth accounts. Please explain the nature and
5 disposition of this lawsuit, including the counterclaim you
6 filed in the matter.

7 A. Yes, sir. I had filed a counterclaim against
8 that accounting -- accountant and her firm for malpractice,
9 or for not doing what she was hired to do. So it would
10 have been a malpractice, essentially, claim. That case was
11 settled prior to trial. She had claimed that there were a
12 very large bill that was due to her for work that was done.
13 I had disagreed with her about the bill. It settled for an
14 amount much less than what I was sued for.

15 Q. Thank you, sir. Mr. Collins, what is your
16 philosophy on recusal?

17 A. If when at all -- when at all possible, if there
18 is a question about an impropriety or a question where a
19 judge's appearance in a particular case, I would -- I would
20 err on the side of granting the recusal.

21 I guess the corresponding or the balancing
22 consideration is making sure that if families and children
23 get a judge to render a decision as quickly as possible in
24 their particular case. So if the recusal can be granted
25 without a delay, without putting any children at harm, then

1 I would err on the side of granting the recusal.

2 If the children need to be protected, then that
3 takes priority.

4 **Q. Thank you, sir. Mr. Collins, do you believe it**
5 **appropriate to recuse yourself in a matter involving the**
6 **law, simply because you disagree with that law?**

7 A. I think there are times when that's going to be -
8 - that may very well be the only way to handle it,
9 depending on what the law is and what the situation is.
10 There are times that family court judges are going to be
11 asked to apply laws that they may not necessarily agree
12 with.

13 And that's part of the job. This is the law.
14 This is what the Legislature says. This is what our courts
15 -- our appellate courts have said. You take that law and
16 apply it. There may very well be times when, for moral
17 considerations or other things, a judge is not comfortable
18 doing it. And that may be a time when a recusal is
19 appropriate. But that would be a very rare exception.

20 **Q. Thank you, sir. Now some housekeeping issues to**
21 **take care of. Mr. Collins, are you aware that as a**
22 **judicial -- a judicial candidate you are bound by the code**
23 **of judicial conduct as found in Rule 501 of the South**
24 **Carolina Appellate Court Rules?**

25 A. Yes, sir.

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

4 A. No, sir.

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

8 A. Yes, sir.

9 Q. Since submitting your letter of intent have you
10 sought or received the pledge of any legislator either
11 prior to this date or pending the outcome of your
12 screening?

13 A. No, sir.

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

18 A. No, sir.

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

22 A. Yes, sir. I believe we've reviewed that.

23 Q. Thank you, sir.

24 MR. FIFFICK: I would note that the Upstate
25 Citizens Committee found Mr. Collins to be well qualified

1 in fields of ethical fitness, professional and academic
2 ability, character, reputation, experience and judicial
3 temperament. The Committee found Mr. Collins qualified in
4 the fields of constitutional qualifications, physical
5 health and mental stability.

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

11 CHAIRMAN RANKIN: Okay. Thank you. Senator
12 Hayes.

13 EXAMINATION BY MR. HAYES:

14 Q. I just have a couple of questions.

15 A. Yes, sir.

16 Q. Thank you for your willingness to serve in this
17 capacity. In your comments, I noted you said at times you
18 called down other attorneys for behavior that you thought
19 was out of line, or whatever. Could you give a couple of
20 examples of that?

21 A. And I don't know if I've called down in the sense
22 that I had some authority over them. But there have been
23 times, for example, when clients do stupid stuff in family
24 court. And sometimes they do things that are harmful to
25 children and to their spouses. And I have at times asked

1 lawyers or told lawyers that I thought they needed to get
2 their clients under control, or at least to have
3 conversations with their clients about what was appropriate
4 or not appropriate for them to do. That would be an
5 example of those types of things.

6 There are times when we've wasted clients' money,
7 we've wasted clients' time because of situations that just
8 simply didn't -- what they were asking for wasn't available
9 to them under our legal system, things that our family
10 court judge just couldn't do.

11 And I've at times been very vocal that it wasn't
12 in the clients or the children's best interest to pursue
13 those frivolous claims when we needed to just figure out a
14 way to make it work under the -- under what we could do in
15 our family court system.

16 **Q. Just one other question. I noted you've been to**
17 **a number of different schools. Where does your loyalty**
18 **lie, Georgia or South Carolina or Clemson? I noticed you**
19 **went to all three of them.**

20 A. They're all on this side of the border. I am
21 confused the week of -- the week of Thanksgiving, we'll
22 just say that, when it comes to a -- between Clemson and
23 Carolina.

24 **Q. What about Georgia? I saw that you went there**
25 **too.**

1 A. I did go to Georgia, but I was there for a very
2 short period of time. When it comes to -- when it comes to
3 school loyalty, it's Clemson and Carolina.

4 Q. Thank you. I appreciate it.

5 EXAMINATION BY CHAIRMAN RANKIN:

6 Q. Mr. Collins, I'm just curious, given your earlier
7 statement about being kind of a black-and-white kind of
8 guy, it's not orange and black, or orange and garnet and
9 black --

10 A. I'm just confused that weekend.

11 Q. Were you happy this past Saturday night?

12 A. I have no clue who won. I didn't even watch.

13 Q. Wow.

14 A. So I have probably watched less than a quarter of
15 football this year, so --

16 Q. Good for you. You'll live a long life --

17 A. A much longer life, yes.

18 Q. -- avoiding that weekly roller coaster. I want
19 to ask you a couple of questions. In terms of the
20 participation by those in your area, who filled out the
21 ballot box surveys, unfortunately there are not that many
22 people either who know you well enough to say good or bad,
23 though you got, I think, about a 114, if my math is
24 correct. And, again, a few comments. Mr. Fiffick asked
25 you about some of them.

1 And in your work history have worked with what I
2 think you would agree, and maybe disagree by saying that
3 you're not the top, but one of the top family court judges
4 in the state, that being Judge Sinclair, that was your
5 partner, right?

6 A. That was my partner, yes, sir.

7 Q. Who enjoys a wonderful reputation across the
8 board by those anonymous survey respondents, the Bar and
9 the Citizens Committee, and in fact got nary not one
10 negative comment, with a slew of positive comments --

11 A. Yes.

12 Q. -- about his ability. So you certainly have been
13 exposed to somebody who knows how to wear the robe
14 correctly.

15 A. Yes, sir.

16 Q. I'm curious about the Bar qualifications, you
17 were asked about that, and you've explained your response
18 to the judicial temperament where they found you only
19 qualified versus well qualified.

20 Tell me -- well, let me just tell you that you
21 have -- are rated very highly on the rest of the questions
22 there, six in all. And, in fact, have done exceedingly
23 well compared to a number of folks. So you've got that to
24 be proud of.

25 And then shift to the Citizens Committee, where

1 again they found you well qualified in judicial
2 temperament. Any idea why there might be a disconnect
3 between those two?

4 A. Between those two? I'll be honest in that I was
5 surprised at the lack of a well qualified result from the
6 Bar Committee. That interview I thought went quite well.
7 We later the room laughing, which was -- so I was a little
8 surprised at their comments -- or their decision on my
9 demeanor.

10 I have no idea. Other than I know there are a
11 very small -- I would assume a -- I hope a small group of
12 lawyers that -- like I say would be a very small minority,
13 but may be an outspoken minority, that I haven't had as
14 kind or a gentle interaction with as others. But other
15 than just that very small handful, I don't -- I can't tell
16 you why --

17 Q. Tell me about that, that process that the Bar
18 itself -- not the Citizens Committee, but the JQ. Tell me
19 about that.

20 A. The interview that I had --

21 Q. Right.

22 A. -- that day? There were a --

23 Q. How long did that take?

24 A. Oh, we were in there, I would say thirty to
25 forty-five minutes. It was the full allotted time. I know

1 when I came out, the gentleman who was next on the roster
2 was standing at the door waiting, because we had taken the
3 full time.

4 But it was a very open discussion. We talked
5 about a -- two of the ladies that were in there, were local
6 practitioners in the same town that my office is in now. I
7 have tried cases with one of them, I have not tried case --
8 I had not tried a case with the other one. But I at least
9 knew who she was and had worked with her partner on one
10 case.

11 And so we were able to talk about the law,
12 different opinions that I may or may not have -- you know,
13 what I felt about particular types of circumstances or
14 situations that, you know, arise in family court.

15 We did talk about some of the issues that came up
16 in the ballot box, but one that we talked about, I think,
17 more than we did the actual -- being to me was me being too
18 nice. That was one of the things we talked about was that
19 there were some lawyers that I think were concerned that I
20 may not be tough enough when things needed to be done or
21 hard decisions needed to be made.

22 **Q. In terms of your -- again, I invoke the**
23 **Carolina/Clemson context, but the black-and-white view of**
24 **the law that you had. And Senator Hayes' question, I want**
25 **to kind of pursue that a little bit more.**

1 What context would there be, that you would not -
2 - that you would exhibit some frustration with someone
3 either pursuing a frivolous claim? I mean, your opposing
4 counsel to these --

5 A. We were talking about situations where this would
6 be opposing counsel, yes, sir.

7 Q. And so again you're advocating for your position,
8 they're advocating for theirs, in terms of the sense that
9 you are somehow --

10 A. For example, there are -- there are certain
11 things in family court that a -- that a family court judge
12 -- there's certain things that you just can't get in a
13 courtroom. I mean, our -- our family court is a court of
14 equity, and so there are wide ranging things that our
15 judges can do. But there are just some things that a judge
16 cannot do.

17 And sometimes we have lawyers that take positions
18 that just are incompatible with what the existing case law
19 is, or what the existing statutes are. And those are times
20 when I would emit frustration when lawyers take positions
21 that are for things that they know they can't get in a
22 communicate.

23 Q. But again to -- and I won't linger much longer
24 here, but how would that arise to the level of a -- someone
25 complaining -- I mean, you would mediate a case. You all

1 **either negotiate yourselves, but --**

2 A. Chairman, I have no clue. I have -- I don't
3 know. I can't -- I wish I could tell you a situation or a
4 circumstance that would -- that I can tell you that I have
5 behaved in a certain way that would -- that would rise to
6 this level. I wish there was a way to know who it was, so
7 that I could go apologize and make it right.

8 I mean, if I've -- if I have behaved in a way
9 that has put somebody to the point where they want to make
10 that comment, then I would love to have the opportunity to
11 make it right. I just -- I can't -- I don't know. I don't
12 know.

13 **Q. And it's difficult, again, likewise for us.**

14 A. Right.

15 **Q. And I may have missed some of the exchange about**
16 **that. In terms of these either objective or subjective**
17 **criteria that we have, again the Bar qualifications --**

18 A. Right.

19 **Q. -- the Citizens Committee, ballot box surveys, do**
20 **you think that we should rely upon these metrics in part of**
21 **our weighing of candidate's candidacy?**

22 A. I think you have to. Because there's no other
23 way. I mean, you -- you've -- as much as I wish I could
24 tell you what has prompted those comments, or I wish I
25 could explain them, or for that matter make them right, I

1 don't know that you as a committee have any other way to
2 get insight into what happens day-to-day with our Bar and
3 the individuals that are going to come in front of you.

4 So, yes, I think you have to rely on those
5 metrics. I do think you have to take into account the fact
6 that oftentimes the folks that would say good things may
7 not be the ones that are going to be the ones quickest to
8 make comments. It's going to be those who are disgruntled
9 or unhappy or feel offended in some way, that are going to
10 be the ones that are most vocal.

11 **Q. Well, an example -- and I'm not going to let you**
12 **use Judge Sinclair.**

13 A. Yeah.

14 **Q. But what attributes of a judge would you employ**
15 **if you were successful? And it could be someone we know.**

16 A. Oh, I don't -- I don't mind telling you. I have
17 for years told Judge Fraley that he wasn't allowed to leave
18 the bench until he trained me, if I ever got a black robe.
19 Now, unfortunately, he didn't listen. And he's retiring
20 this year. So I'm hoping he will at least pick up the
21 phone and answer my questions.

22 But Judge Fraley has for years been the model of
23 what I thought a family court judge should be. Judge
24 Fraley taught me immensely when I was a baby-lawyer. I can
25 remember being in hearings and having legal discussions

1 with that man, he did it off the top of his head, things
2 that I was having to research but he knew -- he just knew.

3 When I left his courtroom, even if clients didn't
4 like the decision, clients and I at least knew why he did
5 what he did. And there was a logical reason for why he did
6 a certain thing. So that's always been -- that's always
7 been the goal, if I ever got a robe and sat on the family
8 court bench, Judge Fraley was the model for what I wanted
9 to be like.

10 **Q. How about temperament?**

11 A. Judge Fraley as well. I mean, he was always --
12 you knew when Judge Fraley was upset. But not because he
13 raised his voice or did anything overt. I just -- I knew
14 him from years of appearing in front of him, and knew his
15 demeanor, but clients quite often never knew what was going
16 on, you know, there.

17 So that always even-keeled, never upset and never
18 raising a voice, never -- he was firm but always rational,
19 always kind. That demeanor was always what I would -- is
20 what I would tell you I would strive for if I -- if I ever
21 became a family court judge.

22 **Q. But a name -- but the negative -- you've been in**
23 **-- you've tried cases, you're out for twenty years.**

24 A. Yes.

25 **Q. The attributes of a judge that you would not want**

1 **to be associated with?**

2 A. The biggest one would be judges that don't
3 listen, judges that seem to have a preconceived idea of
4 what the -- what the ruling is going to be before you ever
5 walk into a courtroom or hear an argument from a lawyer or
6 a testimony from a -- from a client. Those that don't seem
7 to listen, those that can't give you a rational basis for
8 why they do what they do.

9 And those that just seem to be -- for lack of a
10 better term, arrogance. Arrogance seem -- arrogance and
11 inability to listen and almost a dictatorial type of
12 demeanor from a judge. A judge needs to be one who's
13 capable of listening and making a decision based on what
14 they hear, and not imposing their preconceived notions on
15 parties that walk into their courtroom.

16 CHAIRMAN RANKIN: All right. Ms. McIver.

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

18 EXAMINATION BY MS. MCIVER:

19 **Q. Mr. Collins, I noted on your list of**
20 **organizations with which you are affiliated, you have a**
21 **high number of radio organizations.**

22 A. Yes, ma'am.

23 **Q. What do you do with those organizations? What**
24 **are those?**

25 A. Those are -- they're amateur radio, ham radio

1 organizations. Most of them are community service
2 organizations that are designed to provide communications -
3 - the term is, "When all else fails." And so in support of
4 law enforcement, fire services, first responders,
5 government agencies.

6 And the others are more or less social clubs.
7 They're just -- they're geeks. And, you know, other people
8 don't like to interact with geeks, so sometimes we interact
9 with ourselves. That's what that is mostly.

10 **Q. Okay. What about the Belton Gun Club? What is**
11 **that?**

12 A. It's a rifle range, a shooting range. Just on
13 the other side of the Greenville/Anderson County line.

14 **Q. Thank you.**

15 CHAIRMAN RANKIN: Senator Young.

16 SENATOR YOUNG: Thank you, Mr. Chairman.

17 EXAMINATION BY SENATOR YOUNG:

18 **Q. Mr. Collins, I have a few questions for you.**

19 A. Yes, sir.

20 **Q. I appreciate your interest in serving our state**
21 **on the bench. One question is in the sense that you are**
22 **not currently a judge, and you would -- obviously, if**
23 **you're elected, you would be ascending to the bench, and**
24 **you would be moving from your role as an advocate for your**
25 **client to serving, obviously, as a judge. Do you think you**

1 -- do you think you can make that adjustment fairly easily?

2 A. Yes, sir. For ten years I've wanted to be a
3 family court judge. And just because having interacted
4 with some of those judges that I look up to and that I
5 thought had the demeanors that were best on the bench, I
6 tended to gravitate more towards those types of demeanors
7 than I did just the brass knuckles, knock down, drag out
8 litigators.

9 I guess my personality, I would say, is more of a
10 problem-solver than a -- than just a combatant. And so
11 that -- I think that the transition will be relatively
12 easy.

13 Q. Have you mediated any family court cases?

14 A. As a mediator? Yes, sir. I actually was trained
15 as a mediator in 2000. I think it was right before the
16 South Carolina Bar started their mediator training here, I
17 went to Atlanta and found a mediation training center in
18 Atlanta, and went to that training and started doing
19 mediations in 2000.

20 Q. Are you a certified mediator?

21 A. I was. I allowed that certification to lapse, I
22 want to say two or three years ago. I just -- I wasn't
23 getting enough of the work to justify trying to focus on
24 that area. And so I allowed the certification to lapse.
25 But at one point, yes, sir, I was.

1 Q. I noticed in your educational background that you
2 started school at Newberry College and you went to the
3 University of Georgia and then eventually ended up at the
4 University of South Carolina-Upstate to get your bachelor
5 of science. Is there any particular reason why you moved
6 schools, you know, I guess to the -- you went to three
7 different schools?

8 A. Yes, sir. Newberry was -- Newberry is a great
9 school. But I came from a little high school in Landrum,
10 we had eighty-eight graduate in the Class of '89. So when
11 I went to Newberry, it was a very similar environment. It
12 was a small school, a small community. I wanted to
13 experience something a little bit different.

14 And so I went to Georgia. And it was very much
15 different. I had a lot of fun. I learned a lot. It's a
16 great school as well. My grandfather got sick during that
17 time that I was at Georgia, and I decided to come back to
18 be closer to home, once he went into the hospital and
19 started going downhill.

20 Q. I saw where you have a master's in public
21 administration.

22 A. Yes, sir.

23 Q. Have you used that in your legal career?

24 A. I have not.

25 Q. I also saw where you have a massage therapist

1 **license.**

2 A. I do. My wife is an occupational therapist, and
3 does a particular type of therapy that as a massage
4 therapist, I can do as well. And so that was -- if I
5 continue to practice law for another ten, fifteen, twenty
6 years, that was kind of the retirement plan was for us to
7 be able to practice together. Because I could then come in
8 and do the same type of treatments and therapy that she
9 does.

10 **Q. I saw in your PDQ that you were the director -- I**
11 **think it's the director of a --**

12 A. Miracle Hill.

13 **Q. -- Miracle Hill?**

14 A. Yes, sir.

15 **Q. And that was while you were practicing law?**

16 A. I took some time and practiced law part-time
17 while I did that as well. It was -- I forget the years,
18 but some of you may remember the shelter that was run in
19 Downtown Spartanburg ran into some difficulties. And the
20 gentlemen that were running it stepped away, and it was
21 taken over by Miracle Hill.

22 I went in and for a period of time actually was
23 the day-to-day director of that mission. I had a filing
24 cabinet in the back corner, with family court cases I was
25 still working on while I was doing that.

1 And several months into that, I realized that
2 there were certain things as a lawyer I could do to help
3 some of those folks, that other people couldn't do. There
4 were other people that could sit at that desk and manage
5 personnel issues and make sure that the mission ran and the
6 food was served and the heaters were on and the clothes
7 were there when it got cold, but there were not too many
8 folks that could practice law and do what I did.

9 So I went back to practicing law and let somebody
10 else step in and take over as the director there. And the
11 last time -- the last time I was there to visit, he was
12 still the director.

13 **Q. You were partners with somebody named Chris --**
14 **Stephen Chris?**

15 A. Yes, sir.

16 **Q. And that -- it looks like that lasted about a**
17 **year and a half, or about a year and three -- nine months?**

18 A. Stephen is a young lawyer, a very good lawyer.
19 But Stephen got married, and Stephen's wife had just opened
20 a retail business and I think the decision, basically, was
21 that one of them needed to get a real job with health
22 insurance. And that was something that we didn't have in
23 our two-lawyer practice.

24 He is now working with a law firm -- I think it's
25 Coburn -- Coburn & Coburn or something. It's a relatively

1 large firm. He and I still talk on a regular basis, refer
2 cases back and forth to each other. It was an economic
3 decision on his part to take that job.

4 **Q. Have you been a DSS contract attorney at any**
5 **point in time in your career?**

6 A. No, sir.

7 **Q. Have you handled any abuse and neglect cases?**

8 A. I used to do a fair amount of parent defense.
9 When I was a younger lawyer, back before the contracts came
10 out I would do a -- they still had an appointment list.
11 And so I would, for a fee, take over appointments for other
12 lawyers. They would pay me a flat fee to substitute in and
13 take over their appointed cases.

14 And so I did a fair amount of DSS defense work on
15 behalf of the parents, taking other lawyers' appointments
16 at that time. So, yes, I'm very familiar with the DSS
17 system.

18 **Q. As far as areas of the law that may come before**
19 **you, what would you do to prepare yourself in areas in**
20 **which you maybe have not practiced as much in?**

21 A. Well, the example of the juvenile delinquents,
22 that was an area that Judge Sinclair, I think at that point
23 in time would have -- did not have much experience at, when
24 he was running. And I was his law partner, so I would do
25 the same thing I did to help him is pull the statutes and

1 read them. He would go talk to other judges, what do you -
2 - you know, "How do you handle this? What type of things
3 come up and how do you address them?"

4 I would do the same thing. He would talk to
5 other lawyers that actually did juvenile delinquency work.
6 And so those are the types of folks that I would talk to,
7 at least to try and learn that system as well as I could
8 prior to taking the bench.

9 And I am -- I have no doubt that -- I don't know
10 this for certain, but I would assume that the Bar has some
11 type of resources available to the judiciary to help bring
12 them up to speed prior to actually taking the bench in
13 those particular areas where they're -- where they're
14 weakest.

15 **Q. I don't have any further questions at this time.**

16 CHAIRMAN RANKIN: Mr. Safran.

17 EXAMINATION BY MR. SAFRAN:

18 **Q. Mr. Collins, I know it's getting kind of late in**
19 **the day. And I'll try not to keep you any longer than**
20 **necessary. But I just want to ask a few things. I know**
21 **there have been a couple of comments as far as concerns**
22 **based upon the ballot box and, you know, I guess, the Bar**
23 **Committee had said.**

24 **But let me just ask a few things. You know, you**
25 **-- I think I'm saying you're AB rated under --**

1 A. Yes, sir.

2 Q. As I understand it, aren't those ratings
3 basically done by peers?

4 A. They are. Yes, sir.

5 Q. And how long have you held that?

6 A. I got my C rating, which is the initial rating,
7 the first year I was eligible; I got my B the first year I
8 was eligible; and I got my A the first year I was eligible.

9 Q. And so, you know, you've been practicing at least
10 under an AB rating for a period of time now, haven't you?

11 A. Well over ten years, yes.

12 Q. And when you get asked to speak on these
13 particular seminars and all, I'm assuming, you know, you're
14 not calling and asking them to get on, they're soliciting
15 you?

16 A. That is correct. Yes, sir.

17 Q. And you're speaking particularly in the area that
18 you're more or less here talking to us about, which is
19 family court.

20 A. Yes, sir.

21 Q. I know that Senator Hayes asked you about some
22 examples, and as far as maybe sometimes where people maybe
23 behaving in a certain way that you find to be
24 inappropriate, and maybe you'll make comment about it. And
25 I understand that sometimes clients can get out of hand,

1 particularly in a high-stress situation.

2 I guess are there other examples do you run into
3 every now and then, where maybe lawyers act in a way that
4 you just find to be inappropriate?

5 A. Yes, sir. I grew up as a baby-lawyer in
6 Spartanburg County. I was taught by lawyers that had been
7 practicing twenty or thirty-plus years at that point, that
8 there was a certain way to behave. You acted like a
9 gentleman and you behaved in a way that you were an
10 advocate for your client, but if you ran into the other
11 lawyer at dinner that night, and his wife, you could still
12 have a civil conversation.

13 And that behavior went -- I say in a gentlemanly
14 way, because when I had talkings to by older lawyers that
15 was -- that was how it was approached. But the ladies
16 behaved the same way. And it was a -- and there was a
17 certain standard of civility that was required.

18 As a Bar, we've lost that. I mean, the fact that
19 we are now required to take a civility oath as lawyers
20 speaks volumes about where our profession has started to
21 go. And so that is -- that's the standard of behavior that
22 I expect of myself and --

23 Q. And I understand. And granted, not everybody is
24 going to be able to be on their best behavior 24/7.

25 A. Right.

1 Q. That's how it works. And, you know, I guess what
2 I'm more or less asking is, I know there are certain things
3 that I'm sure I do, that people find to be problematic or
4 offensive.

5 A. Yes, sir.

6 Q. It may not be intended that way, but it happens.
7 The flip side is that there are certainly things that I
8 personally, and I'm sure others, find to be difficult,
9 i.e., saying something to the court that's not true.

10 A. Right.

11 Q. And, you know, those are hot button-type of
12 situations where it does bother you.

13 A. Yes, sir.

14 Q. And I'm assuming you probably have similar views
15 about that.

16 A. Yes, sir.

17 Q. Tell me, at least in terms of your looking at
18 comments about temperament and demeanor, would you say that
19 there's a distinction in terms of how you may behave as far
20 as, you know, how you go about a case as an advocate versus
21 how you would be behaving as the one who sits as the judge?
22 I mean, aren't those kind of different roles?

23 A. They are extremely different roles, yes, sir.

24 Q. And as I understand it, you may do things that
25 other lawyers may not particularly like, simply because

1 they could be adverse to the position they're trying to
2 take in a particular case. I mean, you've run into that,
3 haven't you?

4 A. Yes, sir.

5 Q. I think as we all have. But I mean, we're all
6 sometimes guilty of it, that if somebody is basically doing
7 something that's kind of hurting our clients, maybe hurting
8 our case, you know, it may push the wrong button. Not
9 necessarily rationally, but as a practical matter it does
10 happen.

11 A. We're all human. Yes, sir.

12 Q. And so again, you know, I take with a grain of
13 salt to some extent these ballot boxes. Particularly when
14 they're talking about somebody who hasn't sat in the role
15 as the judge, but rather it's a matter of solely through a
16 period of being an advocate. Because again they are two
17 different hats, aren't they?

18 A. Extremely different hats. Yes, sir.

19 Q. I'm assuming with recognizing what you've said in
20 terms of trying to maintain a certain level of courtesy and
21 decorum, you're not necessarily going about a case the same
22 way in terms of how you pursue it if you are trying to
23 reach a goal for a client, as opposed to if you're sitting
24 there trying to decide between two positions.

25 A. That is correct.

1 Q. Tell me are there people, probably that you've
2 run into that have done some things, that if you were asked
3 to comment about them as advocates, that you might not
4 have, you know, a glowing response? I mean, is that a fair
5 statement?

6 A. That's a fair statement. Yes, sir.

7 Q. But is that not necessarily kind of something
8 that would be true for everybody in the Bar, at least at
9 one point or another?

10 A. At some point in time or another, yes, sir, we've
11 all -- we've all made those mistakes.

12 Q. But what I'm seeing is, is that at least --
13 basically, at least in terms of your professional
14 development, you came up and you were taught a certain way,
15 you have over a period of time tried to find a niche in the
16 family court, and you've reached a point where at least
17 some of your peers are basically saying that they think you
18 have very high capacity in terms of both your ability and
19 your ethics.

20 And you're also basically are in a situation
21 where, you know, you've developed at least the reputation
22 enough to where some of these folks want you to talk to
23 them about it, give them lectures and have a value as far
24 as your opinion is concerned.

25 A. I hope so, yes, sir.

1 Q. And let me ask this -- I mean, if you didn't get
2 this, is basically -- you're not going to stop practicing
3 family law, are you?

4 A. Not my plan. No, sir.

5 Q. I mean, that's still something that is on the
6 table.

7 A. That's what I know how to do. Yes, sir.

8 Q. Okay. And let me ask this -- I mean, if Judge
9 Fraley hadn't been retiring, or maybe if an opportunity
10 didn't present itself, you know, for you to go on the
11 bench, I mean, would you otherwise be fine as far as
12 continuing a career as a lawyer?

13 A. Yes, sir. Yes, sir.

14 Q. I know you've talked about kind of the end game
15 maybe being with your wife, but that's down the road a
16 ways, isn't it?

17 A. She doesn't want me now. No, sir.

18 Q. Thank you for your time.

19 A. Thank you, sir.

20 CHAIRMAN RANKIN: Perhaps you need to learn
21 a new massage technique.

22 MR. COLLINS: That's it.

23 CHAIRMAN RANKIN: It might produce a
24 different result.

25 EXAMINATION BY CHAIRMAN RANKIN:

1 Q. I want to follow up on the question and answer
2 about this homeless shelter. By my count it was five full
3 months that you were serving as the, I guess, interim
4 director of the Miracle Hill Ministries Homeless Shelter?

5 A. It was not treated as an interim position. But
6 it was five months, yes, sir. And that's -- it was
7 October, November, December -- 'cause I started the
8 beginning of October and ended February, right after my
9 birthday.

10 Q. And your birthday is the end of February?

11 A. The end of February, yes, sir.

12 Q. So you took a sabbatical, effectively?

13 A. Effectively. I mean, I still had to appear in
14 court. I still had cases that I was still handling. I
15 didn't take any new family court -- I didn't take any new
16 cases at all during that period of time. But there were
17 some that I still needed to wrap up and finish, yes, sir.

18 Q. And that was while you were also working under
19 what firm?

20 A. I was practicing by -- I think at that point I
21 was by myself.

22 Q. Okay. And was that a religious pursuit or a --

23 A. It was. At that point I was a Sunday school
24 teacher. I considered going to seminary. And that did not
25 pan out, so I -- like I said, I'm a lawyer.

1 **Q. And you were a Sunday school teacher?**

2 A. I was a Sunday school teacher at that point.
3 This was a -- it's a -- Miracle Hill is a -- is a Baptist
4 organization. And that was the connection. It was also at
5 that point in time that I was -- had considered taking some
6 night classes in seminary, because of that particular
7 organizations bent and its -- and its mission. But so,
8 yeah, it was a sabbatical, I guess, would probably be the
9 best way to describe it.

10 **Q. I want to commend you for it. I am not familiar**
11 **with that group. But obviously a void there, and somebody**
12 **had to do it.**

13 A. Somebody had to do it.

14 **Q. And you stepped in.**

15 A. Yes, sir.

16 **Q. Not in the religious vein, but in the -- that of**
17 **service in terms of your viewing a judgeship what -- do you**
18 **see a corollary there or a --**

19 A. Absolutely. This is -- you with are called to be
20 in family court in one capacity or another, or you don't
21 belong there. I mean, that's -- that's the way I've looked
22 at family court. These are -- these are families that are
23 going through difficult times. These are children that
24 need someone to protect them and take care of them, and
25 make sure that they have the best chance at life.

1 This is -- this is a way to serve the community
2 and to serve our state. This is not something you do for
3 money. If you want to make money as a lawyer, there are a
4 lot of other ways to do it, and this ain't one of them.

5 **Q. And for the last five years you've done 97**
6 **percent domestic.**

7 A. About 97 percent domestic, yes, sir. I've done a
8 little bit of -- I've done one or two probate cases, one or
9 two criminal cases. But even the criminal cases all had a
10 tie back into family court in one way, shape, or form.

11 CHAIRMAN RANKIN: All right. Mr. Collins,
12 if there are not any other questions, this 3:45 hearing
13 will come to a close. Very near that hour. And thank you
14 again for participating and offering for candidacy. And
15 let me remind you again that you, as you know, are subject
16 to the rules of this -- and the evaluative criteria.

17 MR. COLLINS: Yes, sir.

18 CHAIRMAN RANKIN: That includes a strict
19 adherence to both the letter and the spirit of the South
20 Carolina laws of ethics. And we talked about that today,
21 right?

22 MR. COLLINS: Yes, sir.

23 CHAIRMAN RANKIN: Any violation of those
24 laws or the appearance of impropriety, you know would be
25 deemed -- deserving of very heavy weight and deliberations

1 by the Commission. We would call you back if there was any
2 question about a violation of that. You're aware of that,
3 correct?

4 MR. COLLINS: Yes, sir.

5 CHAIRMAN RANKIN: The record will remain
6 open until the formal release of the report of
7 qualifications regarding anything that we're talking about
8 in this vein, which we don't expect. But you do know that
9 we could call you back.

10 MR. COLLINS: Yes, sir.

11 CHAIRMAN RANKIN: All right. Mr. Collins,
12 thank you so much. And if you hurry, you'll beat the five
13 o'clock traffic.

14 MR. COLLINS: Thank you.

15 (Candidate excused.)

16 CHAIRMAN RANKIN: Judge Pope, we appreciate
17 your patience in being here for so long waiting. Let's
18 start by having you raise your right hand.

19 WHEREUPON,

20 THE HONORABLE KELLY POPE-BLACK, being duly
21 sworn and cautioned to speak the truth, the whole truth and
22 nothing but the truth, testifies as follows:

23 CHAIRMAN RANKIN: The statements you have
24 before you, a PDQ and a sworn statement, are they ready to
25 go into the record?

1 JUDGE POPE-BLACK: Yes, sir.

2 CHAIRMAN RANKIN: No additions or
3 corrections?

4 JUDGE POPE-BLACK: No, sir.

5 CHAIRMAN RANKIN: And you don't object to
6 them being made a part of the record.

7 JUDGE POPE-BLACK: No, sir.

8 (EXHIBIT NO. 22 - JUDICIAL MERIT SELECTION
9 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
10 HONORABLE KELLY POPE-BLACK)

11 (EXHIBIT NO. 23 - JUDICIAL MERIT SELECTION
12 COMMISSION SWORN STATEMENT OF THE HONORABLE KELLY
13 POPE-BLACK)

14 CHAIRMAN RANKIN: Judge, you're familiar
15 with this process, in fact we -- you have seen and know the
16 rules. But for the record I've got to state that we look
17 in -- when we investigate your candidacy, nine evaluative
18 criteria which includes the ballot box survey, a thorough
19 study of your application materials, verification of your
20 compliance with the state ethics laws, a search of
21 newspaper articles in which your name appears, a study of
22 previous screenings, and a check for economic conflicts of
23 interest.

24 No one has filed an affidavit in opposition
25 to your campaign or candidacy. No witnesses have desired

1 to be present and requested it. We note that you have your
2 husband with you, who is smiling broadly at the prospect of
3 continuing to visit and sit here with us. Would you like
4 to introduce him?

5 JUDGE POPE-BLACK: It's Jody Black.

6 CHAIRMAN RANKIN: Jody Black. Welcome, Mr.
7 Black. You have opening -- or an opportunity to make a
8 brief opening statement if you want. But given how close
9 it is to five o'clock, you probably don't want to.

10 JUDGE POPE-BLACK: And you all probably do
11 not want to hear one.

12 CHAIRMAN RANKIN: You're welcome to do it
13 now or at the end --

14 JUDGE POPE-BLACK: I'm fine.

15 CHAIRMAN RANKIN: Very well. All right.

16 JUDGE POPE-BLACK: You all have had a long
17 day and week already, so --

18 CHAIRMAN RANKIN: Ms. Crawford, if you will.

19 MS. CRAWFORD: Thank you, Mr. Chairman.

20 EXAMINATION BY MS. CRAWFORD:

21 **Q. Judge Pope-Black, do you enjoy serving as a**
22 **family court judge?**

23 A. I do. I will admit there are times that it is
24 stressful, it's hard. No one can prepare you for the
25 stress that this job brings along with it, because there

1 are so many decisions being made regarding children. But I
2 do enjoy it because I feel like I'm making a difference. I
3 hope I'm making a difference.

4 I started our first juvenile drug court in
5 Spartanburg, they didn't have one. It took a couple of
6 years, but we were able to get that started. We just had
7 our first graduate this past July. So it's a small
8 juvenile drug court, but we finally have one.

9 So, yes, it's like any other job, it has good
10 days and bad days. But I do, I love it.

11 **Q. Besides that, why do you want to continue serving**
12 **as a judge?**

13 A. A lot for the same reasons. One, the reason that
14 I took the job in the first place -- I think to do this
15 position you have to have a service mind, and wanting to do
16 that. And when I took this job, that was one of the things
17 that I said I wanted to do was to be able to help children
18 throughout our state.

19 I want to continue doing that. Like I said,
20 there are some days that I can go home and feel like that
21 I've not made a difference, that it's just been a very
22 rough day. And then there are other days I go home, and
23 we've had something wonderful happen in court or -- you
24 know, I've had a juvenile that's done what they're supposed
25 to do, or I've had a family that's done what they're

1 supposed to do and they get their child back. And, you
2 know, or we've had a beautiful adoption.

3 So those are the reasons I want to continue to
4 serve.

5 Q. And if you're reelected to this position, do you
6 plan to serve a full term?

7 A. Yes, ma'am.

8 Q. And you mentioned the juvenile drug court. Are
9 there any other accomplishments that you've completed
10 during your tenure? Any other recent endeavors? I think
11 that was the major one we had talked about.

12 A. The main thing that sticks out in my mind is the
13 juvenile drug court. I mean, 'cause it took -- we had no
14 resources -- financial resources and backing for that at
15 all. So it took -- literally took two years to get that
16 started. We still don't have financial backing and
17 resources for that, so we do it all voluntarily. And I
18 hold juvenile drug court two nights a month, sometimes
19 three. We have team meetings throughout the month, too, as
20 well.

21 Q. Do you --

22 A. But that is my biggest accomplishment.

23 Q. Do you have any other goals or any other programs
24 you'd like to start while you're -- if you're reelected to
25 the bench?

1 A. There's some programs that involved more than
2 just our county, that I would -- there are some things that
3 I would like to see done, possibly statewide. The Chief
4 Justice sent me to -- along with some others, to a
5 conference in Knoxville, Tennessee.

6 And while we were there, we learned that in other
7 states their DS -- their equivalent to our DSS has a
8 statewide system where every child that's in the DSS system
9 is listed, and any county can link in and see if that child
10 has a history anywhere else, DJJ can link in and see if
11 that child has a history anywhere else.

12 So that is something -- it would be a very long
13 endeavor, something that would be quite indepth. But I
14 would like to see our state at least explore that as an
15 option.

16 Q. Thank you, Judge. In 2012 when you were
17 originally screened for this position, when asked to
18 explain to the members of the Commission what you think the
19 proper demeanor of a family court judge is, you said, and
20 I'll quote, "I think that a judge should be patient and
21 understanding, but I think a judge should have control of
22 the courtroom and the proceedings, and know when it's time
23 to be stern, but do so in a manner that is respectful of
24 those in the courtroom. In family court, you do a lot of
25 pro se litigants, so I think you have to be extremely

1 patient and understanding, and make sure that they
2 understand the proceeding and they understand what is going
3 on in the courtroom. So I think the biggest thing is to be
4 respectful, but be stern when you need to be, and to be
5 patient."

6 Judge Pope-Black, what do you think your
7 reputation is among attorneys that practice before you, now
8 that you've been on the bench?

9 A. Probably one that she's going to start on time.
10 I try to be punctual and start on time. In the counties
11 that I work in, which are mainly Spartanburg and
12 Greenville, there's no time to start late. I mean, you
13 have a full docket all day. And to be prepared.

14 You know, we don't have a lot of time sometimes
15 on hearings, so if the attorneys prepare then it is
16 beneficial to us as sitting judges. But, yes, be on time
17 and be prepared. And be cordial not only to the court, but
18 also to your colleagues that's across the table from you.

19 Q. Judge, the Commission received 326 ballot box
20 surveys regarding you, with 30 additional comments. The
21 ballot box survey, for example, contained the following
22 positive comments:

23 "Excellent judge. She has a wonderful
24 temperament and is a particularly dedicated and fair trial
25 judge. Outstanding judge who strives to make sure the best

1 interests of the children take priority in her courtroom."

2 Eleven of the written comments expressed
3 concerns. Several comments indicated you are not fair in
4 sentencing. What response would you offer to this concern?

5 A. I guess do they mean sentencing in juvenile
6 court? 'Cause we don't really sentence elsewhere. We do
7 child support bench warrants. But that's kind of hard to
8 answer, because I don't really know what they mean by
9 "sentencing."

10 Q. Right.

11 A. Because that is the only place we would sentence,
12 would be in juvenile court.

13 Q. Okay. A concern was raised indicating that you
14 were not responsive in tasks like signing and filing
15 orders. What response would you offer to this concern?

16 A. I would think probably that may have something to
17 do with the time period that when -- when Judge Kinlaw
18 moved to circuit court, I got reassigned to Greenville.
19 And so I was in Greenville County and out of my office
20 probably for close to three months, I believe it was.

21 So I had a box literally in Greenville for
22 orders, a box literally in Spartanburg for orders,
23 traveling back and forth between the two, trying to get
24 orders signed. So if anything was late, it would have been
25 during that time period.

1 But I can assure you that if it was late being
2 signed, it was probably maybe a little late being turned
3 in. 'Cause I try to get them all signed within ten days of
4 them being put on my desk. During that time period, it may
5 have been a little longer than ten days. But that's my
6 goal. But I literally was working two offices at once.

7 **Q. Another concern indicated that you were too**
8 **uncompromising and not as flexible as family court**
9 **necessitates. What response would you offer to this**
10 **concern?**

11 A. That I'm learning. That if I am that way -- I
12 apologize if I'm perceived that way. I try not to be that
13 way. I would say that I probably approach things better
14 now than when I first came on the bench.

15 The first probably three -- two or three years
16 wasn't taking the time to take care of myself and do what I
17 needed to do. After I came before you all last year, I sat
18 down with one of my mentors, Judge Tommy Edwards, I sat
19 with him before I took the bench, I sat down with him and
20 talked to him about what had taken place, some of the
21 complaints, and told him I needed to work on these things.
22 And so he and I had some good, candid conversations.

23 And so I try to relax more, take time for myself,
24 find outlets to destress. I wasn't doing that when I first
25 took the bench. So I would hope that the changes that I

1 have made are helping with that.

2 And, hopefully, that is not something that will
3 be a continued problem in the future, because I am -- I
4 take -- I take breaks now in-between hearings. I used to
5 be so concerned with being able to stay -- you know, we
6 have thirty hearings we have to get done today, 'cause I'm
7 in a busy county, trying to get them done and not take any
8 time and say, okay, I need about five minutes, I need about
9 ten minutes. I do that now. Whereas before I was not.

10 So there's been a lots of changes in the past
11 year, that I would hope are visible.

12 **Q. There were some concerns raised that you create**
13 **your own procedures, forms and such. Can you -- and this**
14 **has come up in the past, and I think we talked about it.**
15 **Can you explain those concerns, or that comment?**

16 A. I think that's referring to the child safety
17 questionnaire, which actually was created and is used by
18 Judge Wayne Creech. It's his form. It's one a toolkit
19 that we as family court -- it's a CD that's a family bench
20 toolkit. And it's on there that we get, and every year you
21 upload it to your computer, so it's forms that are given to
22 us. And he's a very well respected family court judge, I
23 use his form.

24 And it's basically when you're doing an agreement
25 mainly or -- anything dealing with child custody disputes,

1 his form is used. And it asks certain questions, just so
2 the court can know some information before we make a
3 ruling, that it's in the best interest of the child.

4 Now, when that issue was raised before, I talked
5 to Judge Creech about it. And he uses it all the time. I
6 just don't think it was used a whole lot in my area before.

7 **Q. Is that why you think there's -- I mean, do other**
8 **judges in the area use this form?**

9 A. I don't think they do in my county. I can't say
10 for the others. I do know that I learned this time, that
11 it was brought to my attention that I think guardian ad
12 litem attorneys find it disrespectful in the Upstate area,
13 because that's something that -- the questions that are on
14 there, 'cause they ask about DSS involvement, any domestic
15 violence in the home, criminal charges or a criminal
16 background.

17 I think that the guardian ad litem attorneys
18 thought that's their job. And they make a valid point. I
19 have not -- that had not been raised until I was going
20 through the screening this time. So that is actually
21 something that I've actually started doing, if you have a
22 guardian in the case, then, no, you don't have to do those
23 forms.

24 **Q. But otherwise, you're still using --**

25 A. But otherwise, yes, I am still using them.

1 **Q. Thank you, Judge.**

2 MS. CRAWFORD: Mr. Chairman --

3 A. I'd like to add one part to that.

4 **Q. Yes, ma'am.**

5 A. I'm sorry. Part of those questions are too --
6 are questions that we would have to ask to approve an
7 agreement. So part of it is a time-saving issue, if they
8 go ahead and answer the questions and sign the form, I
9 don't have to take the time to ask them. Which is another
10 reason why Judge Creech created the form and uses it. He
11 still uses it all the time.

12 **Q. Thank you, Judge.**

13 MS. CRAWFORD: Mr. Chairman, I note that the
14 Upstate Citizens Committee reported that Judge Pope-Black
15 is well qualified in the evaluative criteria of ethical
16 fitness, professional and academic ability, character,
17 reputation and experience, qualified in the evaluative
18 criteria of constitutional qualifications, physical health
19 and mental stability, and unqualified in the evaluative
20 criteria of judicial temperament.

21 The Citizens Committee noted, quote, "As the
22 Commission is aware, this Committee reported negative
23 information about Judge Pope-Black's judicial temperament
24 last fall when she was candidate for the circuit judge
25 position. This Committee worked tirelessly to follow up on

1 those reports this year. Our investigation revealed that
2 Judge Pope-Black's temperament remains a problem. During
3 our interview she reported that she had made significant
4 changes in her courtroom demeanor. Unfortunately, that is
5 not what -- that is not consistent with what the witnesses
6 we interviewed reported. The specific words and phrases
7 used by our witnesses were 'dictatorial,' 'disrespectful to
8 lawyers and litigants,' 'arbitrary,' 'arrogant,'
9 'impatient,' 'creates issues when there weren't any,'
10 'lacking any tact.' Therefore, we would urge the
11 Commission to consider this candidate's qualifications
12 carefully. Based on the troubling information received
13 from many sources and not all lawyers," that was in parens,
14 "we must report that this candidate is unqualified in the
15 judicial temperament area of the evaluative criteria."

16 BY MS. CRAWFORD:

17 **Q. Judge Pope-Black, there were several concerns**
18 **also raised by the ballot box survey about your judicial**
19 **temperament. So at this point I'm going to give you the**
20 **opportunity to address both of these concerns -- both these**
21 **concerns and the finding of the Citizens Committee at this**
22 **point.**

23 **And as you do this, maybe you could touch on some**
24 **things you mentioned before, some of the things that you've**
25 **doing differently to address this perception of the**

1 **problems.**

2 A. A lot of them are the same that I mentioned a
3 moment ago. I also worked on -- am still working, and it's
4 something that will continue to be worked on, is the
5 delivery of decisions. When I had my Upstate Citizens
6 Committee interview -- and as you know, I requested --
7 asked you if those were recorded, because we don't know.

8 When I read that, I was very concerned. It's
9 very concerning. And it's hard to read those things about
10 yourself. I was in and out of the interview in twenty
11 minutes. I told them the same things that I had been
12 working on, hoping that there had been a change, that it
13 could be visible.

14 And I was actually told back that, "The response
15 that we are getting is that there has been a change. We've
16 seen a change. We're getting positive responses back."

17 And that was the end of it. And then I left the
18 interview.

19 So seeing -- that's why I wanted to know if it
20 was recorded, because seeing that really took me aback.
21 But what I can say is that I have been working hard. I'll
22 continue. I hate that -- and I'm sorry that people feel
23 that I am that way, because that's not the experience --
24 and family court's hard enough to come into in the first
25 place, and that's not the experience that I want people to

1 leave with. Especially coming from me.

2 So I'll continue to do the things that I've been
3 working on, and actually find other avenues to work on it
4 as well. Because that's not the experience I want people
5 to have.

6 Q. Thank you, Judge. I have a few housekeeping
7 issues. Since submitting your letter of intent have you
8 contacted any members of this Commission about your
9 candidacy?

10 A. No, ma'am.

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

14 A. Yes, ma'am.

15 Q. And since submitting your letter of intent have
16 you sought or received the pledge of any legislator either
17 prior to this date or pending the outcome of your
18 screening?

19 A. No, ma'am.

20 Q. And have you asked any third parties to contact
21 members of the General Assembly on your behalf, or are you
22 aware of anyone doing so on your behalf?

23 A. No, ma'am.

24 Q. And have you reviewed and do you understand both
25 the Commission's guidelines on pledging, as well as South

1 Carolina Code Section 2-19-70(E) --

2 A. Yes, ma'am.

3 Q. -- Subsection E?

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

9 EXAMINATION BY CHAIRMAN RANKIN:

10 Q. Judge, I want to ask you some questions. And I
11 will tell you from the outset, that I am concerned about
12 the input that we've received, and that you are judged as
13 every other sitting judge and every other candidate for
14 election is held to and judged by.

15 You've mentioned and effectively said that the
16 Citizens Committee only spent twenty minutes with you.

17 A. Approximately.

18 Q. Okay. Let me ask you about the JQC, the Judicial
19 Merit Qualifications Committee through the Bar. Tell me
20 about that process and how long did that interview take
21 place -- or take?

22 A. Approximately forty-five minutes to an hour,
23 approximating.

24 Q. And you've seen their results? Are you familiar

25 --

1 A. I've seen the -- what they released, the
2 qualified. Is that what you're referring to?

3 Q. Yes, ma'am.

4 A. Yes, I've seen that.

5 Q. And I will tell you, not to -- there's no way to
6 soften it, but you're the only sitting judge who received
7 no "well qualified," any standard that the Bar puts
8 candidates and sitting judges to the test of.

9 A. Can I ask a question? Because I'm not real sure.
10 Does that mean there were no well qualified votes at all?

11 Or that report that they send out, is that -- the report --

12 Q. The report -- the JQC reports that, "The
13 collective opinion of those Bar members surveyed regarding
14 Judge Pope-Black's candidacy is as follows."

15 And there was again --

16 A. Okay. I follow you now. I understand.

17 Q. There was no "well qualified."

18 A. Yes, sir.

19 Q. Tell me how as compared to other sitting judges -
20 - and you've been out six years?

21 A. I'm in my fifth year.

22 Q. Oh, fifth.

23 A. I'm starting the sixth. I don't know how you --
24 but 2019 will be six years.

25 Q. Should that be a concern, both to this Commission

1 **and to the -- to the Bar itself?**

2 A. That I came out qualified instead of well
3 qualified?

4 **Q. Yes, ma'am.**

5 A. I can see how it would be concerning, yes. I
6 will be honest, I can see how you would be concerned. But
7 what I can say is that they did find me qualified.

8 **Q. And I'm going to interrupt you. There's no lower
9 mark than qualified.**

10 A. There's unqualified.

11 **Q. I'm sorry. Excuse me. I'm corrected. On the --
12 so go ahead. Go ahead. Forgive me.**

13 A. No, that's okay. I'm trying to find the words to
14 -- yes, that's difficult to see. If I were sitting on your
15 side, would I be concerned, yes, that there's no well
16 qualified whatsoever, they were qualified. I feel like --
17 oh, I'm sorry.

18 **Q. And I keep --**

19 A. I know I pause. I feel like that I do work hard
20 at my job. I am making a difference. I'm doing a good
21 job. Yes, there are areas I need to work on. I am working
22 on those, and hopefully will be able to continue to work on
23 those, and would take feedback on ways to do that. But I
24 have been working on them, and will continue to do so.

25 **Q. And, again, I'm -- I don't know you. I don't**

1 know your husband. I have no personal enmity towards you.
2 I have no desire to pursue this. But there are 84
3 candidates for every stripe of judicial position we hold in
4 this state, and so they all kind of not run together, but
5 we kind of hone in on these what I would consider -- and
6 perhaps you would agree or disagree that these are as
7 objective a criteria as we can get, comparing everybody,
8 person to person, qualification to qualification.

9 Are these fair standards? The Bar JQC, the
10 Citizens Committee's interview, the ballot box surveys, are
11 these things that you agree that we should consider or --

12 A. That puts me in a tight spot. Are you saying the
13 process, I guess?

14 Q. Well, the process and the result, the reports
15 that we get.

16 A. I think with the way that we elect judges in our
17 state, that it is a -- it's a good process. Could it be
18 tweaked some? Possibly. There's a lot of things that on
19 this side, I don't know how many well qualified -- like, I
20 don't know how the Bar comes up with their qualified, well
21 qualified, or unqualified. I don't know.

22 I don't know if they have -- if they have fifty
23 people that respond, and if twenty-five of those say well
24 qualified and twenty-five said, you know, qualified -- or
25 twenty-six or twenty-five, is it a majority? Is it a

1 percentage? I don't know.

2 So it's kind of hard to say and answer the
3 question, because I don't know how they come up with -- I
4 don't know what their -- I don't know how they weigh it. I
5 don't know how they come up with it.

6 **Q. Well, I mean, have you suggested to the Bar in**
7 **any prior exchange with them, that you would want to see a**
8 **-- I mean, you mentioned a recording about the Citizens**
9 **Committee.**

10 A. I did. Because I didn't know if there was --
11 when I saw that, I didn't know if it was recorded. I
12 honestly never thought about it, to be honest with you.

13 **Q. I mean, if they had recorded it, what would you**
14 **have done? What was -- listen to see where you -- I don't**
15 **understand what that --**

16 A. The recording? I wanted to see if there was a
17 recording, 'cause it was so -- the feedback that I received
18 was so very different than the report that was submitted by
19 the chairperson.

20 **Q. And that's -- that was Nancy Jo Thomason --**

21 A. Yes, sir.

22 **Q. -- she's the Upstate Citizens Committee chair?**

23 A. Yes, sir. Because what I was told was that the
24 feedback they had received from their witnesses and people
25 they interviewed, was that they had seen a positive change.

1 There was nothing negative mentioned.

2 Q. Well, and I mis-spoke earlier about nothing lower
3 than qualified. In fact, I was referring to the
4 temperament finding wherein -- or the Citizens Committee,
5 they found you unqualified.

6 A. Yes, sir.

7 Q. And so as compared to other sitting judges, I
8 will represent to you that there is no other judge, six
9 years, seven years, one year, thirty-five, twenty-five -- I
10 guess thirty is the longest serving -- that has gotten from
11 the Citizens Committee, an unqualified as a -- in judicial
12 temperament. And that is concerning. And so I -- in terms
13 of the process, again I don't know you.

14 A. I understand.

15 Q. I don't do family court. I mean, it's a -- I
16 don't know how we -- what advice do you have for me in
17 terms of my struggle with holding you to the same standard
18 that other candidates, other sitting judges fully aware of
19 the process and knowing how -- knowing enough to interact
20 with and make their case to persuade to the Bar, the
21 Citizens Committee, and those who appear before you
22 different? Again, do you see a question in that, I guess?
23 Do you understand what I'm --

24 A. I do. And I'll try my best. I think I do. And
25 can I clarify any suggestions about -- or concerns about

1 the process, and then how to address the concerns with me,
2 the feedback? Is that --

3 Q. Well, you asked -- I think I heard you say you'd
4 be open for feedback from us.

5 A. Yes.

6 Q. And that's -- again, you're sitting out there,
7 you met with Judge Edwards. You mentioned --

8 A. I did.

9 Q. -- sitting with him, and that was some time ago -
10 -

11 A. It was --

12 Q. -- apparently --

13 A. -- within the past year.

14 Q. Before you met with the Bar, before you met with
15 the Citizens Committee --

16 A. Yes, sir. Within the past year after -- within
17 the past year, these are things that I have worked on and
18 focused on. I don't know if all those people who responded
19 had been in front of me in the past year, to see if there's
20 been an opportunity for a difference or not.

21 One of the reasons why I asked Ms. Crawford if
22 there -- if the Upstate Citizens Committee -- or the
23 Citizens Committee interviews at all were recorded was
24 because I wanted to try and get a copy of the recording and
25 -- I don't know if I could submit it or -- or how that

1 process worked, but to show that it was so very different
2 than the report that was submitted. It was 180 degrees
3 different.

4 Q. All right. I'm going to ask a few more questions
5 and then --

6 A. Okay. And I don't think I've answered your
7 question yet. I'm sorry.

8 Q. Your testimony in 2012, you used the word
9 "patience," I think, three times; "showing respect" or
10 "being respectful" two times; "understanding," "stern but
11 again cordial to all and respectful."

12 There is a -- in the negative comments a theme,
13 perhaps, that is totally contrary to your goal in 2012, and
14 what you're exhibiting now. And, again, there are some
15 positives here. But the theme is temperament --
16 "temperament runs hot and cold and being unpredictable.
17 Has a brilliant mind but believes she is above procedures
18 she is bound to. A difficult judge to go before."

19 That may not be fair. None of these may be fair
20 to you. I don't know. I don't know who they are.

21 A. I don't either. And I don't know the situations
22 where they occurred, which makes it difficult to respond.

23 Q. And, again, I appreciate that. "One of the worst
24 cases of Robe-itis I can remember." So these comments
25 coupled with the Citizens Committee, coupled with the Bar

1 results, the JQC -- the Judicial Qualifications Committee,
2 that give you unqualified -- I mean, excuse me -- qualified
3 but not well qualified.

4 For a sitting judge, what more would you need?
5 What more input, what more on-the-job training would you
6 need than you have already had the time to correct this?

7 A. Well, like I said, one of those things -- I don't
8 know if those people have been back in front of me in the
9 past year, to be able to see a difference. I just -- I
10 don't know. I think that's probably one of the
11 disadvantages of this process, is that when comments are
12 made it's -- it's hard to respond. I don't know what
13 they're in reference to.

14 All I can say is let the committee know that I
15 understand there are concerns. I am concerned. I do not
16 want to be perceived that way, by no means. I want to be
17 able to keep doing what I'm doing, because being able to
18 serve the children of our state is a passion for me.

19 And so I want to be able to continue doing that,
20 and continue working on myself and working on my appearance
21 -- or how I'm perceived in the courtroom. I think one of
22 those things is I finally got some direct feedback as to
23 what a concern was with the child safety questionnaire.

24 I had never really had a direct comment as to the
25 guardian ad litem attorneys in my area find it

1 disrespectful. That is so good to know. I did not know
2 that until this screening process this year. I wish we
3 could get more direct feedback on something exactly that we
4 did or said.

5 But that being the direct feedback, and that's
6 something I immediately took action with and changed the
7 procedure of when I use those forms. Because I don't want
8 a guardian ad litem attorney to feel disrespected. They're
9 so necessary to the court system and to our court system.
10 I would never want them to feel that way.

11 So that's one thing that I've immediately done
12 through this screening process this year, and I'll continue
13 to work on if I'm able to stay on the bench, is the
14 delivery as I've worked on that. But I'm continuing to
15 work on -- on my patience and on myself and trying to
16 deliver a presence in the courtroom that people are not
17 intimidated by or feel disrespected by. I don't want
18 anyone to ever feel that way.

19 CHAIRMAN RANKIN: All right. That's it from
20 me for now. Questions by members of the Commission? Mr.
21 McIver.

22 MS. MCIVER: Mr. Chairman.
23 EXAMINATION BY MS. MCIVER:

24 Q. Judge Pope-Black, I've been reviewing some of the
25 comments from the ballot box. And one of them is kind of

1 related, but has a different thrust to the comments that
2 you were just addressing. It reads, "I appeared in front
3 of Judge Pope-Black twice. The second time she was not
4 pleased with me. And I absolutely deserved it, even though
5 it was not deliberate on my part. She's incredibly fair
6 without being cruel. It was not an enjoyable experience,
7 but I was completely impressed with her, nonetheless. I
8 respect her even more for how she has handled the
9 situation."

10 Can you think of examples where attorneys may
11 come into your courtroom and feel like, "That wasn't very
12 much fun, but maybe I deserved it"? Can you think of
13 examples of how someone may have come up with this comment?
14 I'm not trying to identify the person, by any means, but --

15 A. I know I had those when I was in private
16 practice.

17 Q. Sure. And I know I did too.

18 A. A specific -- we deal with so many issues that
19 people can not get the result that they want. Honestly, I
20 can't -- I don't know a specific incident. I don't.

21 Q. I'm comparing this comment with some of the other
22 comments --

23 A. Right.

24 Q. -- "uncompromising, discourteous, opinionated,
25 rude, disrespectful." And so I guess what I'm trying to

1 find out is are there examples of how you may be stern in
2 the courtroom with attorneys, where some attorney may
3 interpret it more negatively, where another attorney may,
4 as this attorney did, perceive that as just part of going
5 into the courtroom and being prepared or unprepared?

6 A. I will say -- I don't know if this is -- if this
7 is that issue or a positive or a negative. I serve mainly
8 in Spartanburg and Greenville counties. We have temporary
9 hearings that are usually set for fifteen minutes.

10 Sometimes thirty minutes, but mainly they're fifteen
11 minutes -- they're set every fifteen minutes in those
12 counties.

13 According to the rules, we can -- we are to
14 review affidavits, supporting documentation, financial
15 declaration. When I first took the bench, I would give
16 five minutes to each side to argue, and then five minutes
17 for me to look, review and try to do a decision. And
18 that's not possible. Because a lot of the affidavits have
19 information -- you need to read the affidavits. That's
20 what they're there for.

21 So I stopped that process and now I use the
22 fifteen minutes to review the packets, basically submitted
23 from both sides. I usually ask questions, but I try to do
24 it so that I can stay within the time frame that I'm
25 supposed to stay in to keep my docket -- so that other

1 people aren't waiting outside when I get behind.

2 Sometimes it's inevitable. Sometimes a hearing
3 takes a little longer. But I think that may be one of --
4 that may be a problem with some attorneys. But I've got to
5 be fair to both sides. I can't let you argue five minutes
6 and then I cut you off, and the other side argue five
7 minutes and cut you off and you're not finished, 'cause
8 then I can't do my job.

9 So I've just started -- I'll read your packets.
10 Now, we have pro se litigants. And I do let the pro se
11 litigants make a statement at a temporary hearings if they
12 want to, because they don't know about a packet. They're
13 not aware of that. And some attorneys may not like that.

14 I don't know if that's a specific -- if that's
15 what that's referring to, but I do know that, that is one
16 thing that I do to try to keep -- one, make it -- keep it
17 fair and also keep things running on time.

18 **Q. You mentioned the fifteen-minute hearings. And**
19 **that is an issue that we've discussed multiple times over**
20 **the past few days.**

21 A. Okay.

22 **Q. And as far as the time allotted, have you**
23 **considered requiring cases that seem more complex to obtain**
24 **a thirty-minute slot as opposed to a fifteen-minute slot?**

25 A. I think the problem on our end is that the

1 clerk's office takes in the request and sets them. But we
2 have -- and when I say "we," the judges in my circuit -- we
3 have expressed to the Family Bench Bar of Spartanburg
4 County, if you're got custody issues or complex financial
5 issues, please request thirty minutes. Because we just --
6 we can't get it done in fifteen minutes.

7 And I want to be fair. Sometimes I can't get it
8 done in thirty minutes. I try not to take things under
9 advisement, but sometimes I do. If you've got children
10 involved, and there's a lot of information, it's my duty to
11 take the time to read through all of that. And sometimes I
12 can't get it done even in the thirty minutes.

13 But that's one thing that we have encouraged for
14 them to try to do. And we are having more thirty-minute
15 hearings requested.

16 **Q. So for the fifteen-minute hearings, typically you**
17 **rule from the bench?**

18 A. Typically, we try to rule from the bench on a
19 fifteen or a thirty minute. But sometimes it's just not
20 possible.

21 **Q. Thank you.**

22 A. Thank you.

23 CHAIRMAN RANKIN: Mr. Safran.

24 MR. SAFRAN: Thank you, Mr. Chairman.

25 EXAMINATION BY MR. SAFRAN:

1 Q. Judge, I remember you from last year. And, you
2 know, I have a few things I just want to ask you about.

3 A. Yes, sir.

4 Q. I mean, obviously we're here to try to be fair to
5 everybody. And certainly the last thing anybody wants to
6 do is put under a microscope, try to dissect everything
7 that's happens in five years. It wouldn't be really
8 equitable to you.

9 The flip side is, is that we've got to be
10 sensitive to what we hear from the Bar, that's one factor.
11 And we have to try to look at kind of an amalgamation of
12 things in order to try to get as good a picture as we can
13 as to how you're doing, and ultimately what can be
14 corrected and what can't.

15 I don't doubt that you're a very bright person.
16 I think that most of what I've read in the ballot boxes
17 certainly indicate that. And I have no reason, listening
18 to you, to feel any differently. I know that when you were
19 here last time, you were given at least some indication
20 about what the comments were.

21 A. Yes, sir.

22 Q. And, you know, I'm assuming took them to heart
23 then and were trying to do things. But yet, you know, we
24 see similar comments coming back. And so I'm not going to
25 sit here and, you know, pretend that people aren't

1 influenced in terms of what they say, at least potentially
2 by what the outcome is in the case.

3 But then again, you know, after sitting here and
4 listening and reading so many of these -- I mean, tens of
5 them at minimum -- I see other situations where you --
6 they're saying, "Even if I'm losing, I'm still walking out
7 feeling like I've been treated fairly."

8 I see some judges -- and I'm not saying this is
9 the rule, I think it is to some extent an exception, where
10 there's not one negative thing said at all. You've got one
11 right down the hall from you with Judge Sinclair.

12 And so, you know, the last thing I want you to
13 believe when we come meet like this, is that it's some kind
14 of inquisition. Because it's not. That said, you talked
15 about see in your previous questioning about -- I was a
16 lawyer too and I remember these things happened. And I
17 what I heard from Judge McGee, just a little while ago was,
18 you know, "The way I act is based on what I learned as a
19 child. You do unto others."

20 And I don't think there's a lawyer in here, or
21 pretty much anyone that's probably ever practiced, you
22 know, for any length of time that hasn't gone to court and
23 gotten maybe some of a butt-chewing or whatever you want to
24 call it. But unfortunately, that's just part of the
25 process.

1 But I think you walk out there, particularly if
2 you ultimately ascend to a situation like you are,
3 remembering that and remembering how you felt, where you
4 go, "Maybe they were right." As that commentor said, you
5 know, "I wasn't prepared and she basically got on me, but
6 she spared me the embarrassment that maybe I otherwise
7 would have gotten."

8 I guess what we're looking at is that -- you
9 know, you're in control of the courtroom, it's your kind of
10 running the show. But at the same time we recognize, and I
11 think you would too, that it needs to be done in a way that
12 is conducive to getting a result and people being at their
13 best as opposed to their worst.

14 A. Yes.

15 Q. Particularly in a family court context.

16 A. Because they come in at their worst moments.

17 Q. Exactly. And I think what's troublesome, and I'm
18 sure what I'm hourly from the Chairman is, is that when you
19 see, you know, one or two comments out of a bunch, you go -
20 - we kind of can really dismiss those to some extent.

21 But when you get more than that, and they start
22 coming back and they're, you know, using some pretty strong
23 terms -- you know, "rude," "arrogant" -- I mean, I'm sure
24 that when you were a lawyer, that the last thing you would
25 have wanted is for somebody to evoke this kind of responses

1 out of you.

2 A. I agree.

3 Q. And so again, I'm really more or less trying to
4 kind of get a sense as to what you think we're supposed to
5 be doing when we're confronted with something like that,
6 and then we're looking at it in a context where you were
7 just here a year ago. And the same kind of things were
8 being said.

9 And, look, I don't doubt for a minute that, you
10 know, in your mind or heart of hearts, was you want to call
11 it, that think you've made an effort. Tell us, you know,
12 basically where you think you may be falling short to still
13 be kind of prompting those kind of comments that are coming
14 out.

15 A. It would -- it would be good to know if those
16 people have been in front of me in the past year, or if
17 it's the same people that made the comments from last year
18 are making the comments again this year. It has been a
19 conscious effort on my part to be more respectful.

20 The thing with the temporary motion hearings has
21 stayed -- that's something that I think people may have a
22 problem with, and that could be viewed as something as
23 Robeitis or arrogant, because I don't want to hear
24 arguments from them. And it has nothing to do with their
25 abilities whatsoever.

1 Q. And I get that. And let me just say this:
2 Probably of anybody on this panel this go-round, the one
3 who has probably been the most, I guess, vocal about this
4 fifteen-minute hearings is me. And I'm not a family
5 practitioner, so, you know, maybe you're saying, hey, I'm
6 coming from a utopian view.

7 But it just seems really, really inconsistent
8 that if we're getting into these cases and the temporary
9 hearing is the first step, that, that's really going to set
10 a tone for what's going to go on, potentially in the
11 litigant from there on out, and effectively you're corking
12 the mouths of the lawyers, you're basically tying their
13 hands, you're more or less making it something almost as if
14 you could run it through a computer, really.

15 I mean, how -- is that really in any way
16 enhancing a case going in the right way? I mean, because
17 it looks like it's McDonald's law. And that's not
18 necessarily something I think that promotes the system, I
19 think it tears it down. But that's not necessarily on you.
20 And I want you to understand that.

21 A. No, I understand.

22 Q. I mean, I've heard that repeatedly. And
23 apparently I respect that, that's at this point how that
24 system works.

25 A. I don't think that you would find a lot of judges

1 that would probably object to having some more time.

2 Q. Sure. I mean, we heard from several of them.
3 And I asked Judge McGee, I asked -- you know, Judge
4 Sinclair, "What do you do?" And they said, you know, "If
5 it takes thirty minutes, I give it thirty minutes. If it
6 takes longer than that, I'm going to rearrange the schedule
7 and tell people --

8 A. Or take it under advisement.

9 Q. Well, I think they don't like doing that. So I
10 think they're trying to get it heard.

11 A. But sometimes it needs to be --

12 Q. But you understand if in fact you think that
13 maybe the source of all this is that situation, it seems to
14 me the way to remedy it is to recognize how it is more or
15 less impacting people.

16 A. That's true.

17 Q. And if you see that, hey, this is how -- they're
18 thinking I'm being rude, maybe I need to change the whole
19 way I go about them.

20 A. Well, that's a -- that is -- that is a true --
21 that's a good point. And that is something that definitely
22 can be looked at and done. On the flip side of that, I'd
23 be defending that I hold up court and I take too long and
24 I'm too slow.

25 Q. Well, let me say this -- I've been in --

1 A. I don't -- I don't know. It's a -- it's a
2 double-edged sword.

3 Q. Well, and I understand. And, again, I'm not
4 trying to -- this isn't an indictment on you.

5 A. Well, I understand.

6 Q. But I'll leave it at this: You know, as far as --
7 I've been in other context, whether it be the circuit court
8 or workers' comp or whatever, and it's not just the family
9 court that multi -- multi-books these things, okay, where
10 you'll do one hearing every fifteen minutes. But you know
11 what, when we go in those other places, if people run
12 behind, we sit in the hall and we wait until we get called
13 up.

14 A. True.

15 Q. And, you know, I keep hearing this, "Well, I
16 don't want to make people wait." Well, people wait
17 everywhere else. So I'm just kind of concerned maybe that
18 there's an overemphasis on supposedly keeping the train
19 running as opposed to dealing with what the baggage is on
20 the train in the first place.

21 A. I can understand that. I understand. I do.

22 Q. And, you know, I don't want to get afar afield,
23 but I know we've talked about that. But let me just sum up
24 by this: We obviously have to decisions to make, and the
25 concern that you would normally expect we would have is

1 that we see you every six years, we see these things come
2 back.

3 A. Yes, sir.

4 Q. And once you leave here, basically if you leave
5 then there's really nothing that anybody's going to be able
6 to do for the next six years. And if this behavior is
7 going on, and continues to go on, it's -- over time it's
8 destructive. And so I hope you understand why there is
9 concern for it.

10 A. I do. I do. And I hope that all of you
11 understand that, that is not a perception that I want of me
12 at all. That's not a perception I want for anyone to have
13 from someone's -- of anyone sitting on the bench. And
14 you're right, the hearings -- maybe doing them a different
15 way. I think I had a comment that was made last go-round,
16 that sometimes I don't run my docket on time. I get
17 behind.

18 So I made an effort to try to not get behind, and
19 I don't think it was -- I don't think that it was met very
20 well, or perceived or taken very well. So I do apologize
21 for that. Because I was just trying to fix another issue.

22 Q. Well, I appreciate your responses. And thank you
23 for being here.

24 CHAIRMAN RANKIN: Mr. Hitchcock.

25 EXAMINATION BY MR. HITCHCOCK:

1 Q. It's supposed to be "good afternoon," Judge. But
2 we're a little past that, unfortunately. Judge, let me --
3 let me kind of, you know, explain to you where I'm coming
4 from, and hopefully you can -- you can help me a little bit
5 as we get a little bit down the road.

6 You know, I can tell you to a certain extent, you
7 know -- and I know that these are hard questions. And
8 we're certainly not trying to in any way -- you know, and
9 to a certain extent you're being asked by people who
10 certainly live in glass houses. You know, I'm -- and I
11 would -- if I were to ever offer myself for -- I have
12 somewhat of a reputation for being open, honest, and
13 direct. Sometimes too direct.

14 And if I were to ever offer myself for a judge, I
15 would hate to see what the feelings of the fellow Bar
16 members in regards to my judicial temperament might be.
17 But that's assuming that I realize and I recognize and I --
18 as a result, I have not offered myself to be a judge.

19 But the -- you know, the one thing that concerns
20 me is -- the one thing that I do believe is, I believe that
21 out of all of the evaluative criteria that we look at, that
22 judicial temperament is -- and I've said this before today,
23 that judicial temperament is probably one of the most
24 important that we evaluate.

25 A. Yes, sir.

1 Q. Especially in the family court. Because in
2 family court, you know, it doesn't matter who you are,
3 rich, poor, whatever, you might find yourself in family
4 court, right? I mean, there -- every walk of life, you
5 could potentially find yourself in family court, because of
6 the matters that are handled, in that they are some of the
7 most important matters because they so different affect
8 peoples' personal lives.

9 A. They're very emotional.

10 Q. Right. And they're very emotional. And, you
11 know, to me the one thing that can more quickly erode the
12 confidence in the judiciary more than anything else is for
13 a litigant the come into court and meet with a judge who
14 has a poor temperament. I think that, that can -- you
15 know, because -- and I think to your credit, I think you've
16 gotten, you know, a comment or two about how -- you know,
17 "I lost and I walked out, but I felt like I had been fairly
18 treated."

19 And, you know -- and I think if you exhibit that
20 proper judicial temperament, I think that's -- you know,
21 nine times out of ten, that's how people are going to feel
22 if they walk out, even if they're not happy. Because most
23 people, whether they realize that they won or not, don't
24 walk out of family court happy, right?

25 I mean, that's just -- they're not a hundred

1 percent happy. Everybody loses a little bit, you know, in
2 family court.

3 A. True.

4 Q. I did it a long time ago, you know, and I only
5 did it for a year because I knew that wasn't the place for
6 me. But the thing that I have concerns about is, you know,
7 we kind of went down this road a little bit last year, and,
8 you know, we talked about some other things, and you've
9 certainly taken some strides to address those.

10 But what really, really concerns me is, you know,
11 the -- is the finding of the Citizens Committee. And, you
12 know, there's not -- I've been doing this for a while, and
13 there's not a lot of times where it really has seemed to me
14 like a -- you know, kind of a they are really waiving the
15 red flag, "please look at this," because of the strength of
16 the language that they're using.

17 I mean, words like "dictatorial" really cause me
18 concern. And I know that you've indicated that, you know,
19 you want to take -- you have taken some steps to address
20 it. But, you know, the one problem that I have, and Mr.
21 Safran touched on this a little bit -- to qualify you,
22 you're unopposed and we don't see you for six years. You
23 know, it's not like a regular job where you get a
24 performance review every year, and you get feedback from
25 your boss, they tell you what you're doing good, they tell

1 you what you're doing bad, what you need to correct, and
2 then you may have some conversations along the way to make
3 sure that you're doing it.

4 And you're in a position where as a -- as a
5 judge, that people aren't necessarily -- and we talked
6 about it earlier, you tell the funniest jokes in the
7 courthouse, you know, as a judge. And I -- I'm the -- in
8 my office, I'm the boss and I tell the funniest jokes. I
9 am not the funniest person.

10 So, you know -- and so there's a -- it's
11 difficult for -- sometimes, I think, for judges to get
12 that. And there's a degree of isolation to what you do.
13 And it's a lot of times difficult for judges to get the
14 feedback -- or to get that type of feedback as to how
15 they're doing.

16 A. Right.

17 Q. But that doesn't mean that you need to please
18 everybody, right? Because that is not what we're asking
19 you to do, by any stretch of the imagination. You've got
20 to make tough decisions. People are going to be upset.
21 People are going to be mad.

22 We're not ask -- we don't want you to compromise
23 in any way the -- we don't want you to run your courtroom
24 because you're worried that necessarily about what ballot
25 box comment, and offhand -- an isolated ballot box comment.

1 Obviously, when we see a lot, and we see kind of the
2 thematics, that's when we get concerned.

3 I say all this to get to the point: I know that
4 you say you want to take steps to address your judicial
5 temperament, but how are you going to evaluate your
6 progress? Like, how are you going to -- what are you going
7 to use as a barometer to evaluate whether or not you feel
8 like that you're making the progress that you need to make
9 to address these issues, which obviously still exist in the
10 minds of the people that, quite frankly, are the closest --
11 they're a lot closer to you, you know, in proximity in a
12 daily basis than we are.

13 So if you need -- can you help me out with -- and
14 give me some idea about how you would -- you know, how you
15 would just make this part of your standard operating
16 procedure, and -- and fit -- and how you would judge your
17 progress in that regard?

18 A. It is difficult. Because we don't get feedback
19 until we come through this process. I don't -- I believe
20 that Ms. Crawford had said there were 326 ballot boxes,
21 with 11 negative?

22 MS. CRAWFORD: Yes, ma'am.

23 A. So out of 326 comments, 11 were negative. I
24 don't know how many other ballot boxes all the other judges
25 have been --

1 CHAIRMAN RANKIN: About three hundred
2 comments -- thirty comments.

3 MS. CRAWFORD: Three hundred and twenty-six
4 respondents.

5 CHAIRMAN RANKIN: Three hundred and twenty-
6 six respondents. Thirty comments --

7 JUDGE POPE-BLACK: Were all the comments
8 negative?

9 CHAIRMAN RANKIN: No.

10 BY MR. HITCHCOCK:

11 Q. No.

12 A. And I'm asking because I don't know.

13 Q. Yeah. And just so you -- just so I can give you
14 some idea --

15 A. Yes. 'Cause I'm trying to get an idea too --

16 Q. Sure. Yeah. And one thing that I want you to
17 understand is -- and I'm not trying to interrupt you. But
18 one thing I want you to understand is, I don't give a whole
19 lot of credence, necessarily, to anonymous comments unless
20 I see some themes, right?

21 Or unless I see some other indication of things
22 that corroborate it. Quite frankly, I'm much more
23 concerned about the Citizens Committee's, you know,
24 representation that they interviewed several witnesses that
25 kind of countered your "I'm trying to get better."

1 And so that -- that's my bigger concern. Which
2 to me lends credence to the negative comments that are in
3 the ballot box.

4 A. And I'm trying to -- I was very concerned by
5 those comments as well. Because they were so very
6 different from my -- in the comments that were given to me
7 in the interview. Not one time during the interview was
8 there ever brought up, "We have had a negative comment
9 about you on temperament."

10 In fact, it was the very opposite of that. So it
11 is also concerning that no other committee member signed
12 that report, just the one person. It was done, I think,
13 maybe fourteen days after I had my interview.

14 And I don't know the process of once you have
15 your interview, do they discuss it? Do they vote? I don't
16 know how it works. And, honestly, we don't know how much
17 we can ask.

18 Q. Sure. And why don't -- and I'll tell you, let's
19 not -- let's not look back. Let's look forward and --

20 A. I was just --

21 Q. Yeah. Sure. And, you know, if you can help me.
22 Because I know we don't want to -- if you can -- how are we
23 -- how are we going to -- how are we going to measure
24 progress going forward, so that I can feel like that if --
25 you know, I say yes, you're qualified, that I know that

1 you've taken this seriously and that you are -- that you
2 are, you know, continuing to measure your progress and that
3 you're getting feedback that you need to along the way?

4 A. I don't know if this is possible. But I think
5 that this would probably not only benefit me, but possibly
6 other judges as well, I think that it wouldn't be bad to
7 get some feedback throughout our time on the bench, and not
8 wait until we have to go through the screening process.

9 You know, if it's something that I can send out -
10 - I'd have to figure out a way to do it, but anonymously to
11 the counties -- to the main bars that I'm in front of.
12 Because we don't travel a lot now, so I'm in front of the
13 same counties usually.

14 And maybe our local bars do a survey, and you get
15 anonymous feedback that way. I would be open to that. I
16 think that would be a very good measure until -- I would
17 have welcomed that before, so that we had that ability to
18 kind of see how we're doing throughout a job. We really
19 don't get job reviews until we come in here.

20 So I would welcome that opportunity. Absolutely.
21 I don't know if that -- how that works with the screening
22 process and the Commission, if that's something that we can
23 -- we can ask our bar to do individually. But I would be
24 very open to that. I think that gives you feedback along
25 the way to be a better judge.

1 CHAIRMAN RANKIN: Senator Young.

2 SENATOR YOUNG: Thank you, Mr. Chairman.

3 EXAMINATION BY SENATOR YOUNG:

4 Q. Judge, a question I have for you is when -- and
5 you may have already answered this in all of these
6 questions, but I want to -- if so, I don't remember hearing
7 it. But when have you first learned that there were some
8 members of the Bar who had questions about your
9 temperament?

10 A. It would have been this time last year when I
11 went through the process of circuit court.

12 Q. In the screening for the circuit court.

13 A. Yes, sir. And I will add the issue with the
14 guardian ad litem filling the forms as disrespectful, I
15 just learned that, actually, through the Bar interview on
16 this screening process. So when I had that bar interview
17 in October, that's when I learned that they felt that, that
18 was disrespectful to them as guardian ad litem attorneys.

19 And that's when I said, okay, and I eliminated
20 that form in cases where there -- there is a guardian ad
21 litem that can provide that information in their report.

22 Q. Prior to 2017, after you were elected in 2013,
23 did anyone ever mention to you that you should be aware of
24 a temperament issue on the bench?

25 A. I got questions from attorneys as to what Judge

1 Creech's form was, and the purpose of it. But other than
2 that, no. It's kind of one of those things when -- as Mr.
3 Hitchcock was saying, you're the funniest person in the
4 office, that you don't -- you don't get that constructive
5 feedback. Does that --

6 **Q. I noticed that the sheriff wrote a letter of**
7 **reference for you, the Spartanburg County sheriff.**

8 A. He did.

9 **Q. And he noted that you played an instrumental role**
10 **in the Spartanburg County drug court.**

11 A. Yes, sir.

12 **Q. Is that something that started after you were**
13 **elected to the bench?**

14 A. Yes, sir. I started that program. That was one
15 of the -- I'm sorry to interrupt. But that was one of my
16 goals, if I was elected, I wanted us to have a juvenile
17 drug court because we didn't have one.

18 **Q. Did you model that after another county?**

19 A. After York County. They have a -- they have
20 financial resources, but they have a smaller juvenile drug
21 court. Richland has a large one. Greenville has a large
22 one that is almost like its own separate entity with the
23 solicitor's office and -- we just didn't have those
24 resources, so I modeled it after York's program.

25 **Q. How much interaction did the sheriff -- or does**

1 the sheriff have with you in family court?

2 A. Well, they provide our deputies, our security.
3 They have -- the sheriff provides a deputy to do curfew
4 checks for the juvenile drug court. They testify in some
5 DSS cases sometimes, if they're involved in an emergency
6 protective case.

7 Q. The Spartanburg County sheriff's deputies that
8 you work with on a daily basis, those are the deputies that
9 provide security at the courthouse?

10 A. Yes, sir.

11 Q. James Price, he's an attorney in Greenville.

12 A. Yes, sir. Chip Price.

13 Q. He wrote a letter of reference as well. Does he
14 appear in front of you?

15 A. No. His children also practice, and they do not
16 appear in front of me either.

17 Q. The clerk of court wrote a very nice letter on
18 your behalf, too, noting your work settled up the juvenile
19 drug court. Let me ask you another question, which I've
20 asked all the candidates who are sitting judges. And this
21 is in the area of abuse and neglect.

22 If you could improve the system in this state for
23 abuse and neglect cases, in how we handle those for the
24 children and the families involved, what would you
25 recommend change?

1 A. One of the things that I would like to see
2 explored, as I mentioned earlier, sometimes I believe are -
3 - sometimes I believe there's not a continuity within our
4 DSS. It's so very different in every county that you go
5 to.

6 Some continuity, I think, would help. How you
7 achieve that, I'm not sure, to be quite honest with you. I
8 think there needs to be the centralized system with the DSS
9 database, so that they see if a child's involved in DSS in
10 another county. I think DJJ and DSS could work closer
11 together.

12 Because unfortunately, most of your children that
13 come through the DJJ system also have been touched by DSS.
14 DSS and DJJ should probably both have access to that
15 centralized system so that they can see if a child that
16 comes into DSS also has a DJJ history or a current case,
17 and vice versa.

18 The caseworkers are overworked. There's a huge
19 turnover. It's a very hard job. And I understand that.
20 And this comes from someone that -- I can -- I can ask a
21 lot from -- on a DSS case, because there's a lot riding on
22 that case.

23 If we as judges don't make the right decision on
24 a DSS case, then the children's lives are at stake. And so
25 I think that while I know that there's been an effort to

1 hire more caseworkers, unfortunately there's still a
2 turnover rate.

3 I don't know if that has to do with -- I don't
4 know if the pay was increased or if it stayed the same. I
5 do not know. Maybe that's something that can be looked at
6 too. But a large problem with DSS is that your entry-level
7 with your caseworkers, they just can't keep up.

8 And I wish I had an answer for you, because
9 they're so necessary. In Spartanburg County we have the
10 highest number of children in foster care, so I understand
11 how necessary the Department of Social Services is. And I
12 wish I could give you an answer. I wish that we could fix
13 it. But those are some things that I see could possibly --
14 could possibly change things.

15 **Q. Thank you. I may have some additional questions**
16 **in a moment.**

17 CHAIRMAN RANKIN: Representative Smith.

18 REPRESENTATIVE SMITH: Let me just follow up
19 on that. Judge, you've been going at it for a while. Do
20 you need a break?

21 JUDGE POPE-BLACK: No, I don't -- it depends
22 on how much longer you're going to have me to.

23 REPRESENTATIVE SMITH: I hope not long. My
24 wife is texting me, so that's going to give me some
25 incentive to be quite. She's giving me this mean smiley

1 face.

2 JUDGE POPE-BLACK: That's not good.

3 REPRESENTATIVE SMITH: So things are not
4 good right now in the Smith household.

5 EXAMINATION BY REPRESENTATIVE SMITH:

6 Q. I guess I found an interest in what you said
7 about DSS and -- and over the years, for more my
8 information than anything else. But we've been involved in
9 Children's First Lawsuit, I think is what it's called, and
10 they had to fund DSS, create more caseworkers.

11 And what I'm hearing you tell me from -- you're
12 on the ground floor of it, watching what's happening, you
13 haven't seen much improvement with the addition of new
14 caseworkers?

15 A. That's a fair statement.

16 Q. Okay. And, you know -- and so, you know, I just
17 find that interesting, because that's what experts come in
18 from out of state and tell us that they need more
19 caseworkers, and that's what's going solve all the problems
20 at the Department of Social Services.

21 And I, like you, am not seeing much improvement
22 at the Department of Social Services. And, you know, I'm
23 over -- I'm on their subcommittee where they request
24 funding every year, and I think last we gave them over \$20
25 million, and the year before something similar.

1 And then of course we're building a child support
2 system from nineteen -- that was prior to being the 1990s.
3 And we still have yet to complete it. And we're moving
4 forward in that.

5 So let me ask you this -- we've been having these
6 discussions about the Department of Social Services with
7 some of the judges, some of your contemporaries. And one
8 of them brought up the issue about DSS attorneys. And, you
9 know, I have some concern that it looks like to me -- and
10 every time I turn around, they've gone to a county attorney
11 system where the attorneys are being hired by the agency.
12 And I don't see the attorneys having much of a legal
13 discretion, as I could call it.

14 With their caseworkers, it seems like the tail's
15 wagging the dog, and the caseworkers are driving the train
16 as it relates to whether we're going to go forward or how
17 we're going to resolve or -- and all of that. Are you
18 finding that to be the case on your time on the bench?

19 A. Yes, I would agree with that statement. There's
20 -- or maybe the supervisors -- but hearing a lot of "my
21 client can't agree to this" or my client this or my client
22 that.

23 Q. So it doesn't -- it doesn't appear to you that
24 the attorneys are independent arbiters or evaluating the
25 case. Of course, you know, I've got my -- if I report a

1 client and my client's insisting upon a position, then, you
2 know, I've got to go with it.

3 A. Right.

4 Q. They're the boss. But also it seems that -- you
5 know, I don't see that independent advice is given, nor is
6 it welcomed at the Department of Social Services.

7 A. I don't know to that great detail, because I'm
8 not involved in what's happening outside of the courtroom.
9 I can say that there have been times when I have had DSS
10 attorneys say, "I've had discussions with my client, I've
11 given them my take on the case, advised them but they would
12 like to move forward" or "this is the decision that they
13 want to go with." So I have heard that distinction on --
14 from some DSS attorneys.

15 Q. Judge, and I don't want to -- I think they've
16 discussed some of these Bar surveys and Citizens Committee
17 surveys ad nauseum. But, you know, one thing that I'm
18 looking at -- you know, we don't have a record of your last
19 time you appeared. I recall it, but we don't have a record
20 of it. And I'm just trying to figure out whether these are
21 similar complaints that you had last year.

22 And, you know, I guess it's a double-edged sword,
23 'cause what we've got to figure out is whether you have
24 been improving. And it takes some time for the improvement
25 to catch up with those who still have ill feelings.

1 A. Correct.

2 Q. Or rather, this is a continuing problem that's
3 occurring because -- you know, you had talked about -- you
4 said you were going to make improvements and -- you know,
5 like the Citizens Committee says during the interview, "She
6 reported she had made significant changes in courtroom
7 demeanor. Unfortunately, it's not consistent with the
8 witnesses interview."

9 Do you recall whether these are similar
10 complaints, you know, that you're hearing from us today as
11 it was last year at this time?

12 A. My specific words?

13 Q. Well, I don't -- I guess, you know, what I'm
14 trying -- you heard some of the complaints. Were those --
15 I don't have a transcript. I don't have anything I can go
16 back and refer to.

17 And I'm trying to figure out exactly whether this
18 is -- you know, look, you treat me -- and I can still tell
19 you the judges in my legal career who treated me rudely,
20 you know? I'm never going to forget it. It's an
21 experience that no one enjoys.

22 And so I -- you know, and I don't -- you know,
23 I'm a -- if I had to fill out a ballot box survey with
24 someone that chewed on me like I've been chewed on my legal
25 career, I probably would not have kind things to say about

1 them now.

2 And, you know, unfortunately, when you engage in
3 that type of conduct that's -- it's hard to shake it out
4 from somebody. And so, you know, that's -- that's what I -
5 - my practical experience I bring to this commission. So,
6 you know, I tend to think that these are probably people
7 who you may have offended in the past, that you're trying
8 to rectify those situations.

9 And so, you know, I -- and I don't think there's
10 any way we're really going to be able to get to the bottom
11 of it, 'cause we don't have a transcript and we don't have
12 the materials from last year. So, you know, I guess that's
13 what I was to your knowledge to understand.

14 A. I understand. I do -- I remember there being the
15 Robeitis comment. I remember there being comments about
16 controlling of the courtroom.

17 Q. And, you know, that's --

18 A. I'm sorry, I'm trying to --

19 Q. But that's my recollection also, is some of these
20 comments that I'm looking at are very similar to the ones
21 you had last year. So, you know, I'm trying to give you
22 the benefit of the doubt and say, you know, look, I came
23 onto the bench maybe I -- you know, I -- this is a
24 different career.

25 You're not much younger than I am. From what I

1 looked on here, you started practicing law a few years
2 after I did. And, you know, judges that have progressed in
3 this legal world that we live in now, where before they
4 were -- you didn't question them. I mean, you know, and
5 they were --

6 A. Right.

7 Q. They were people who were of high quality, of
8 high stature and -- you know, and they treated people not
9 like they should have all the time. And, you know -- and
10 so, you know, we try to thread the needle on this where you
11 have the judges who were tyrants to now, you know, if you
12 say something or look at someone wrong, they're quick to
13 criticize you.

14 So, you know -- you know, I don't know how you
15 ever -- you know, I think the pendulum swung too far this
16 way, and it needs to be in the middle, and so I think
17 you're probably the beneficiary of some of these people who
18 carry their feelings on their sleeves a little bit and need
19 to have some tougher skin.

20 But by the same token, you know, I -- you know,
21 the one thing, and I think you told you this last time,
22 that I'm most concerned about, you don't have to be the
23 smartest judge, you don't have to be, you know, the best
24 personality, the best dressed or whatever other things they
25 want to grade you on.

1 But one thing I'm always concerned about is your
2 judicial temperament. Because, you know, I'm sure you've
3 been chewed on in a courtroom like all of us up here who
4 have practiced law have been chewed on, and it ain't fun.
5 And if it happens in front of your client, that's an
6 unpardonable sin in my book. Because you never embarrass a
7 lawyer in front of their client.

8 A. I agree.

9 Q. If you have a problem with a lawyer, you take him
10 back in they chambers and you dress him down all day long.
11 And I have no problems with that.

12 A. You're still trying to make a living.

13 Q. Yeah.

14 A. And you've worked hard to get ready for the
15 hearing, to be there. And so, no, I don't want to
16 embarrass an attorney. I've been there. That's not
17 something I want to do.

18 Q. And so that's what -- you know, and I ask
19 whatever happens out of this today, and if you continue on
20 in your position, I just -- you know, I would ask that you
21 assure this Commission that if that occurs, that, you know,
22 we're going to -- we're not going to see comments like this
23 six years from now.

24 I know I'm not going to be on the committee six
25 years from now. I'm probably not going to be in the

1 Legislator six years from now. But, you know, it -- you
2 know, there's needs to be assurances that -- that we're
3 seeing the same trend in the wrong way.

4 And you're a young judge. I remember when you
5 ran. You have a lot of potential. You're a -- you're a
6 fine lawyer. And, you know, I still -- I voted for you and
7 I'm still confident in that vote I made six or seven years
8 ago.

9 A. Thank you.

10 Q. But what I want to make sure of is that -- is
11 that this isn't, you know, this isn't here to embarrass or
12 to humiliate you. This is a learning experience like all
13 of us -- as Mr. Hitchcock has been saying, it's a job
14 review.

15 A. Right.

16 Q. And you've got to come up for a job interview
17 every six years. And I just want to make sure that we're
18 going to -- that the next six years from now, you're never
19 going to remedy those who you've really offended. But, you
20 know, the next six years it should look a whole lot better,
21 if we get there.

22 And I just want your assurance that if you -- if
23 you go forward and you're elected -- I mean, you've
24 obviously got to go to the Floor too, that you would strive
25 hard to make sure we don't see comments like this in the

1 future.

2 A. Absolutely. Yes.

3 Q. Well, Judge, in conclusion let me tell you this:
4 I want to commend you on the drug court in Spartanburg
5 County.

6 A. Thank you.

7 Q. I've been on sentencing reform for the first
8 generation, and number two which is obviously not going in
9 the -- on the train to nowhere quickly, 'cause it doesn't
10 please certain interests around this statehouse over here.
11 But I think there's nothing better that can be done to give
12 a person a second chance. We all make mistakes.

13 A. I agree.

14 Q. And, you know, in drug court is where someone
15 makes a mistake and we let them try to learn from their
16 mistakes and move on in a positive fashion in life. And,
17 you know, I -- and where I want to commend you is (a) you
18 don't have to do it, (b) it's not a job that you're doing
19 on your nine-to-five job. It's something you're going and
20 doing at night. And so that's a labor of love for you?

21 A. Yes, it is.

22 Q. And it is a -- and it's a service to your
23 community, it's a service to the state. So I really want
24 to commend you for going down that path and trying to help
25 people improve their lives.

1 Because if it's not for judges like you who say,
2 "I can go home and be with my husband or be with my
3 children," those kids that you are saving through that drug
4 court would still be somewhere a lot -- a whole lot worse
5 than where they are now.

6 A. Thank you. That means a lot. Thank you.

7 CHAIRMAN RANKIN: Anything else further?

8 (Hearing none.)

9 EXAMINATION BY CHAIRMAN RANKIN:

10 Q. And I may have heard this question answered
11 before, but you have -- and we've been talking way too
12 long, and you've been here way too long. I know your
13 husband said it -- standing for twenty minutes might be a
14 good thing. My take from that would be it would be over.

15 A. I don't know how long I've been here.

16 Q. Twenty-two minutes. Twenty-two minutes.

17 A. Twenty-three. When you're in the hot seat, you
18 kind of lose track of time.

19 Q. The earlier question of -- about seeking other
20 judgeships, you mentioned earlier -- and there's been a lot
21 of back and forth, and no secret about it you -- for a
22 period of time last year were a candidate for the circuit
23 court bench.

24 A. Yes, sir.

25 Q. And a question asked today about fulfilling the

1 term and not running for another position. My question to
2 you is: What changed from last year to this year? And why
3 the conviction that you would not seek another judgeship
4 other than this one?

5 A. Even when I was running for this seat in 2012 --
6 2013, actually -- I think that it's probably been expected
7 of me to make the transition to circuit court. I did a lot
8 of civil work, had done some criminal work. I even got
9 asked several times by members of the General Assembly,
10 "Why aren't you running for circuit court?"

11 When I ran last year -- one, my heart wasn't in
12 it. But, two, I'm glad I did it. My heart was not in it.
13 But if I had not done it, I would not have appeared before
14 you a year ago to know things I needed to work on. Not
15 only what we discussed at length here today, but also some
16 financial issues that need to be cleaned up. And if I had
17 not been before you a year ago, then the job that I have
18 now that I love, and the things that I'm working on to try
19 improve in my community, I wouldn't have the opportunity to
20 do that. Because I would be sitting in a different
21 position if I had not done that last year, to learn the
22 things that I did.

23 So to answer your question, I can understand that
24 people would think that I would probably not fulfill the
25 term. There are things that I have started in Spartanburg,

1 that I want to finish, make sure that a strong program is
2 developed not only in the juvenile drug court.

3 But I mentioned some things tonight the I hope
4 that -- in regards to DSS, that I might get contacted on
5 later to give some more information on those so that we can
6 have a better program. Because that is such an integral
7 part of what we do. So I can tell you that my passion and
8 my heart lies with family court and helping the children of
9 our state.

10 CHAIRMAN RANKIN: All right. Unless there
11 are any other questions, Judge, thank you. This will
12 conclude this portion of our screening. And I want to
13 remind you, as you know, pursuant to the evaluative
14 criteria, we expect you as a candidate, and all candidates,
15 to abide by both the spirit and the letter of the South
16 Carolina laws of ethics. Any violation of those laws,
17 either in spirit or letter, or the appearance of
18 impropriety would warrant us calling you back. You're
19 aware of that, right?

20 JUDGE POPE-BLACK: Yes, sir.

21 CHAIRMAN RANKIN: And we don't expect that
22 to be the case. However, the record of qualifications will
23 not be closed until all is finished.

24 JUDGE POPE-BLACK: Okay. Yes, sir.

25 CHAIRMAN RANKIN: Again, we don't expect

1 that to be the case. But with that, and your
2 acknowledgment of that --

3 JUDGE POPE-BLACK: Yes, sir, I do.

4 CHAIRMAN RANKIN: -- this will close this
5 hearing. And thank you for your patience and your waiting
6 on us, and the longest twenty minutes your husband has ever
7 sat.

8 JUDGE POPE-BLACK: Well, you all have still
9 a long night. So I'll thank you for your service.

10 (Candidate excused.)

11 CHAIRMAN RANKIN: Let's start first by
12 having you raise your right hand.

13 WHEREUPON,

14 MONET S. PINCUS, being duly sworn and
15 cautioned to speak the truth, the whole truth and nothing
16 but the truth, testifies as follows:

17 CHAIRMAN RANKIN: You've prepared for us two
18 documents that are before you, a sworn statement and a
19 personal data questionnaire. Any changes need to be made
20 to those before they're made a part of the record?

21 JUDGE PINCUS: No, sir.

22 CHAIRMAN RANKIN: And you don't object to
23 them being included in the record?

24 JUDGE PINCUS: No, sir.

25 CHAIRMAN RANKIN: If you'll hand them to

1 Lindi. And now mark them in as exhibits.

2 (EXHIBIT NO. 24 - JUDICIAL MERIT SELECTION
3 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
4 HONORABLE MONET S. PINCUS)

5 (EXHIBIT NO. 25 - JUDICIAL MERIT SELECTION
6 COMMISSION SWORN STATEMENT OF THE HONORABLE MONET
7 S. PINCUS)

8 CHAIRMAN RANKIN: Judge, you are familiar
9 with our investigation of your candidacy for reelection.
10 And you know that we focus on nine evaluative criteria,
11 which include the ballot box survey, a study of your
12 application materials, verification of your compliance with
13 the state ethics laws, a search of newspaper articles in
14 which your name appears, a study of previous screenings,
15 and a check for economic conflicts of interest.

16 We've received two affidavits filed by
17 Nathan Miles Ginter, if I'm pronouncing that correctly, and
18 Matt Younginer -- we'll spell that for the court reporter
19 later -- that have been filed in opposition to your
20 election. And then two witnesses are present, I believe,
21 to testify.

22 You have the opportunity at this point to make a
23 brief opening statement to the Commission. Otherwise, Ms.
24 Valenzuela will begin the questions and we'll go from
25 there.

1 JUDGE PINCUS: Well, I didn't ask this
2 earlier, but the last time I ran I was given the option of
3 waiving the opening statement. If that's an option, I
4 would waive it.

5 CHAIRMAN RANKIN: You can invoke it at
6 anytime if you like.

7 JUDGE PINCUS: All right. Thank you.

8 CHAIRMAN RANKIN: Do you want to waive it
9 now?

10 JUDGE PINCUS: Yes, sir.

11 CHAIRMAN RANKIN: Then we'll begin with
12 questions. Thanks.

13 MS. VALENZUELA: Thank you, Mr. Chairman.

14 EXAMINATION BY MS. VALENZUELA:

15 Q. Good evening, Judge Pincus. And thank you very
16 much for your patience.

17 A. Yes, ma'am.

18 Q. Judge Pincus, after serving five years on the
19 family court, why do you want to continue serving as a
20 family court judge?

21 A. Well, when I decided to run the first time, I
22 thought that being a family court judge would encapsulate
23 all that I loved about family court: trial work, motion
24 work, oral arguments. And it has. And I get to do that
25 now regularly every week versus a little bit, you know,

1 maybe a trial once a year. So it's an extremely
2 challenging job and difficult at times, but very rewarding.

3 After practicing law for sixteen years, I now
4 have the ability to, in a hands-on way, really work with
5 family law -- really work in the family court system. I'd
6 love the opportunity to do it again. I'm very grateful for
7 the opportunity to do it for the last five years.

8 **Q. Thank you, Judge. Could you please explain one**
9 **or two brief accomplishments that you feel you've completed**
10 **during your tenure, and then a goal you would like to**
11 **accomplish if you are reelected?**

12 A. I really enjoy mentoring young students and
13 lawyers at times. So I've had the opportunity to
14 participate in a JOE Experience Program, which is through
15 the law school. But not just that. I have regularly, high
16 school students come that are in some type of a political
17 program or a law program, that come and sit with me on the
18 bench and participate in my daily -- in my day and my daily
19 activities. That's something that I'm proud of, that I was
20 able to reach out and make connections in a couple of
21 schools to do that. Anytime that I have that request, I
22 accommodate myself.

23 What I would hope to be able to do more, and this
24 was more of a scheduling issue when I became a judge, I
25 just -- I get a docket, I have to be certain places, so I

1 have not been able to participate as much as I'd like to in
2 mock trial.

3 I used to do that a lot as an attorney. And I
4 would love to be able to get back into that more. I am
5 going to be participating in March, but there's many other
6 opportunities for me to. But I have to work with
7 scheduling.

8 **Q. Thank you, Judge. What do you think your**
9 **reputation is among attorneys who practice before you?**

10 A. Well, a lot of the attorneys that I practice --
11 or that come before me, I've known and for a long time.
12 Some of them from the beginning of my time as a practicing
13 attorney. When I went for my Bar interview, I was given a
14 little bit of information about what the Bar felt about me
15 as an attorney, and the committee actually told me they
16 were really pleased with the responses. And that was
17 really uplifting to hear.

18 So I think that I have the reputation of being
19 what you would expect as a judge that has family law
20 experience: experienced, diligent, I'm a hard worker,
21 knowledgeable about the law, respectful, professional to
22 the litigants and the attorneys.

23 **Q. Thank you, Judge.**

24 A. Yes, ma'am.

25 **Q. Judge Pincus, for clarification you have not been**

1 named as a party to a lawsuit since your last screening in
2 2012; is that correct?

3 A. That's right.

4 Q. And then to your knowledge, all lawsuits brought
5 by or against you before 2012 have been resolved. Is that
6 also correct?

7 A. That's right.

8 Q. Judge Pincus, the Commission received 341 ballot
9 box surveys regarding you, with 29 additional comments.
10 The ballot box survey contained some of the following
11 positive comments. And these are only a few examples,
12 because we can't be here to go through all of them:

13 "Great on complex matters and not afraid to make
14 difficult decisions. We are lucky to have her service."

15 "Fair, impartial, kind to litigants and
16 attorneys. Great courtroom manner and management."

17 And then this last one is from someone who
18 identified themselves as practicing in circuits across the
19 state:

20 "Without question a top five judge in the state.
21 Kind but firm. Knows the law. Patient will fairly
22 consider an opposing view. Practical, excellent and well
23 reasoned decisions. And always, always treats everyone
24 with respect. She is an absolute pleasure to have on the
25 bench."

1 **Now, five of the comments expressed some**
2 **concerns. One of the comments allege that you have an**
3 **unprofessional demeanor and that you're mean and**
4 **disrespectful to attorneys. What response would you offer**
5 **to this concern?**

6 A. Well, I certainly regret that an attorney
7 perceived me as being mean or disrespectful. I work very
8 hard at extending respect to not only attorneys but
9 litigants that come before me.

10 I begin my hearing with pleasantries. I end it
11 with pleasantries. I maintain eye contact. I generally,
12 to the best of my ability within time limits, give
13 attorneys as much time as they need to present their cases.

14 I think it was -- I don't know the context, but I
15 would think it would be a misperception of something that I
16 did or said. I certainly wasn't intended to be mean or
17 disrespectful. It could have been a ruling that someone
18 did not like. But I work hard not to have that type of
19 description, and I'll continue to do it.

20 **Q. Thank you, Judge. Another concern stated simply,**
21 **"Ex parte communications. Unprofessional demeanor."**

22 **What response would you offer to this statement?**

23 A. Well, I answered in my written application my --
24 I think the question was my philosophy on ex parte
25 communication, and of course I would refer to that. I do

1 have to engage in some ex parte communication. It's part
2 of my job. But when I do it, I do it under the rules and I
3 do it as permitted.

4 I don't, however, have conversations informally,
5 somewhere outside the courtroom, about a case with just one
6 party and not the other party involved. No, that I do not
7 do. So I do ex parte within the confines that I'm allowed.
8 But absolutely, I don't engage in ex parte communication
9 outside of that.

10 **Q. Judge, another comment alleged that you're in --**
11 **that you're often in over your head. What response would**
12 **you offer to this concern?**

13 A. It said "often"? Did you say "often"? Or just
14 in over --

15 **Q. Often.**

16 A. Okay.

17 **Q. Actually, if you give me just a second. It says,**
18 **"Judge Pincus does an adequate job, but is often in over**
19 **her head."**

20 A. Okay. What I would say to that is -- prior to
21 coming on the bench, I practiced family law exclusively for
22 sixteen years. I invested a lot of time becoming
23 proficient in my practice. I was a fellow in the AAML, as
24 an example.

25 So coming on the bench -- certainly, I don't know

1 everything. I still don't know everything, and I didn't
2 then. But we -- as most of you would know, we have
3 mandatory CLEs, we are always in conferences as judges,
4 learning, we have conferences just for judges on family
5 law. So we're always -- me in particular, but my fellow
6 family court judges always learning, always being prepped
7 and updated about new cases that might have come down.

8 So on the one hand I have to do certain things to
9 stay on top of the law. On the other hand, I personally
10 review the rules of evidence and the rules of civil
11 procedure on my own regularly. I personally do my own case
12 law summary of any family law cases that come out.

13 I think if somebody perceives me of being in over
14 my head, I would say that if I was or if I didn't rule
15 correctly in their opinion, they could appeal or ask me to
16 reconsider that. Maybe they did that, I don't know. But
17 I'm competent to be a family court judge.

18 **Q. Thank you, Judge. Now, one comment suggested**
19 **that you're biased in favor of military and men. What**
20 **response would you offer to this concern?**

21 A. Military and men. So I've never been asked to
22 recuse myself based on that as it -- you know, so I've
23 never had an attorney come in and say, "Judge Pincus, I
24 don't think you can be fair because there's a military
25 personnel involved."

1 So as I said, I practiced a long time with many
2 attorneys that still practice. So during that
3 relationship, and now they know I'm married to a retired
4 sergeant major, my son is about to graduate the Citadel and
5 be commissioned for the units -- United States Army. So
6 people that know me, and have known me over my career as a
7 family law attorney and judge, know those personal things
8 about me.

9 However, anytime I have a case involving the
10 military, I may know more about the nuances of military
11 life. I also represented a good bit of military personnel
12 when I practiced, because of Fort Jackson advertizing --
13 but I also represented spouses of military personnel. So I
14 may know more of the nuances, more of the nomenclature, but
15 when a case is before me, it's about that particular case
16 and those particular people and those facts.

17 And when you first brought this to my attention,
18 it reminded me that I had recently ruled on two cases
19 involving military personnel. I don't keep track of those
20 kind of cases, it's just something that jogged my memory
21 'cause they were so recent.

22 And in one case I granted a military father
23 custody. And it was a -- you know, 'cause mother wanted
24 custody, but I found the best interests of the children
25 served the father having custody. In the other case it was

1 the father wanting custody, but I granted custody to the
2 mother. And that's just two examples. And I have the
3 dates and the cites I could give you, if required.

4 So while I may have more familiarity with it, and
5 I have some family members involved in the military, I
6 would deny that I have a bias against or for either
7 military personnel or fathers in general.

8 Q. Thank you, Judge Pincus. Judge, as recently as
9 this year you were listed as a registered agent for a
10 nonprofit and three LLCs. What actions have you taken with
11 these companies and the nonprofit as a registered agent?

12 A. All of the companies I believe have been closed
13 at this time. They were not active. But as an attorney
14 some of them had to do with my husband's business, where I
15 would be listed as the agent for service. And when I
16 discovered that I was still listed, we've terminated those
17 companies.

18 Q. Judge Pincus, two of your letters of
19 recommendation were written by family law attorneys,
20 Rebecca Creel and Elizabeth McCool, who appear in family
21 court. Do either of these attorneys who wrote you letters
22 of recommendation appear before you in the court?

23 A. No, ma'am.

24 MS. VALENZUELA: Mr. Chairman, I would note
25 that the Midlands Citizen Committee reported that Judge

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

7 Mr. Chairman, I would now turn to the two
8 complaints we received, one by Mr. Matt Younginer and one
9 by Mr. Nathan Ginter. Both complainants are here to
10 testify today. And I have Mr. Younginer listed first, but
11 we can go at the Chairman's --

12 CHAIRMAN RANKIN: Okay. Let's hold on one
13 second. Judge, and I apologize I didn't do this outset, as
14 I've done with every candidate or judge who's come before
15 us thus far -- it's late I know. But you have family with
16 you that you'd like to introduce?

17 JUDGE PINCUS: Oh, I do have family, sir. I
18 have my mom, Joyce. This is my husband, Danny, behind her.
19 I have my father, Danny, and his fiancée, Kathy. And I
20 have my good friend, Rebecca.

21 CHAIRMAN RANKIN: Very well. And I
22 apologize.

23 JUDGE PINCUS: That's okay.

24 CHAIRMAN RANKIN: Welcome. Thank you. All
25 right. Now, Judge, if you'll have a seat.

1 JUDGE PINCUS: Yes, sir.

2 CHAIRMAN RANKIN: Mr. Younginer.

3 WHEREUPON,

4 MATTHEW TODD YOUNGINER, being duly sworn and
5 cautioned to speak the truth, the whole truth and nothing
6 but the truth, testifies as follows:

7 CHAIRMAN RANKIN: Ms. Valenzuela.

8 MS. VALENZUELA: Thank you, Mr. Chairman.
9 Mr. Younginer's complaint alleges unethical behavior by
10 Judge Pincus, claiming she's -- claiming she seals court
11 records to shield her own bad conduct, that she has an
12 ongoing relationship with a local therapist with ties to a
13 behavioral modification program, and that she took his
14 children away from him without any violations on his part.
15 EXAMINATION BY MS. VALENZUELA:

16 Q. Mr. Younginer, the Commission has before it the
17 affidavit of complaint.

18 A. Yes.

19 Q. And then you also have an attachment to it, which
20 appear to be handwritten notes by one of your children.
21 They have that as well.

22 A. Thank you.

23 Q. And I'm going to remind you that the committee's
24 purpose is to review the qualifications of the candidate.

25 A. Yes.

1 Q. They're not here to relitigate the case.

2 A. Absolutely.

3 Q. And they do not have the ability to change the
4 result of your case.

5 A. I understand that.

6 Q. Is there anything that you wish to testify to
7 tonight that is not already covered in the documents before
8 the committee?

9 A. Yes, absolutely. First off, I'd like to thank
10 everyone on this commission. I realize it's late and I
11 realize everybody's probably ready to get home. But you
12 can imagine many of us have been waiting out there for
13 about four hours, and so we certainly understand your pain.

14 I appreciate you all allowing me to have time
15 tonight to speak, and I will try and be as brief and as to
16 the point as possible. I know you already know this, but
17 I'd like to read it for the record:

18 When it comes to our judges, we put our faith and
19 our trust in judges. It doesn't mean they have to go our
20 way or give us the verdict that we have to have, but it
21 means that we simply want them to be almost like an umpire.
22 We want them to be competent. We want them to be fair. We
23 want them to be unbiased. We want them to be able to be
24 like an umpire where they can call a ball a ball or a
25 strike a strike.

1 When that umpire continues to miss those calls,
2 or when a judge continues to do things that in this
3 situation, and apparently others as I found out, are
4 affecting the children of South Carolina, it doesn't matter
5 if the judge is running unopposed, it doesn't matter if
6 there's a shortage of umpires, Ladies and Gentleman, you
7 change the umpire or you change the judge.

8 We cannot afford in South Carolina to have this
9 situation happen. And I'll get into one of the situations
10 that took place in Pennsylvania, and I promise like I said
11 to be as brief as possible. But it's important for this
12 commission -- I understand it only has so much power to it,
13 but it is a checks and balance. And I'm also happy to see
14 that there's so many members here tonight that also have
15 taken this situation very seriously for the children of
16 South Carolina.

17 I'd like to read just two excerpts for you, real
18 quick, that I'm sure you're very familiar with. On the
19 Judicial Code of Conduct, it makes it very clear: Although
20 judges should be independent, they must comply with the
21 law, including the provisions of this code. Public
22 confidence in the impartiality of the judiciary is
23 maintained by the adherence of each judge to his
24 responsibility. Conversely, a violation of this code
25 diminishes public confidence in the judiciary, and thereby

1 does injure -- does injury to the system of government of
2 the law.

3 One final part I'd like to say on this. In Canon
4 2, A judge shall avoid impropriety and the appearance of
5 impropriety in all of the judge's activities. A judge
6 shall respect and comply with the law and shall at all
7 times in a manner that promotes public confidence in the
8 integrity and impartiality of the judiciary.

9 On August the 25th of 2014, that didn't take
10 place with me. And more importantly with my children. My
11 exwife, three years prior, had sued me for custody because
12 we'd been going to counselors, and finally after several
13 counselors that are very well qualified in this state, said
14 that the father's doing everything that he can to help the
15 children repair their relationship with the mother, but the
16 mother needs to do some more stuff.

17 Finally, my exwife came across a couple of snake
18 oil-style therapists that practiced this thing called
19 "Threat therapy." It's parental alienation. And it is
20 considered by many across the nation some, of the most well
21 respected psychologists and psychiatrists, as junk science.

22 These snake oil-style therapists look for
23 draconian-style judges, these rogue judges to get this
24 stuff passed through the court systems, because they still
25 after all these years can't get it accepted in the DSM, the

1 American Psychological Association's Bible of mental
2 disorders.

3 So they get these rogue judges and that have this
4 draconian style, and they get them to pass this off. And
5 it's coming at the consequences of South Carolina's
6 children, and several other state's children have also
7 seen. Several states have now cut it out.

8 I want to show you this as well or read this to
9 you. And I'm not a lawyer, and not trying to play a
10 lawyer, just so you know. But even a layman as myself can
11 research this stuff. It's pretty obvious. This is what
12 the Supreme Court has had to say about this parental
13 alienation in the family courts.

14 REPRESENTATIVE SMITH: Is that the South
15 Carolina Supreme Court or United States Supreme Court?

16 MR. YOUNGINER: United States.

17 A. Under relevant evidentiary standards, the court
18 shall not accept testimony regarding Parental Alienation
19 Syndrome. In theory, the existence of PAS has been
20 discredited by the scientific community. *Tire v.*
21 *Carmichael*, 526 U.S. 137, the Supreme Court ruled that even
22 expert testimony based on the soft sciences must meet the
23 standards set in the *Daubert* case.

24 Daubert has the court reexamine the standard of
25 that earlier, articulated the *Frye* case. In other words,

1 any testimony that a party to a custody case suffers from
2 the syndrome of parental alienation shall be therefore
3 moved inadmissible and stricken from the evaluation report,
4 on both the standard established in the Daubert and the
5 Frye standard.

6 CHAIRMAN RANKIN: Mr. Younginer, do me a
7 favor and back up a little bit.

8 MR. YOUNGINER: Is it too much? Okay.

9 CHAIRMAN RANKIN: We can hear you loud and
10 clear.

11 MR. YOUNGINER: Okay. I just want to make
12 sure. Okay.

13 REPRESENTATIVE SMITH: And can you do one
14 more favor. Can you give us the cite of that of case
15 again?

16 MR. YOUNGINER: Yes, sir. It's under code
17 526 U.S. 137 in 1999.

18 REPRESENTATIVE SMITH: 1999?

19 MR. YOUNGINER: Yes, sir.

20 A. I'd like to also ask you for the sake of time,
21 for all of you, if you would to please also -- if you
22 could, to jot this down to research what's taking place
23 here. The Washington Post actually did an article on this
24 kind of stuff and the dangers that it presents to children.

25 CHAIRMAN RANKIN: You included that in your

1 --

2 MR. YOUNGINER: Well, I want to give you the
3 actual reference, though, if I can, Mr. Chairman.

4 CHAIRMAN RANKIN: Right.

5 A. It's May the 9th of 2017. The article is titled,
6 "They were taken from their mother." This time it was
7 reversed, parental alienation. They said the mom was doing
8 it. But they were taken from their mom to bond with their
9 dad. It did not go well. If there's any chance with
10 everything that you all have on you all's plates, if you
11 all could research this article, I would love for you do
12 so.

13 One of the judges that's retiring, that has had
14 an impeccable career in the state of South Carolina, is
15 Judge Dana Morris. I'm not sure if any of you all know
16 him. All of this had already come in front of Judge Dana
17 Morris in 2011. Judge Dana Morris heard the same the
18 people that Judge Pincus heard, he saw the same affidavits.
19 He heard everything. And here's what he said about all
20 this. This is what happens when you have a judge who calls
21 the balls a ball and the strike's a strike, and they have
22 wisdom on the bench and don't have knee-jerk reactions for
23 the sake of the children.

24 "You guys" -- talking about my exwife and I, "You
25 guys are the only ones who are going to be able to fix

1 this. And it's pretty obvious when I read some of the
2 affidavits and the e-mails that have gone between you, that
3 there's some unresolved issues between the two of you.
4 There's some anger and some frustration. And it's on both
5 sides of the fence."

6 In other words, he looked at this situation and
7 realized that it's taken two in this particular case to
8 tango. And on top of that, only my exwife and I can fix
9 this. No therapists. None of this parental alienation.

10 I'll wrap it up by telling you this: This judge
11 on August the 25th, 2014 actually, without any violations
12 on my part, took these kids away from me, my 14-year-old
13 son and my 16-year-old daughter and sent them off to a
14 behavioral modification camp in Bozeman, Montana.

15 She allowed one of these snake oil-style
16 therapists to oversee all of this, even though the
17 particular therapist who she allowed in the courtroom that
18 day, and to be involved in the custody change of a phone
19 call, who had nothing to do with my case, she also allowed
20 that person to oversee this behavioral modification camp.

21 She gave me the death penalty. Ladies and
22 Gentleman, a sexual pedophile or a murderer could have had
23 more access to the children than what I got for six months.
24 I was given the death penalty. And that's what this judge
25 stepped in and did.

1 These kids, to my knowledge, were the first ones
2 in the state of South Carolina that were put on a plane,
3 against their will, told them repeatedly their father's a
4 bad man, and continually said that if they even think about
5 trying to re-associate with their father, that they would
6 go to foster care, and if that if their dad tried to
7 contact them, well, he would go to jail.

8 There's nothing healthy about that situation.
9 And the man that was the clinical director of this place,
10 Randy Rand, had just come off of serving a five-year
11 probation for committing perjury in child custody cases.

12 This whole thing -- this whole thing, Ladies and
13 Gentleman, is a cult. And just like with all cults, you
14 have your leaders: David Koresh, Jim Jones. And in this
15 case the man's name is Dr. Richard Gardener. He created
16 the term "Parental alienation syndrome," or PAS, in 1985.

17 And he is also known as being on record as
18 actually saying -- this is how twisted this is. He's on
19 record as saying, for some reason about pedophilia, "The
20 American society has overreacted to pedophilia. In fact,
21 in some societies it's actually normal for the father to
22 have sex with his daughter, because that way at least the
23 daughter knows the first person that had sex with her was
24 somebody that loved her."

25 That is the top of all of this that this judge is

1 allowing to happen right here. If you saw it in a movie,
2 you would say, "Well, that's Hollywood for you." And yet,
3 it's happened right here, Ladies and Gentlemen, in
4 Columbia, South Carolina, thanks to Judge Monet Pincus.
5 This is what these kids have gone through. You've got
6 excerpts from my daughter's journal.

7 CHAIRMAN RANKIN: We do.

8 A. Does that look healthy to you? And meanwhile,
9 all along these therapists are telling this judge, "Things
10 are going great." Family Bridges and Horse Sense are the
11 two behavioral modification camps that these kids are being
12 sent to, and they are nothing but moneymaking schemes from
13 these people.

14 And I would like to let, for the record, this
15 commission know, just so that it understands based on the
16 obligation it has to the citizens of South Carolina, that
17 even though I'm not alleging that Judge Pincus is receiving
18 a financial kickback from it, I am saying that these are
19 friends of hers, and all that stuff about she not having ex
20 parte communications is bull. She is friends with these
21 ladies. She is kicking them business.

22 And just as we saw in the "kids for cash" scheme
23 in Pennsylvania, where two judges who thought they were
24 above the law were giving kids to a particular juvenile
25 detention center, and they were getting financial kickbacks

1 because the guy that ran the juvenile detention center was
2 their buddy.

3 Now, those two judges, who served a long time on
4 the bench and had a lot of connections, not only in
5 Pennsylvania but obviously, apparently, in D.C., Judge
6 Ciavarella and Judge Conahan, they now are behind bars
7 because the FBI stepped in. And when the FBI steps in on
8 an investigation, the FBI makes it very clear: Judicial
9 immunity falls.

10 And with those judges that felt they were above
11 the law, it also shows you that nobody, no judge is above
12 the law.

13 I want this commission to understand the
14 importance of that. Because whether it's the media in this
15 town or the Federal Bureau of Investigation, if it gets
16 involved and ask any of you all on this commission, "Were
17 you ever aware of some possible unethical conditions by
18 Judge Monet Pincus?" you have to answer, "Yes."

19 And as also Marsha Levick in Pennsylvania, the
20 lawyer that had a civil lawsuit on Luzerne County showed,
21 you better know what you're doing. Because she won a \$2.5
22 million lawsuit for the victims of that.

23 I close with this: You saw my daughter's journal.
24 I want to enter into admission, the very last excerpt again
25 to show you --

1 CHAIRMAN RANKIN: It's in the record, sir.

2 MR. YOUNGINER: That is in the record then?
3 Okay.

4 CHAIRMAN RANKIN: Submitted.

5 MR. YOUNGINER: Okay. Well, that's fine.

6 CHAIRMAN RANKIN: It's submitted and we have
7 it.

8 MR. YOUNGINER: Well, thank you.

9 A. So then I will close then with this: I've had the
10 privilege of co-chairing an organization here for five
11 years called Healthy Learners. My father started it before
12 he died back in 2001. Some of you may have heard of
13 Healthy Learners. We provide dental, vision and healthcare
14 for South Carolina's children that can't afford it. They
15 actually help about fifteen children a year in twenty-seven
16 school districts across South Carolina. I tell you that to
17 tell you this. We have a very simple moto. It's "Be a
18 champion for children."

19 I don't care if she's running unopposed. I don't
20 care what others say that might be good. Please, I beg you
21 -- she's going to get a chance to rebut what I've said. I
22 never had that chance that day, as I mentioned in my
23 complaint. I never had that chance to be able to defend
24 myself against my accuser.

25 But please know this: Nothing she says, as crafty

1 as it may be, changes the facts of what I've said to you
2 today. So I close by asking you to do the same for the
3 sake of future children, so that they don't have -- they
4 don't have to go through the hell that my children went
5 through and what other kids have gone through.

6 For the sake of the South Carolina's children,
7 I'm asking each and every one of you to please be a
8 champion for children. And I thank you for your time.

9 EXAMINATION BY CHAIRMAN RANKIN:

10 Q. Mr. Younginer, I want to ask just a couple of
11 questions, if I may.

12 A. Yes, sir.

13 Q. And obviously there's some -- you litigated this
14 case and you were represented by an attorney?

15 A. Yes, sir.

16 Q. Was there a final disputed result where an order
17 was issued? Or was there a settlement?

18 A. So Mr. Chairman, what took place with this was,
19 once some other attorneys caught wind of this across the
20 state, and how egregious the temporary order was, and how
21 dishonest the temporary order was, where she took just my
22 exwife's side of the affidavits and put them into the
23 temporary order as if they were fact without my chance to
24 rebut, one of the attorneys stepped in a couple months
25 later when he realized how egregious and draconian this

1 was, as I've mentioned, and he stepped in and he shut it
2 down.

3 And what I mean by that, Ladies and Gentlemen, is
4 he stepped in and he subpoenaed eighteen people, including
5 my entire exwife's family and these therapists that we were
6 talking about. Because beyond a shadow of a doubt, we
7 could prove that they committed perjury in sworn
8 affidavits. And when they found out that we were going to
9 expose that perjury in sworn affidavits, and even this
10 judge who almost in a boastful manner, back on August 25th,
11 bragged about she'll retain jurisdiction all the way
12 through trial, not only did she then say during one of
13 those future hearings afterwards that, "Now, if this goes
14 to trial, I won't be the judge. I hope you all know that."

15 And she not only said that, she started backing
16 away from it, but also my exwife and everybody gave the
17 kids back. It all came crumbling down because they
18 realized we were going to hold them accountable for the
19 perjury they had committed in sworn affidavits.

20 So the order actually got vacated. All of a
21 sudden all this stuff that I was going to be having to do -
22 - and even the kids were going to go through another six
23 months of therapy, even once they came back from the
24 psycho-circus in Bozeman, Montana, all of that came to a
25 complete halt. And it all stopped. And her order got

1 vacated, which I have learned is a legal term as if it
2 never happened. Well, tell my kids that it never happened.
3 They lived it.

4 But, yes, sir, it came in -- and to answer your
5 question, other attorneys came in that have had a lot
6 experience in this state with this kind of stuff, and said,
7 "Enough's enough." And they shut it down. And whenever my
8 exwife and those counselors found out that they were being
9 subpoenaed for deposition to expose perjury in their
10 affidavits, the kids came right back to me. We shut it
11 down. Her order got vacated. And that's been it ever
12 since.

13 I'm speaking today not for my kids or for me.
14 It's too late. I swear to you, I'm speaking for the future
15 kids of South Carolina that don't have to face this kind of
16 stuff anymore, that might not have the financial means or
17 the emotional stability to do it.

18 **Q. Mr. Younginer, tell me about yourself. What do**
19 **you do?**

20 A. For the last twenty-four years I am the national
21 -- the national accountants manager for Husqvarna
22 Construction Productions. The facility is located on Two
23 Notch Road. We manufacture construction equipment that --
24 also the diamond tools that cut and repair the highways,
25 that you see out there. A lot of times when you're being

1 frustrated for having to move into one lane and traffic
2 stops, unfortunately a lot of our customers that are using
3 our products are causing that in order to cut the highways
4 up and re-pour them, and also do demolition for buildings
5 as well.

6 **Q. And who were your attorneys?**

7 A. Well --

8 **Q. Or attorney.**

9 A. An attorney. Originally, I had --

10 **Q. Just briefly who was it?**

11 A. Yes, sir. Anne Marie Ugarte was the original
12 attorney who came on. She was also with the School of Law.
13 And she was so distraught at this order. So then I ended
14 up getting Mr. Douglas Cody. I also got Michael Taylor.
15 Michael Taylor was for the appellate part -- excuse me --
16 for the appellate part of the process.

17 She might even mention to you how the appeals
18 court approved this. She won't know to let you know,
19 though, that they approved it on procedural matter and not
20 merit. There's a huge difference.

21 But also, then finally Mr. Peter Shahid, who's
22 the current president of the Charleston Bar Association,
23 stepped on board. He's been a -- he's been a family court
24 lawyer for over thirty-three years, and he also was a
25 magistrate judge for eleven years. And he's the one that

1 officially came on and applied the eighteen subpoenas for
2 deposition to these people and shut it down.

3 **Q. And so there was an appeal by you, or by your**
4 **exwife?**

5 A. We appealed it immediately because of the -- like
6 I said, just the absolutely insane nature of what was being
7 taking place.

8 **Q. Now, I'll try to be as short as I --**

9 A. Yes, sir. Sure. Yes, there was an appeal. Yes,
10 sir.

11 **Q. And you said it was administratively --**

12 A. It was moved on for procedural matters and not
13 merit. And what I mean by that, Mr. Chairman, is the fact
14 that they looked at it again -- I can't speak for Judge Few
15 on the appellate court. But they moved it on in regards
16 to, basically, you know, we're just going to let it
17 continue on for now. They didn't say that based on the
18 merit of it, in other words, that --

19 **Q. So there is no reversal of some order by an**
20 **appellate court?**

21 A. Correct. The appellate court, when we took it to
22 appeals, just simply said, "At this time from looking at
23 it, we're going to just let it move forward for now." And
24 then obviously when the order got vacated, well, then no
25 one else had to look at it anymore.

1 Q. Was that order vacated by settlement?

2 A. Yes, sir. Yes, sir.

3 Q. How long from start to finish of your temporary
4 till the settlement?

5 A. Six months. From the actual temporary to the
6 actual official settlement, six months.

7 Q. And how long were your children actually in
8 Bozeman?

9 A. Four days.

10 CHAIRMAN RANKIN: That's all I have. Any
11 questions by the Commission members? Mr. Safran.

12 EXAMINATION BY MR. SAFRAN:

13 Q. I think I've got the time frame. And I want to
14 be quick, too, because I think I read this --

15 A. Yes, sir.

16 Q. -- in the materials that were presented. As I
17 understood it, when you were talking about the appeal being
18 done, Judge Few heard it on what was called a supersedeas?

19 A. Yes, sir.

20 Q. Basically try to stop it at that point?

21 A. Right.

22 Q. But did not allow it at that point --

23 A. Right.

24 Q. -- or didn't find that it should be stopped, so
25 it was still allowed to be pending.

1 A. Yes.

2 Q. And at some point down the road within at the
3 six-month period is when you ultimately reached the
4 settlement.

5 A. Yes, sir.

6 Q. And it was done in a consent order, basically.

7 A. Yes, sir.

8 Q. And is that consent order part of what was
9 sealed, ultimately?

10 A. Yes, sir.

11 Q. But what you're telling me is, is your
12 understanding is what prompted the consent order was
13 getting the third attorney in the case --

14 A. Yes, sir.

15 Q. Is it Shaheed or Shahid --

16 A. Shahid.

17 Q. Down in Charleston.

18 A. Yes, sir. Peter Shahid.

19 Q. And once this discovery process was initiated,
20 things kind of came to head.

21 A. That's correct.

22 Q. And your kids came back.

23 A. Yes, sir.

24 Q. I'm assuming that resolved the case, you know,
25 overall at that point.

1 A. Yes, sir.

2 Q. But I mean, the time we're talking about in terms
3 of what you're telling us that went on was roughly about a
4 six-month window from the time that, that initial temporary
5 order came out until the time everything was more or less
6 concluded?

7 A. Yes, sir.

8 Q. Thank you.

9 A. Thank you.

10 MR. YOUNGINER: Mr. Chairman, one final
11 thing that I -- that I remembered, though.

12 EXAMINATION BY CHAIRMAN RANKIN:

13 Q. You can back up 'cause we are --

14 A. That day in court -- that day in court August
15 25th, she asked for my daughter when they brought them in -
16 - took them out of school, by the way, and paraded them in
17 Blythewood High School, in front of their friends, as if
18 they were almost like criminals. Their friends are saying,
19 "What's going on? What's going on?" And these kids are
20 like, "We don't know."

21 They parade them into a guidance counselor's
22 office, my exwife's there with a sheriff's deputy, and they
23 bring them down to the courthouse like as if they're
24 criminals themselves. The judge notifies them of what's
25 going to take place.

1 And then the judge asked, "Do any of you, young
2 man" -- his name is Bryce, at the time 14 years old, or
3 Ansley, 16 years old -- "do you have any questions?"

4 And my daughter -- how she composed herself, I
5 have no idea. But she spoke so eloquently, and basically
6 said to the judge, "What would you do if you were me? What
7 would you do if a judge is telling you that your daddy now,
8 you're not going to be with him anymore, and your momma's
9 the one that's been talking bad about your daddy? Your
10 daddy hasn't been talking bad about your mom. What would
11 you do?"

12 And once again -- what's interesting, with all
13 due respect, ma'am, when you mentioned about someone saying
14 she was rude, she cuts off my daughter and she goes, "Is
15 there a question in this?"

16 And she goes, "Yes, ma'am. I'm asking you what
17 would you do? What would you do now if the world that you
18 were happy in is now being taken away from you?"

19 This judge, after my 16-year-old daughter, who's
20 now 20 -- this judge, after my 16-year-old daughter said
21 what she said so eloquently, turns to the court reporter
22 and says, "I would like to strike the kid's comments from
23 the record."

24 Ladies and Gentlemen of the Commission, why would
25 this judge want to strike the kid's comments from the

1 record? She didn't say anything like, "I'm going kill
2 myself" or "I'm going to kill you" or anything like that.
3 She asked a very simple question to the judge. And she
4 also exposed the judge for what she was doing to be wrong.

5 And even if the judge obviously disagreed with
6 her, because she is the judge, why would the judge -- I
7 hope this commission wants to know why would a judge strike
8 a 16-year-old's comments from the record, that simply
9 pointed out that everything that the judge was saying was
10 incorrect? Why wouldn't she still allow it on the record?
11 'Cause she would be worried about somebody like you all,
12 one day on the judicial commission of merit, questioning
13 her? And why would she strike it from the record?

14 **Q. Was that part of your appeal? Was that included**
15 **in any briefing that you would have filed? The exchange**
16 **you just -- the information you've just shared with us.**

17 A. Well, at that time our main goal, Mr. Chairman,
18 was simply to try to see about getting the kids back.

19 **Q. There would be a transcript with that --**

20 A. Yeah, actually, the whole was, the court reporter
21 sent it to my attorney by mistake, I think. So that's why
22 it wasn't sealed.

23 **Q. So your attorney objected to that request to --**

24 A. Yeah. And she shut the attorney down, you know,
25 as if in other words, "This is how it's going to be."

1 Q. So is it within the transcript, or not?

2 A. No, sir. She had it erased.

3 Q. Who was your attorney at that point?

4 A. Anne Marie Ugarte.

5 Q. So she shut your attorney down?

6 A. Yes. She shut the kids down first, and then she
7 shut the attorney down when the attorney wanted to know why
8 the -- why would that be struck from the record.

9 Q. Was there an objection made by your attorney --

10 A. I have to honest, Mr. Chairman, there was not.
11 And the reason why was because she was flabbergasted. Anne
12 Marie Ugarte -- I don't know if any of you know Mrs.
13 Ugarte, but she's been a professor at the School of Law
14 down here at South Carolina for many years. And she was so
15 flabbergasted by this absolute off-the-grid rogue style of
16 ruling, that she was -- she was actually at a loss. She
17 really was.

18 So, no, sir, Mr. Chairman, she did not. Because
19 she was still trying to take in what all had just happened
20 in the last hour.

21 Q. Last question from me, and I want to make sure
22 that I understand. You're not alleging that Judge Pincus
23 has any financial interest that she's benefitting from the
24 referral, you're just saying that it's something that we
25 should be aware of might --

1 A. Mr. Chairman, I'm saying that an investigation by
2 the Federal Bureau -- the Federal Bureau investigation
3 might find some very interesting things. But for the
4 record, Mr. Chairman, I am not personally alleging that
5 she's receiving any financial kickback. My only things
6 that I'm saying to this commission is that she's allowing
7 friends of hers to receive huge financial -- that Bozeman,
8 Montana camp was \$40,000.

9 Now, originally in her order she said I was
10 supposed to pay half of it. But again when we shut all
11 this down, and everybody was getting subpoenaed and stuff,
12 and we were going to expose what we exposed, all of a
13 sudden I didn't have to pay any of that either. I didn't
14 pay one dollar of it.

15 **Q. Okay. So four days there was no -- who paid for**
16 **the four days --**

17 A. My exwife and her -- and her father and her
18 family.

19 **Q. What did that cost?**

20 A. Forty thousand -- well, thirty-eight thousand, I
21 think.

22 **Q. For four days?**

23 A. Yes, sir.

24 **Q. Okay.**

25 A. That's what these camps are. And they're huge

1 moneymakers. Dr. Paul Vanwyke, who was our therapist,
2 also said that these counselors -- these particular kind of
3 counselors, they use this and that -- alienation does
4 exist, but these counselors are taking it on a huge canvas
5 and they're going, "Alienation, alienation, alienation."
6 Because when you do that, that's money, money, money.

7 **Q. This is the last question, then we're going to**
8 **try to wind this down here. You have also alleged in your**
9 **complaint, something about the record being sealed.**

10 A. Right.

11 **Q. But was that at your lawyer's motion?**

12 A. Oh, no, sir. Not at all. It was at her lawyer's
13 motion.

14 **Q. But was there an objection by your attorney to**
15 **sealing the record?**

16 A. At that time we were so happy to get the kids
17 back, Mr. Chairman. We were just wanting to get the kids
18 back. I honestly don't know if he -- if they objected to
19 it. They realized probably that even if they did, it
20 wouldn't have been heard. But I don't know if they did
21 file an actual objection. I would say I don't believe they
22 did.

23 CHAIRMAN RANKIN: Thank you, sir.

24 MR. YOUNGINER: Thank you for your time.

25 CHAIRMAN RANKIN: Representative Smith.

1 EXAMINATION BY REPRESENTATIVE SMITH:

2 Q. Mr. Younginer, just a couple questions.

3 A. Yes, sir.

4 Q. And there's a lot of editorializing. And I
5 understand that --

6 A. Yes, sir.

7 Q. -- about this case. I just want some facts,
8 okay?

9 A. Yes, sir.

10 Q. I don't need explanations behind it.

11 A. Sure.

12 Q. Who was the therapist that you -- that
13 recommended that these children go to the alienation camp?

14 A. Well, there was two. One was Dr. Alicia
15 Benedetto and the other one was Dr. Allison Foster.

16 Q. Allison Foster who used to be with DMH and the
17 ARC over here?

18 A. Right. They've changed the name since then.

19 Q. Yeah, it's changed. I know what you're talking
20 about. And then who was your wife's attorney?

21 A. For that particular case it was Peter Currence.

22 Q. With McDougall and Self.

23 A. Right.

24 Q. And let me ask you this question: When you all
25 went to court, was Judge Pincus the judge who approved your

1 settlement? Or was there another judge?

2 A. No, she approved it.

3 Q. And the record is sealed; is that right?

4 A. Yes, sir.

5 Q. And this was in 2014, so we have a rule called
6 Rule 41.1, which is sealing records, okay?

7 A. Yes.

8 Q. And so would you all -- if it's sealed, would
9 your attorney have consented and agreed to the sealing of
10 the record? Or was that decision made by Judge Pincus,
11 where it was proposed and Judge Pincus had to make that
12 ruling?

13 A. Judge Pincus said she was sealing the record.

14 Q. She said she was sealing the record. That was
15 not part of any agreement?

16 A. No, sir.

17 Q. And help me understand it if -- and I'm just real
18 confused. And I have read in detail your complaint.

19 A. Thank you.

20 Q. Judge Pincus ordered this parental alienation
21 camp.

22 A. Yes, sir.

23 Q. And how long did it take for your children to go
24 up there? I mean, it seems like six months later you were
25 --

1 A. It was about two months, I think. Because we
2 filed an appeal immediately.

3 **Q. So that stayed it while --**

4 A. Yes, sir.

5 **Q. Okay.**

6 A. Maybe six weeks. Six weeks to two months.

7 **Q. And then you all entered into the agreement, and**
8 **that's why your children only stayed out there for a couple**
9 **of days?**

10 A. No, sir, that's how those programs run. I mean,
11 literally, like I say, it's thirty thousand --

12 **Q. It's a three-day --**

13 A. -- forty five --

14 **Q. -- program?**

15 A. Yes, sir. Three to four days, yes, sir. Thirty-
16 five to forty thousand dollars.

17 **Q. All right.**

18 A. And the other program is called Horse Sense. And
19 one of the complainants, I don't think she's here tonight,
20 Trudy Morris, her family went up there. And that was a
21 weekend and that six thousand dollars. And Horse Sense,
22 you go up there and, "Now, you tell Popcorn all your
23 secrets. And I'm not going -- I'm not going to listen.
24 Popcorn's got your secrets."

25 And the counselor's on the other side of the

1 horse --

2 Q. Yeah, that doesn't have anything to do with this
3 complaint. I'm just trying to -- I need to get all these
4 facts out.

5 A. Okay.

6 Q. And so as I understand it, the procedural history
7 of this is that you all appeared in front of Judge Pincus
8 on a temporary hearing.

9 A. Yes, sir.

10 Q. And then you appealed the supersedeas, which was
11 denied.

12 A. Yes, sir.

13 Q. And I understand what you're saying about the
14 supersedeas, it's procedural. And I agreed with you on
15 that.

16 A. Yes, sir.

17 Q. And then did you all ever go -- I thought I read
18 somewhere where there were some motions to reconsider all
19 that, or did you all --

20 A. Oh, yes, sir. We also asked her to recuse
21 herself. You know, that wasn't --

22 Q. Did you all have hearings on that also or -- just
23 "yes" or "no." Did you have any --

24 A. We had a second rehearing about other stuff. I
25 mean, we -- Dr. Foster's mentor, Dr. Jonathan Gould, who's

1 nationally renowned, he had looked at the case, and he put
2 a -- I'll be glad to tell you, but that's what -- that's
3 what the hearing was. We had another hearing about that.

4 Q. And it appears to me, and maybe I'll see it and
5 we'll hear it from Judge Pincus, that she stayed her
6 enforcement of her ruling until you had this motion. Would
7 you agree with that? Did she stay the ruling -- the
8 temporary ruling until you had your motion to reconsider
9 hearing?

10 A. Yes, sir. You mean in -- yes, in regards to the
11 kids going to the camp?

12 Q. Yes, sir.

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

14 Q. So actually, it was Judge Pincus, on her own
15 order, that stayed the kids from going to camp until that
16 time.

17 A. Well, until the appellate court heard the case.

18 Q. Yes, sir. And then you all had another hearing
19 where some more affidavits and information was accepted at
20 that hearing?

21 A. That is correct.

22 Q. And then you all reached a settlement and entered
23 that into the record, and the record's been sealed so
24 nobody can see the record -- really, I mean -- you know,
25 that's part of the concern I have is -- you know, I take

1 your word, I'm sure she's going to have a different version
2 of it, and we don't the opportunity to have a record. Do
3 you have any transcripts or anything, orders in your
4 possession?

5 A. No, sir. Because again it would all be sealed,
6 and I'd be in violation --

7 Q. Right. Yes, sir. I understand that. But what
8 I'm saying is -- you know, I don't do family court anymore,
9 but I have extensive prior experience in that for years.
10 And, you know, the clients -- I always sent my client the
11 order, I send them everything that I had in the file as a
12 matter of course.

13 A. I have all of them.

14 Q. And I know you can't share them. Do you have
15 that stuff in your possession?

16 A. Yes, sir. I have all of it.

17 Q. All right.

18 A. I do.

19 REPRESENTATIVE SMITH: All right. Mr.
20 Younginer, thank you for being here today.

21 MR. YOUNGINER: Thank you all for your time.

22 CHAIRMAN RANKIN: Senator Young.

23 SENATOR YOUNG: Thank you, Mr. Chairman.

24 EXAMINATION BY SENATOR YOUNG:

25 Q. Mr. Younginer, I just have a few questions.

1 A. Yes, sir.

2 Q. The 2014 case that you've talked to us about,
3 that case as I understand it was related to modification of
4 custody; is that correct?

5 A. Yes, sir.

6 Q. You and your exwife had been declared divorced in
7 a prior action in Richland County?

8 A. Yes, sir.

9 Q. And when was that entered?

10 A. The divorce was received in the court of Richland
11 County in 2009.

12 Q. And so was the modification of custody action
13 filed to modify something from the 2009 divorce decree?

14 A. Mr. Young, what happened was we had a week
15 on/week off, and the kids didn't want to go with their
16 mother because of things they said that was happening over
17 there. We were seeing a therapist at the time, to try and
18 reunify the kids, and it continued just to go bad with
19 that.

20 And so I hope I'm answering your question
21 correctly. It was a week on/week off visitation. But even
22 at that time one of the therapists, Dr. Sam Touma,
23 recommended that the kids stay with me during the school
24 time, because they were doing better.

25 So it was a week on/week off agreement, but it

1 never officially ever had any length to it. Because the
2 kids would always be coming back, not wanting to be with
3 their -- with some of the stuff happening.

4 **Q. So you and your exwife were divorced in 2009?**

5 A. Yes, sir.

6 **Q. And you had joint custody?**

7 A. Yes, sir.

8 **Q. With a week on/week off?**

9 A. Yes, sir.

10 **Q. And that was the arrangement between 2009 and**
11 **2014?**

12 A. Well, in 2011 is whenever she sued for custody.
13 And that's whenever -- was the first attempt when they
14 tried to bring on Dr. Benedetto and --

15 **Q. What happened with -- the case that's cited in**
16 **this paperwork is a 2014 case. What happened with the 2011**
17 **case?**

18 A. That's what I read for you from doctor -- excuse
19 me -- from the Honorable Judge Dana Morris, who made his --
20 you know, he appointed a guardian. He appointed, also, a
21 therapist to be reporters to the court. They both reported
22 back the court that no wrongdoing was being done by the
23 father, the father was not alienating the affections of the
24 kids towards the mother. And so that case ended up
25 shutting down.

1 Q. That case was in 2011?

2 A. Yes, sir. With Judge Dana Morris, he heard it
3 that day in Camden.

4 Q. Is that case filed under seal too?

5 A. No, sir. Not to my knowledge.

6 Q. That must be a Kershaw County case.

7 A. Well, I don't know how it would --

8 Q. It's not showing up on the court roster that I
9 can see in -- or the court records in Richland County.

10 A. Okay.

11 Q. The 2009 divorce action is actually showing up,
12 but it's a 2008 and 2009, two different actions. And they
13 actually appear to be sealed. Did you agree to seal that
14 too --

15 A. No, sir.

16 Q. -- at some point?

17 A. No, sir. That's news to me.

18 Q. The 2014 action, I don't see it showing up either
19 in the court records.

20 A. Well, that is sealed.

21 Q. But you can't pull up the 2008 or 2009 records.
22 And one more question is: Were you aware that it appears
23 that your attorney of record agreed to seal the record
24 after the case was resolved in February of 2015?

25 A. Which attorney does it show? Does it say Mr.

1 Peter Shahid?

2 **Q. It's my understanding that the case was -- the**
3 **record was sealed at the request of both parties.**

4 A. Well, it was just agreed upon. Again, Judge
5 Pincus said she was going to seal the record. And so they
6 signed off on it. Mr. Young, I'm not sure with regard --
7 my attorney I know for a fact never suggested we want the
8 record sealed. By no means did we want them sealed.

9 And possibly -- and again I don't want to speak
10 for Mr. Shahid, but my only thought could be based on that
11 time frame, we were doing whatever at that time the judge
12 was doing so that we could get the kids back.

13 But no, I know my attorney never, ever suggested
14 for the record to be sealed. If he signed off on it, then
15 that might be a different thing, just because the judge
16 said she was sealing the record. But he never -- Mr.
17 Young, he never put any kind of suggestion into the court
18 for the record to be sealed. Maybe Mr. Currence did, and
19 Mr. Shahid had said, "Okay. Fine." But he never, ever
20 suggested for the record to be sealed.

21 **Q. Has there been any subsequent action since the**
22 **2015 settlement?**

23 A. No, sir. And, happily, I'm glad to say that my
24 daughter is 20 and my son's 18.

25 SENATOR YOUNG: Thank you.

1 CHAIRMAN RANKIN: Mr. Safran.

2 EXAMINATION BY MR. SAFRAN:

3 Q. Very briefly. I think part of what I wanted to
4 know is what Senator Young just asked you was -- because at
5 least it's our understanding that the record was sealed by
6 agreement as opposed to something that the judge
7 necessarily said, "This is what I'm going to do on my own
8 motion." I mean, is that --

9 A. Mr. Safran, to my recollection, and what I think
10 took place, was that there was some pictures of my exwife
11 who has a connection -- or had a connection at the time to
12 a prominent member here in Columbia, and I think for the
13 sake of that situation, if I recall, Mr. Currence wanted
14 the record sealed. And he suggested it to be sealed. And
15 the judge wanted it sealed. And I think Mr. Shahid had
16 signed off on it. Again, that is to my best recollection
17 of it.

18 I do know for a fact, Mr. Shahid never suggested
19 for it to be sealed. But that doesn't mean, Mr. Safran,
20 that Mr. Shahid didn't say, "Okay, Mr. Currence wants it
21 sealed based on some stuff in regards to his client, and
22 the judge wants it sealed, whatever."

23 But I know we never officially submitted that we
24 wanted it sealed. But I'm sure Mr. Shahid had signed off
25 on it being sealed, just to move forward.

1 Q. So at least what I'm hearing from you now,
2 though, is, is that at least it's certainly your
3 understanding that the rationale behind sealing the file,
4 so to speak, was that it had something to do with some
5 things that might have been, you know, less than --
6 potentially embarrassing --

7 A. Yes, sir.

8 Q. -- that may have come up during some process --

9 A. That's right.

10 Q. -- in the course of the case --

11 A. Yes, sir.

12 Q. -- that had to do with your wife.

13 A. That's correct.

14 MR. SAFRAN: Thank you.

15 MR. YOUNGINER: Yes, sir.

16 REPRESENTATIVE SMITH: One last question,
17 Mr. Chairman.

18 REEXAMINATION BY REPRESENTATIVE SMITH:

19 Q. Mr. Younginer, what was the ultimate settlement,
20 the disposition of your case with the -- with the custody
21 of your children?

22 A. Well, they were going back to week on/week off.

23 Q. You all went back to week on/week off.

24 A. We did. But then afterwards, my daughter, I
25 guess, apparently -- yes, sir. Yes, that's what the --

1 that is the final verdict.

2 Q. And you filed -- if I understand correctly what
3 you told Senator Young, you filed the child modification
4 action, correct? You were the plaintiff in the custody
5 action?

6 A. No, I was the defendant.

7 Q. Oh, she --

8 A. She's filed -- she filed all that.

9 Q. She filed. What was the relief she was seeking,
10 to stop the week on/week off --

11 A. She was wanting -- she was seeking full custody.

12 Q. Okay. I'm sorry. I had it -- I thought you said
13 you were seeking full custody.

14 A. No, sir.

15 Q. So you all went back to the current arrangement
16 that you had.

17 A. Right.

18 Q. And she was what we call the moving party in the
19 modification of custody --

20 A. Yes, sir.

21 Q. Thank you.

22 A. I have to say one thing -- I have to say this:
23 Those counselors, as I mentioned in the affidavit, I will
24 tell you again the expert opinion of those counselors in
25 other cases in this state that you can -- I can certainly

1 give you the cases on, have been shown in retrospect as I
2 said in my complaint, it's very accurate, their expert
3 opinion in retrospect ended up advocating for pedophiles
4 and sexual molesters. That is a fact that I do want to
5 also get into the record about these so-called expert
6 opinions that this judge allowed to have reign over my
7 case.

8 CHAIRMAN RANKIN: Mr. Younginer, the last
9 question and courtesy -- same courtesy to you as everyone
10 that comes with us, do you have -- is that your daughter
11 with you here?

12 MR. YOUNGINER: Yes, sir. There's also my
13 mother and my aunt that are here.

14 CHAIRMAN RANKIN: And your daughter's name?

15 MR. YOUNGINER: Ansley.

16 CHAIRMAN RANKIN: Very good. All right.
17 Thank you so much.

18 MR. YOUNGINER: Thank you all so much.

19 (Complainant excused.)

20 CHAIRMAN RANKIN: Judge, if you'll come back
21 up. And you are still under oath as --

22 JUDGE PINCUS: Yes, sir.

23 CHAIRMAN RANKIN: -- I'm sure you are aware
24 of that. So how would you like to respond? The floor is
25 yours to address the complaint that has been filed and the

1 testimony that Mr. Younginer has --

2 JUDGE PINCUS: I had the opportunity, once I
3 received the complaint, to review the entire court file. I
4 had the opportunity to provide the Commission with a
5 written response to that complaint. Which I'm hopeful you
6 have in your materials. I understand you do.

7 There's probably a few comments I should
8 make maybe to reiterate some things in my written response,
9 but also some things I've heard today for the first time.
10 I would like to point out on the issue of sealing the
11 record --

12 CHAIRMAN RANKIN: Well, I'm going to --

13 JUDGE PINCUS: Is there a way --

14 CHAIRMAN RANKIN: That's the last -- that
15 seemed to be the last point.

16 JUDGE PINCUS: That was the last -- I guess
17 that's the first refresh -- first in my mind.

18 CHAIRMAN RANKIN: Let's get to the bigger --
19 the bigger crux of his complaint, and that being --

20 JUDGE PINCUS: Sure.

21 CHAIRMAN RANKIN: -- the procedural --

22 JUDGE PINCUS: Okay. The temporary order?

23 CHAIRMAN RANKIN: But your involvement with
24 this case, and again direct response as best you can of his
25 complaint about the Bozeman order.

1 JUDGE PINCUS: The written response that I
2 provided the Commission went through a lot of detail as to
3 exactly when I heard the matter, how much time I spent on
4 the record with it. Is that what you're --

5 CHAIRMAN RANKIN: Well, and there's no --
6 that's not a sworn statement. So you need to give us a
7 little bit about that.

8 JUDGE PINCUS: So it was the parties' first
9 temporary hearing randomly scheduled before me. I just
10 happened to be in Richland County on that day and got the
11 case. It was scheduled for a thirty-minute temporary
12 hearing. And for those -- I know that some of you are
13 familiar with temporary hearings, some may not be, but
14 temporary hearings are motion-type hearings where I am to
15 decide issues brought before me based on affidavits,
16 documents and pleadings that come in under the rules.

17 It's not a trial. It's not where you would
18 have witnesses testify and I would make a final
19 determination on that.

20 So I held the first temporary hearing in the
21 case. It was scheduled for thirty minutes. I've checked
22 my notes, and I spent almost two hours on the first
23 hearing. The attorneys were very well prepared. They are
24 very respected attorneys for both sides.

25 During the litigation Mr. Younginer had

1 exceptional representation. And so did Ms. Donaldson. The
2 attorneys know family law and practice family law
3 regularly, so as you can imagine they were very prepared.

4 Because it was a longer scheduled temporary
5 hearing, they weren't limited to eight pages of affidavits.
6 I actually measured for my written response the amount of
7 documents I reviewed for that first hearing was voluminous.
8 Inches. Which is fine. But I am the type of judge at a
9 temporary hearing -- not all judges do this, but I do. I
10 read everything the attorneys submit to me. And I hear
11 oral arguments. Other judges have different styles.

12 And I do that on the bench in front of the
13 attorneys. So with the amount of documents that I was
14 given, it took long time. And I happened to have the time
15 that day. So after I reviewed and listened to arguments of
16 counsel, I also had some thing -- I took it under
17 advisement. I didn't rule from the bench. I had some
18 things to listen to in chambers.

19 There were a lot of audio recordings that
20 were given to me. I finally came to a decision on a
21 temporary basis, what I wanted to do. I called the
22 attorneys to tell them about my decision on the phone, and
23 what I was wanting to do, and gave instructions for an
24 order.

25 It was shortly after that, that I received

1 notice from a second attorney for Mr. Younginer, asking me
2 to hear, on an emergency basis, a stay of my order, to
3 reopen the record, to allow another opportunity to be heard
4 before I closed the record and signed my order. And it's a
5 little bit of an unusual request. I granted it. We
6 scheduled an emergency hearing as soon as I could do it.
7 It was within days.

8 At this hearing there was even more
9 documents presented. Both parties had a lot of time on the
10 court -- all open court on the record to present multiple
11 documents, affidavits, and oral arguments again for as long
12 as they needed. So after all of this time -- and the two
13 hearings that I scheduled, I granted the request to open
14 the record. I did stay my order. I didn't change my
15 underlying decision orally. I made a few -- a few, maybe
16 adjustments to it, but I ended up granted the relief on a
17 temporary basis that Ms. Donaldson requested. Not all of
18 it. But I generally granted her relief and not Mr.
19 Younginer's.

20 So after I did that, I appointed a guardian.
21 I didn't know the guardian. It was a guardian from Sumter
22 County, Mr. Stoddard, who was recommended to me from some
23 other judges, who would -- who might be a good fit. Other
24 than -- and I was asked to appoint a guardian. So it's not
25 something I did independently.

1 But I did not take -- I don't even recall if
2 the attorneys offered a suggestion on guardians. I really
3 don't recall. So nevertheless, I appointed a guardian. I
4 understand there was an emergency appeal of my order.
5 Justice Few reviewed it -- he was Judge Few at the time.
6 He denied the emergency appeal, the supersedeas. And my
7 order went forward.

8 Now, at that point it's not correct to say
9 that I kept any kind of close eye on this case. I don't do
10 that. Even if I keep jurisdiction on a case, I don't call
11 people and say, "How's it going?" I don't check with the
12 guardian and say, "How's it going?"

13 The attorneys have to report to me, under the
14 rules, which would be by motion or perhaps a request for a
15 conference call. I don't even think that happened, that I
16 recall. So it's not to say that I followed the case to
17 make sure everything was going okay. It was news to me
18 when I got a call that they settled. I was very happy that
19 they settled the case. I asked for time to come in to put
20 it on the record. But I don't track cases.

21 And in my temporary order -- I think it's
22 important to understand that I -- I did not independently
23 research any type of therapist or program or camp or
24 anything like that. That's not what I do as a judge. I
25 received information from very competent attorneys to

1 support their request.

2 Ms. Donaldson, through her attorney,
3 presented a plan for reunification that she thought was in
4 the children's best interest. My temporary order -- I
5 didn't even order the children to go to any particular
6 place. I leave it in her discretion to choose the
7 reunification therapy that I believed was in the best
8 interest of the children.

9 So it's not fair to say that I had, you
10 know, any kind of a relationship with or interest in
11 appointing certain people. In fact, in my temporary order
12 --

13 REPRESENTATIVE SMITH: Hold on a second.
14 If it's going to be easier for me to digest all this --

15 JUDGE PINCUS: Okay. I'm sorry.

16 EXAMINATION BY REPRESENTATIVE SMITH:

17 Q. Let me say from the beginning that I'm not here,
18 and this Commission is not here, to re-litigate a case,
19 okay? And so I don't want to -- you know, we heard from
20 Mr. Younginer, and we can hear from you, but -- you know,
21 what we're doing is, this calls into question your
22 character and your fitness for a judge is what the
23 complaint's about.

24 And so, you know, I'm not here -- I don't want
25 detailed explanation of why you ruled on what you did.

1 That's your job. And, you know, you can -- in fact,
2 there's other avenues for that to be addressed.

3 But what I am concerned about is what I heard is
4 -- that raises my antennas, that I'd like addressed is did
5 you order for these children to go to a reunification place
6 in Bozeman, Montana?

7 A. Can I look in my order, sir?

8 Q. Yes. Yes, ma'am.

9 A. I have it marked exactly what I had -- what I had
10 ordered. I'm reading from my temporary order on page 20,
11 paragraph 46.

12 Q. Judge, if this is sealed, how do you have a copy
13 of it?

14 A. Okay.

15 Q. So help me just get to that.

16 A. Well, that goes to the sealing of the record. I
17 had -- the parties asked me to seal the record. It's in
18 their final agreement. I quoted the page in my response of
19 exactly where they asked for me to do that. The consent --
20 an order sent in, and the first line of the order sealing
21 the records says that the parties moved for the court to
22 seal the record.

23 So I as a court official -- it's a Richland
24 County case, I can -- I can go and look at the file. So
25 can the parties. The file is sealed for outside third

1 parties to come in. It's to -- it's to protect parties
2 privacy or most -- most -- most of the time --

3 **Q. Is that in the rule?**

4 A. -- the children.

5 **Q. Is that the rule?**

6 A. Well, in the -- the Rule 41.1 does have a special
7 clause when you're dealing with family court, that family
8 court judges can consider things that might not be normally
9 considered in the civil court, for protection of children
10 or privacy or things like that. So at the request of the
11 parties, I sealed the record. And this is how I got into
12 the record --

13 **Q. Yeah, I don't want to get into that.**

14 A. -- you can do that.

15 **Q. I was just asking how do you have a copy --**

16 A. So that's how I have it.

17 **Q. -- of it when the record's sealed. So you're**
18 **saying that court officials and parties can seal the**
19 **document? I don't know what the unsealing of documents,**
20 **how you go about that, I don't see that in the rule. But**
21 **you're telling me that Mr. Younginer and his wife and you,**
22 **and anybody in the Richland County clerk's office, can**
23 **legally look at a sealed file.**

24 A. Yeah. And if there's any question -- the clerk
25 of court brings the file up the administrative judge at the

1 time, or if the judge is there that sealed the record and
2 said this -- you know, "Parties downstairs, they need a
3 copy of this or that," so the clerk oversees that. If
4 somebody wanted to --

5 Q. Again, we need rifle shots and not shotgun blasts
6 to this. So help me. All I asked was is there a rule, a
7 policy? Where are you getting it from, that you can have
8 that document? 'Cause I'd like to have that document, but
9 I don't think I can under the rules of where we are.

10 But that's why I'm asking. Is there a policy or
11 is there a rule? What allows you to have a copy of that
12 document?

13 A. Anyone can file a motion to unseal the record.

14 Q. But no one's filed a motion to unseal the record,
15 right?

16 A. I don't know if you all have done that or not.

17 Q. No, we haven't.

18 A. I wouldn't --

19 Q. So not by --

20 A. -- know that. Anyway, I wouldn't have to be the
21 judge to hear that. So if somebody did that, I wouldn't
22 know.

23 Q. All right. Well, let's --

24 A. I'm sorry. Maybe I don't understand your
25 question.

1 CHAIRMAN RANKIN: And I'm going to interrupt
2 you.

3 CHAIRMAN RANKIN: You were at the settlement
4 stage, so we're going to move past. You were happy that
5 they settled it. And again --

6 JUDGE PINCUS: So I was referring, I think,
7 to -- there are some parts of their final settlement that I
8 could refer to, but then I was asked about the temporary --

9 CHAIRMAN RANKIN: Well, hold on a second.

10 REPRESENTATIVE SMITH: Mr. Chairman, my
11 question wasn't finished. I didn't have my question
12 answered that I want answered, please, sir.

13 BY REPRESENTATIVE SMITH:

14 A. To answer your question, Representative Smith, I
15 do -- I ordered temporary custody to the mother. And with
16 that I gave her the discretion to chose a therapist. I in
17 fact said she cannot chose Dr. Benedetto, one of the
18 complained therapists for Mr. Younginer, because there was
19 something going on between them.

20 So I allowed her to chose the reunification
21 therapist and/or the process in her discretion as the
22 custodial parent.

23 **Q. And so that reunification process was in Bozeman,**
24 **Montana?**

25 A. If that's what Mr. Younginer says. I don't have

1 any reason to dispute where she went.

2 Q. Is that something that you --

3 A. As I said, it wasn't brought up then in the
4 final. I didn't try the case, so I can't really tell you,
5 from the time I heard the temporary hearing until I put the
6 settlement on the record, what exactly transpired, how many
7 days the children were somewhere, or for how long.

8 Q. Okay. All right. But you didn't specifically
9 order that the child go to Bozeman, Montana, at whatever
10 expense it is. But putting a child on a plane to Bozeman,
11 Montana --

12 A. No, sir.

13 Q. -- is kind of baffling to me.

14 A. No, sir.

15 Q. All right. That's not something you ordered,
16 that's something a therapist recommended. Did anyone bring
17 that back to you and say, "Judge, they're recommending that
18 the child go to Bozeman, Montana, and that's insanity"?

19 A. Well, certainly the --

20 Q. Did someone just bring that back to you --

21 A. Well, there was a --

22 Q. -- in the form a motion?

23 A. -- motion to reconsider.

24 Q. Was that part --

25 A. Sort of in the sense that I hadn't yet signed my

1 order. So I opened the record and then each attorney again
2 brought information before me, "This is the therapy we'd
3 like to use" or "this is why we oppose it." I didn't make
4 the call on where they should go.

5 Q. And all I'm really trying to get -- and I'm going
6 to just tell, it's going to disturb me greatly if a court
7 in this state ordered someone to get on a plane and go to
8 Bozeman, Montana, for some type of therapy. I mean, you
9 know, I just -- you know, that's -- but what I'm just
10 asking I guess is: Did you specifically order or approve,
11 or do anything to allow the child -- the children to get
12 placed on a plane and go to Bozeman, Montana, for a three-
13 day therapy class?

14 A. It's not in my order.

15 Q. Okay. That's all I want to know. Thank you.

16 A. Yes, sir.

17 EXAMINATION BY CHAIRMAN RANKIN:

18 Q. I want to follow up that with, was a guardian
19 involved and was there a recommendation by --

20 A. Yes.

21 Q. -- the guardian ad litem supporting --

22 A. Yes, sir. There was a guardian --

23 Q. -- supporting whatever reunification?

24 A. At the beginning of that case there was not.

25 Q. At the point that this temporary order is issued.

1 A. Well, it's my temporary order that appointed a
2 guardian, but then -- was immediately appointed, and
3 certainly consulted along with therapists about the best
4 reunification plan.

5 **Q. So is there a --**

6 A. So we had the opportunity to do that.

7 **Q. And there would be within that record a guardian
8 report supporting --**

9 A. In this case --

10 **Q. -- that decision?**

11 A. I don't know if he filed a written report at the
12 -- in the file. Again, the parties settled. And I can't
13 recall --

14 **Q. Well, I'm saying at the point of a temporary
15 order, would there be a requirement to have a guardian ad
16 litem's report or testimony --**

17 A. Not at that first temporary hearing. No, sir.
18 Some temporary hearings we do, but not this one. This was
19 the very first time they were in court. They had not yet
20 agreed upon a guardian. The court had not yet appointed
21 one.

22 I did appoint one the first time it came before
23 me. Of course, the guardian stayed involved all through
24 the five months of litigations, six months of litigation,
25 until the final order. And he -- and he signed off on

1 their agreement.

2 CHAIRMAN RANKIN: Mr. Safran.

3 EXAMINATION BY MR. SAFRAN:

4 Q. Judge, I'm going to make the request -- because I
5 don't want to put you or anybody else through anything
6 longer than is necessary, so I'm going to kind of echo what
7 Representative Smith said, "give me it back as a rifle
8 shot." Just tell me if I'm right or wrong, okay?

9 You issued an order that vested custody, where it
10 had been previously alternating, to the mother; is that
11 right?

12 A. Yes.

13 Q. As part of that order, you basically gave her
14 complete and sole discretion in terms of choosing where
15 this child was going to go for the therapy that you had
16 determined that they needed; is that fair?

17 A. Fair. Yes.

18 Q. Okay. And basically, you've excluded the
19 particular psychologist that was objectionable, locally.
20 Benedetto, correct?

21 A. Yes, sir.

22 Q. Do you have any idea whether or not Benedetto was
23 the one that actually chose this place out in Montana, to
24 effectively facilitate what they wanted anyway?

25 A. I can't recall, sir.

1 Q. But you would agree with me, does it not seem a
2 little odd that -- and again I don't go to family court.
3 But it seems a little strange to me that an order would
4 give complete discretion to send somebody -- what if they
5 wanted to send them to Tibet? I mean, I'm just asking. I
6 mean, from what you're telling me, the way the order was
7 drafted was that they could have done that. I mean, is
8 that not true?

9 A. It's not -- it's not that -- it's not true. The
10 way that you're saying it -- I -- I ordered reunification
11 therapy.

12 Q. And I get that.

13 A. And I was presented with several plans. I
14 adopted a type of a plan that looked to me like what was in
15 the best interest of the children at the time. There's a
16 guardian involved in a case, sir. There's -- there was a
17 therapist involved. I think if somebody -- again, I don't
18 oversee the cases either, once they're off of -- off of my
19 docket as far as jurisdiction goes. But if that happened,
20 there are ways that a aggrieved party can bring that issue
21 back.

22 Q. Wasn't that part of the supersedeas, potentially?

23 A. Initially. But the therapy hadn't occurred yet
24 at that time.

25 Q. Right.

1 A. So assuming -- assuming that after the
2 supersedeas, that the therapy goes forward not -- it's
3 wrong to assume or think -- and if I gave you that
4 impression, I'm sorry, that Mr. Younginer didn't know what
5 was going on.

6 So he had counsel involved and a guardian
7 involved. He was not cut off from really what was going
8 on. It's not uncommon to award a parent temporary custody
9 and give them discretion to choose a path of welfare for
10 the children.

11 Q. And let me --

12 A. And final -- or sole authority to do that.

13 Q. Let me say this. I'm not suggesting that he
14 didn't know what was going on, because he was obviously
15 party to the -- to the litigation. What I'm simply asking
16 is -- and again, if you're telling -- if you want to tell
17 me that, you know, maybe I'm just -- I don't have a clue,
18 or you can tell me that maybe I'm not, I guess, educated
19 enough in this area to understand what the process is,
20 that's fine. I accept that.

21 But what I'm asking you is, is that is it
22 standard to basically issue an order that vests that type
23 of discretion, to the extent that the court doesn't
24 supervise anymore, where somebody is basically pretty much
25 at the whim of one party going to be sent to somewhere

1 that, you know, may, as Senator Smith pointed out, be sent
2 somewhere that seems a little extreme for the
3 circumstances? Do you follow what I'm asking?

4 A. I do. But I just --

5 Q. And let me just say this: As somebody who I know
6 has a long background in family court, and who's obviously
7 is well versed in the law, and who I think from everything
8 I've read had a sterling reputation, what I'm asking is, is
9 that the norm in a situation like this? Or does not the
10 court continue to have to have some form of oversight to
11 avoid anything that would be abusive in terms of the use of
12 that parental discretion?

13 A. There is not a norm per se in family court,
14 because each family and those children and/or their
15 situation has to stand on its own. It can't be compared to
16 what we might do in other cases.

17 So it's hard for me to say what I did in this
18 particular case is the norm or the standard. But as far as
19 oversight there are -- we issue orders all the time, and
20 then never know what might happen afterwards unless it's
21 brought back. And there are ways for people that are
22 aggrieved under this order.

23 Mr. Younginer was allowed to be involved in the
24 process and know what was going on. If Ms. Donaldson, as
25 you say, decided to take the children out of the country or

1 do something outside the scope of my order, there's
2 contempt available if -- there's further motions for
3 supplemental relief available.

4 There is avenues by which a party that believes a
5 parent is abusing a certain discretion they're given in a
6 temporary order, or a final order. There are avenues for
7 that to be brought before -- it doesn't have to be me, but
8 any judge. But there is no oversight of cases once they --
9 once we sign off on an order.

10 **Q. Let me ask you this, and I'll end with this:**

11 **You're saying that based on --**

12 A. In the sense of me overseeing it.

13 **Q. I understand that.**

14 A. Oh, okay.

15 **Q. I understand. But didn't you retain jurisdiction**
16 **of this one?**

17 A. I did retain -- I wanted to review, I think is
18 the word I used, once the guardian got involved, for the
19 guardian to be able to report to me any concerns or
20 problems.

21 **Q. And I guess the other bigger --**

22 A. And then that never happened.

23 **Q. And the bigger question, at least in my mind,**
24 **based on what you just said, was that contempt would be**
25 **available if somebody went outside the parameters of your**

1 order; but yet, the order basically vested such a broad
2 level of discretion, that what would have been outside the
3 perimeter of the order?

4 A. Well, I mean not -- not really, sir. The heart
5 of the case -- the heart of case was -- the heart of my
6 order was a certain type of therapy that I ordered. It
7 wasn't -- it just -- it's hard to say. If you're aggrieved
8 by the order, you would bring it back and say, "Look, I
9 think the parent is abusing her discretion or violating the
10 order," and then we review it.

11 Sometimes orders are not easy to interpret on
12 contempt. Sometimes they are. But in this case there was
13 enough in my order that said this is the type of therapy
14 that should be done. And it was the -- and it's not --
15 it's not a stranger. This is a mother who had --

16 Q. Oh, sure.

17 A. -- you know, a week on/week off, that was
18 presenting the problems, and what she believed to be the
19 solution to those problems. And I happened at the time to
20 agree with her. And when I look back over the file and
21 everything that I did, and it comes back to my memory, I
22 stand by what I ordered.

23 And there is oversight of orders, but not
24 necessarily all the time. It's, you know, by the judge
25 that issues the order.

1 Q. I understand that.

2 A. I hope that --

3 Q. And, you know, again I'll end with this -- and
4 maybe I'm just uninformed. Maybe I am not certainly versed
5 in family court practice. But the thing that does kind of
6 sit with me as being a little difficult, as Representative
7 Smith pointed out, was where somebody could basically go to
8 the extent of saying that a therapy that presumably is
9 available in a lot of locale, we have to go literally
10 across the country in order to get it. That's something
11 I'm finding problematic.

12 A. Well, there's a lot of -- there was -- from what
13 I recall in the voluminous records I received at that
14 hearing, multiple professionals that were already involved
15 in the case, many of which would have been conflicted out
16 from doing anything.

17 Again, there were experts that are -- like Dr.
18 Gould, Mr. Younginer mentioned, is an expert. And he could
19 have potentially been the person to do this. However, he
20 was retained as an expert so he was -- so many of the
21 therapists or experts that attorneys would bring to a judge
22 and say this -- this -- this therapist can do reunification
23 therapy or this person can, couldn't have done that in this
24 case.

25 Q. And again, the only thing I'd say in response to

1 that is, is it that -- is there some rule that says that
2 the court can't designate an expert that's within a certain
3 geographic proximity, as opposed to letting a party
4 effectively just go pick anybody they want in the world?

5 A. No, sir. No.

6 MR. SAFRAN: Thank you.

7 CHAIRMAN RANKIN: Mr. Hitchcock.

8 EXAMINATION BY MR. HITCHCOCK:

9 Q. Judge.

10 A. Yes, sir.

11 Q. And again, we're not here to re-litigate this
12 case. And I want to you to understand that and I want
13 everybody to understand that, that's not the purpose here.
14 But it's been a long time since I've been in family court.
15 I practiced for a little while, but it was quite a while
16 ago. So I'm just trying to -- in my mind I'm just trying
17 to follow. There was a -- there was a temporary hearing,
18 right?

19 A. Yes, sir.

20 Q. And at that temporary hearing you issued an order
21 and you gave -- I guess it was Ms. Donaldson custody at
22 that point?

23 A. Yes, sir.

24 Q. And you ordered a -- ordered reunification
25 therapy of her choice, I guess?

1 A. Yes, sir.

2 Q. Then there was subsequently a motion for
3 reconsideration, I think you said, that was even before you
4 signed your order, right?

5 A. That's right.

6 Q. And was any part of that motion for
7 reconsideration, was there any allegation that -- or any
8 concern expressed that the reunification therapy was going
9 to -- was it brought to your attention that the planned
10 reunification therapy was going to take place in Bozeman?

11 A. I don't recall what was specifically in the
12 affidavits. I can tell you that there were more than one
13 reunification plan or option presented by Ms. Donaldson,
14 and absolutely nothing that was agreed to by Mr. Younginer.
15 He was opposed to it in all manner.

16 Q. That's not exactly my question, Judge. What I'm
17 asking you is, is that as part of the motion for
18 reconsideration -- were any of the arguments in regards to
19 the motion for reconsideration, was it brought to your
20 attention that the reunification therapy would take place
21 in Bozeman and there was an objection to that?

22 A. I can't -- I can't answer definitively about an
23 objecting -- and objection to Bozeman. I can say that
24 there was an objection to reunification therapy brought up,
25 and every plan that was submitted was objected to.

1 So the two that I mentioned in my order, that she
2 could choose from -- it was the wording she could choose a
3 reunification therapy program like Family Bridges or Horse
4 Sense.

5 **Q. Is Family Bridges the one in Bozeman?**

6 A. I don't know, sir.

7 **Q. Did your order say Family Bridges?**

8 A. Yes, sir. It doesn't say where -- that's not to
9 say I didn't know at the time.

10 **Q. Okay.**

11 A. I don't want to mislead you. There was a lot of
12 information presented to me, there were brochures, there
13 were professional affidavits about different reunification
14 therapies that were available. It could very well have
15 been presented.

16 Q. and again, you have the benefit of the order, you
17 have the benefit of the file. Did you review the file
18 before you came --

19 A. I did.

20 **Q. -- here today?**

21 A. Today? No, I reviewed it --

22 **Q. Before you came here today, did you -- I'm not**
23 **saying that you came here today. Did you review your file**
24 **-- the file at some point before you came here today?**

25 A. I reviewed the file before I filed my written

1 response with the Commission, yes.

2 Q. Well, obviously, we don't have the benefit of
3 that, and you do. So it mentioned the actual names of the
4 -- the Bridges and Horse Sense, it mentioned -- you
5 specifically say that those are the choices in your order.

6 A. No, I say "such as." And please -- and also I --

7 Q. Judge.

8 A. -- I absolutely would --

9 Q. Judge, were those in your order or not? Those
10 two. I said mentioned "such as," it means the same thing.
11 Are those -- are those two places listed in your order?

12 A. Yes.

13 Q. Okay. All right.

14 A. And I'm happy to read. But I -- but you're the
15 second person that brought up that you don't have the file
16 and I'm sorry about that because --

17 CHAIRMAN RANKIN: We're going to correct
18 that.

19 JUDGE PINCUS: Okay. I thought that you all
20 --

21 CHAIRMAN RANKIN: And again, let me -- and
22 let me ask you a real quick -- and I have a real quick
23 question, yes or no from Mr. Younginer.

24 MR. YOUNGINER: Yes, sir.

25 CHAIRMAN RANKIN: Will you sign whatever

1 document or consent to unsealing this record, for us to
2 have the benefit of the entire record?

3 MR. YOUNGINER: One hundred percent, yes,
4 sir.

5 CHAIRMAN RANKIN: All right. And I need you
6 to speak loudly in that microphone -- or Madame Court
7 Reporter, can you hear that? Okay. And your exwife is a
8 resident where now?

9 MR. YOUNGINER: Right here in Columbia.

10 CHAIRMAN RANKIN: And are you all on terms
11 where you can communicate to her, or have her reach out to
12 us to likewise consent to her --

13 MR. YOUNGINER: I think the best thing would
14 be for my attorney to contact her attorney.

15 CHAIRMAN RANKIN: And who is your attorney?

16 MR. YOUNGINER: Mr. Peter Shahid. Her
17 attorney is Mr. Peter Currence. Pete Currence.

18 CHAIRMAN RANKIN: And you all are still
19 litigating some --

20 MR. YOUNGINER: No, sir. The daughter's 20
21 and the boy's 18, so they --

22 CHAIRMAN RANKIN: So you are -- but you
23 still have him as your attorney in all -- in other --

24 MR. YOUNGINER: He would be the one that
25 would -- that would request it.

1 CHAIRMAN RANKIN: Yeah, there's no
2 litigation pending between you.

3 MR. YOUNGINER: Correct.

4 CHAIRMAN RANKIN: Okay. And then --

5 MR. YOUNGINER: But I'll contact him to
6 contact her attorney to have the file.

7 CHAIRMAN RANKIN: Very well. If you'll
8 communicate with your attorney --

9 MR. YOUNGINER: Yes, sir.

10 CHAIRMAN RANKIN: -- likewise, and to reach
11 out to Ms. Crawford here.

12 MR. YOUNGINER: Yes, sir.

13 CHAIRMAN RANKIN: And then finally, real
14 quick. Judge, you have handed us a document. Do you have
15 any objection to us -- which is your written response. Do
16 you have any objection to us making that a part of the
17 record?

18 JUDGE PINCUS: No, sir.

19 CHAIRMAN RANKIN: On the motion of
20 Representative Smith, and seconded, that will come into the
21 record.

22 (EXHIBIT NO. 26 - CANDIDATE'S WRITTEN RESPONSE)

23 CHAIRMAN RANKIN: I want to briefly ask
24 another question -- Mr. Hitchcock, you might not have been
25 finished.

1 MR. HITCHCOCK: Yeah, I was.

2 EXAMINATION BY CHAIRMAN RANKIN:

3 Q. I may be the only one up here who has gone to
4 family court, with children in the tug-of-war. And this is
5 years ago, where I was involved with a contested case, a
6 temporary hearing, affidavits galore. And we've been
7 talking all for the last however many days about the --
8 either the short shrift -- the short attention given to or
9 great weight given to and time to time to ponder. I know
10 all about that.

11 My question is, as to the somewhat surprise of
12 all of us, I've never heard of reunification therapy.
13 Reunification -- I don't even know what it means. I've
14 never heard of that. Perhaps it's a very common tool in
15 highly litigated, highly contested, fractured
16 relationships. I don't know. But was it common in 2014?
17 Was this something that had been ordered by other judges in
18 the state? And is it -- does it continue now?

19 A. Well, I don't -- I don't have the ability to know
20 what other judges order. I just don't. I know my -- I
21 know that particular case that I had dealt with 2014, since
22 then there have been -- there was a Supreme Court case that
23 came out, I think it was Nguyen, on parental alienation.
24 So the heart of this matter is there -- it was extremely
25 high conflicted. It was not their first time in court.

1 There was --

2 Q. Have you ever ordered -- and I'm interrupting
3 you. Forgive me. Have you ordered this before 2014?

4 A. No.

5 Q. And you're a member of the -- I want to call it
6 the elite --

7 A. I was a fellow of -- right -- of the American
8 Academy of -- and I didn't say I didn't hear of it, but I
9 did not order it.

10 Q. Well, before you became a judge, you appeared
11 before lots of family court judges, advocating for your
12 clients.

13 A. Yes, sir.

14 Q. Had you ever been a party to a case that involved
15 -- not a party to, but representing folks where this was
16 ordered? Agreed upon or not, as was the case clearly in
17 this one.

18 A. Yes, in the sense that many types of therapies
19 have been -- were ordered in cases where I was the attorney
20 or -- and/or agreed to. And many of those, you know, dealt
21 with reunifying an estranged parent or an alienated parent
22 to some degree.

23 I can't -- I can't say that it happened a certain
24 amount of times. You could say it wasn't a foreign concept
25 to me. It wasn't something that when it was presented,

1 that seemed to be out of the realm of what a court can do
2 when you're dealing with these types of allegations.

3 But, sir, I honestly can't say a specific case or
4 time or an order, but I was not unfamiliar with therapeutic
5 intervention in families by multiple experts, many of which
6 were mentioned in this case.

7 Q. All right. And I'm going, I hope, hush here in
8 just a second. But in temporary hearings, generally with a
9 custody situation when the parties have had some prior
10 either agreement or order, is it not generally the case
11 that most judges want to maintain the status quo, pending
12 the final development of all the facts, all the discovery,
13 and at that point make whatever, perhaps, drastic changes
14 to the status quo? Is that -- is that my mis-impression?

15 A. No, it's not a mis-impression. There is no rule
16 that says that a judge has to maintain the status quo. The
17 reason why we look to the status quo is to try to get an
18 idea of what's in the best interest of a child. But not
19 every case is a status quo in their best interest.

20 So we -- I, or we as judges, have the right to
21 issue orders that adjust, modify or change the status quo
22 even on an interim basis.

23 Q. And I'm not cutting you off, but here's what I
24 would like to do, unless there are other comments from the
25 other commission members. We want to get the file. We

1 want to get the information. And not to re-litigate this.

2 CHAIRMAN RANKIN: And be clear: All parties
3 in this room, that's not our job here. Because, again, we
4 don't know the history, Mr. Younginer, of your family.

5 MR. YOUNGINER: Yes, sir.

6 CHAIRMAN RANKIN: Obviously, you're a -- you
7 have deep devotion to your children, as arguably your
8 exwife and the mother does as well. We're not here --
9 we're not the appellate court, to sit here and decide
10 whether something should change. Your children have aged
11 out.

12 MR. YOUNGINER: Yes, sir.

13 CHAIRMAN RANKIN: Thank the Good Lord. Our
14 job is to determine whether, within the confines of
15 character, ability, the evaluative criteria, whether this
16 judge has stepped beyond the bounds of that authority. So
17 what I would like to do is to adjourn this portion of the
18 complaint. Mr. Younginer, you have told us that you don't
19 object to unsealing the record for us to get it.

20 MR. YOUNGINER: Correct.

21 CHAIRMAN RANKIN: Judge, I don't think it
22 requires your consent, but you have no problem with us
23 getting it.

24 JUDGE PINCUS: Of course not.

25 CHAIRMAN RANKIN: And so you're going to

1 have your attorney contact your exwife's attorney?

2 MR. YOUNGINER: Yes, sir.

3 CHAIRMAN RANKIN: Get in touch with --

4 MR. YOUNGINER: And contact Mrs. Crawford or
5 Mrs. Valenzuela?

6 CHAIRMAN RANKIN: Yeah. Yeah.

7 MS. CRAWFORD: Both.

8 CHAIRMAN RANKIN: Ms. Crawford and Ms.
9 Valenzuela.

10 MR. YOUNGINER: Okay.

11 CHAIRMAN RANKIN: We're not looking for you,
12 no more --

13 MR. YOUNGINER: I understand. I understand.

14 CHAIRMAN RANKIN: Not to cut you off, but
15 we've heard and we've read. We've got all we need.

16 MR. YOUNGINER: Right.

17 BY CHAIRMAN RANKIN:

18 Q. But what I would ask us to do -- and we'll talk
19 about it how we're going to resume this. But for the
20 specific purposes of looking in the record that we don't
21 have the benefit of, that perhaps as you say, in hindsight
22 you wouldn't have changed a thing, you knew what was going
23 on then. And you were the one, and the only one, called
24 upon to decide at that time, based on what was before you,
25 what as you've said is your task, what's in the best

1 interest of these children. We can't second guess that.

2 But if there's some new something out there that,
3 again you're kind of pausing with this concept of
4 reunification, and you're the top of the top lawyer --

5 A. Well, I really don't want you to misinterpret my
6 pausing. It's I can't -- I can't identify specific cases
7 or dates.

8 Q. Well, that's --

9 A. And that might seem like I'm pausing. I'm not.
10 I was --

11 Q. And again, no negative association about by that.

12 A. Okay.

13 Q. But it seems very unusual. But again --

14 CHAIRMAN RANKIN: Representative Smith?

15 REPRESENTATIVE SMITH: Mr. Chairman, one
16 other thing is, could counsel probably also contact Mr.
17 Currence, so we can bypass that, where they could talk to
18 Mr. Currence about seeing if he could gain the wife's
19 consent? If not, then I would suggest the court issue a
20 subpoena or a motion to the family court. Who's the chief
21 administrative judge for Richland County right now?

22 JUDGE PINCUS: It's Judge Frierson.

23 REPRESENTATIVE SMITH: And so we can motion
24 them for limited discovery -- I mean, limited ability to
25 get that.

1 EXAMINATION BY REPRESENTATIVE SMITH:

2 Q. So Judge Pincus, while all this is going on let
3 me ask you one question, Because this is what it boils down
4 to me. Did you know the cost of the procedure -- I mean,
5 of the therapy, before they went out there?

6 A. Possibly. And I say if it's a -- if it was in
7 the affidavits, then I would know it.

8 Q. And I don't know anything about the financial
9 conditions of the parties, but would it be around \$60,000?
10 Is that reasonable? I mean, is that something that could
11 occur?

12 A. I don't have -- I can't dispute.

13 Q. Would you order something of a party to spend
14 \$60,000? I mean, is that something routinely done in your
15 courtroom for some type of therapy?

16 A. I look at each -- if there's a request for me to
17 order parties to share in types of fees, I look at their
18 underlying financial declarations to see whether or not
19 they can afford it. I've refused certain requests before
20 that I thought were out of the realm of what the parties
21 could afford.

22 I'm not going to dispute what the program may
23 have cost. It could be in the affidavits that were
24 submitted to me. And again, it could, in fact, be what Ms.
25 Donaldson was told when she enrolled the children. So I

1 don't have ability to say that it wasn't \$40,000.

2 I did order the parties to share equally in the
3 costs.

4 Q. That was my next question.

5 A. And then they agreed to share equally in the
6 counseling costs. But as part of their agreement, Ms.
7 Donaldson paid the entire cost of whatever therapy she
8 chose.

9 Q. But in the temporary order, when you ordered the
10 reunification therapy and left that in discretion, you
11 ordered them to initially split that, and you may have
12 known at that time -- and we will be able to tell by the
13 affidavits -- whether that was \$60,000.

14 A. Yes, sir.

15 Q. So the next question -- and I'm not going to ask
16 this on the record to Mr. Younginer or any -- I don't know
17 what his income is and -- you know, and whether that's
18 something that was -- you know, I guess based upon the
19 income is whether it would be reasonable or unreasonable in
20 looking at the financial declarations.

21 And so maybe, I guess, we probably would need the
22 financial declaration. I want a limited access to the
23 file. I want to reiterate what the chairman said. This is
24 not the forum to re-litigate the issue. You know, and
25 again to me, it's just this sending somebody out to

1 Bozeman, Montana, is what's giving me pause.

2 And I'd like a lot more clarification than what I
3 heard from today. And I think the benefit of the file
4 would provide that to us. And, you know, it may be
5 absolutely reasonable once I look at the file. It may not
6 be. I don't know.

7 But, you know, it's causing me enough pause that
8 I want to have a further investigation and a further
9 hearing into this, so we can figure it out and make sure we
10 have all the facts when we make a decision. 'Cause you are
11 -- you should be able to be confident in this process, and
12 make sure that you are treated fairly and with respect.
13 And also any complainant, including Mr. Younginer over
14 here, should also have -- be treated fairly and with
15 respect, and have us do the job that we were required and
16 charged under the law and the constitution of this state to
17 perform.

18 JUDGE PINCUS: Yes, sir.

19 CHAIRMAN RANKIN: I have a few more
20 questions for you and then we're going to recede with this
21 portion. And then we'll go to the other -- Mr. Ginter's
22 complaint, and then we'll decide accordingly at that point
23 what to do.

24 JUDGE PINCUS: Yes, sir.

25 MS. VALENZUELA: Thank you, Mr. Chairman.

1 EXAMINATION BY MS. VALENZUELA:

2 Q. Judge Pincus, do you have a personal or financial
3 connection to Family Bridges, an organization that
4 advertises its work in behavior modification?

5 A. No, ma'am.

6 Q. Do you have a personal or financial connection to
7 Horse Sense, an organization that does work in behavioral
8 modification?

9 A. No, ma'am.

10 Q. Do you have a personal or financial connection to
11 any local or national organization that treats children
12 with behavioral modification?

13 A. No, ma'am.

14 Q. Do you have a personal or financial connection to
15 any local or national organization that offers
16 reunification therapy or intervention?

17 A. No.

18 Q. Have you ever instructed a court reporter to
19 strike language from a transcript?

20 A. I might have. But usually the attorney -- it
21 would be when an attorney says "move to strike" in some
22 form of an objection. I have no recollection of what Mr.
23 Younginer said in that regard. But if it -- I can see --
24 there are attorneys that would make an objection and then
25 move to strike, I would say "yes" or "no." If somebody

1 disobeyed a directive of the court, I could see saying, you
2 know, that should be stricken.

3 But I do understand that even when a judge says
4 that, it's still in the actual transcript. That's what I
5 understand, that a court reporter doesn't go -- have the
6 ability to delete what was said. So I have had transcripts
7 stricken before. Under the rules, I've done that.

8 Q. So aside from an attorney motioning, asking you
9 to strike, or a person in your courtroom ignoring a direct
10 order from you, have you ever instructed a court reporter
11 to strike language from a transcript?

12 A. I would say I have not. And I would refer to the
13 transcript in this case as to why -- if I did that, why I
14 did that.

15 Q. Thank you, Judge Pincus.

16 A. Yes, ma'am.

17 EXAMINATION BY CHAIRMAN RANKIN:

18 Q. Judge, I want to be real clear on that last
19 exchange.

20 A. Okay.

21 Q. Forgive me. When you reviewed the file in
22 preparation for this hearing today, and the complaint
23 that's been leveled against you, did you review the
24 transcript as well?

25 A. No, sir.

1 **Q. Is there a transcript in that file?**

2 A. I don't think there is. The only way it would be
3 in there is if a party had transcribed it and attached it
4 to a document and placed it the file. But it wouldn't come
5 from me, it would come from a party. But the full
6 transcript is not in the file, that I recall. I don't
7 recall any transcript, let me -- let me say that.

8 **Q. But you've looked in that file recently.**

9 A. I looked at it the day the complaint came in --
10 or that week, so the end of October, and I did not see a
11 transcript. I did not request one or order one to be put
12 in the file. But I did not see one.

13 **Q. Again, we're talking five -- four years ago, but**
14 **very vivid recollections you've heard with a different**
15 **story. Your testimony is that you, of your own motion, did**
16 **not instruct the court reporter to strike the comments made**
17 **by Mr. Younginer's daughter.**

18 A. Senator, I can't deny his recollection. I have
19 under the circumstances mentioned -- ordered the court
20 reporter to strike certain testimony.

21 **Q. But that's --**

22 A. Generally, in those two situations, I don't
23 recall ever just on my own, in the manner it was described
24 doing that.

25 **Q. At the insistence of another -- of one of the**

1 litigants, or their representatives, that being the one or
2 the -- again, I didn't hear both.

3 A. Okay. It was -- if there -- if it was a -- like
4 a violation of the directive of a court.

5 Q. Right.

6 A. In that regard.

7 Q. Or a motion of one of the parties.

8 A. Or on motion of a party.

9 Q. And you don't recall that at all in this
10 instance.

11 A. No. But I'm not going to say it's not in the
12 transcript. I just don't -- I don't recall.

13 Q. You don't remember.

14 A. Yeah.

15 CHAIRMAN RANKIN: So Judge, if you will have
16 a seat. And Mr. Younginer, you're free to leave at this
17 point. We are not going to resume any testimony on your
18 complaint tonight.

19 MR. YOUNGINER: Mr. Chairman, were you
20 saying, though, that the attorneys -- you all are going to
21 contact the attorneys? Or I still have to do what you were
22 asking earlier?

23 CHAIRMAN RANKIN: You're going to contact
24 your attorney, who's going to contact her attorney, who is
25 going to submit consent to us. And perhaps your attorneys

1 can prepare whatever document that -- not to put the burden
2 on you, that will allow us to get access to that file.

3 MR. YOUNGINER: Thank you.

4 CHAIRMAN RANKIN: Yeah. And so, again, we
5 got a little bit going back and forth here. We've got
6 that. So we'll handle that. Ms. Valenzuela will contact
7 the other attorney.

8 Let's now go to Mr. Ginter. State your name
9 for the record, please.

10 MR. GINTER: Nathan Ginter.

11 CHAIRMAN RANKIN: I'm sorry?

12 MR. GINTER: Nathan Ginter.

13 CHAIRMAN RANKIN: Maybe pull the mic up
14 some. And if you will raise your right hand.

15 WHEREUPON,

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

19 CHAIRMAN RANKIN: So we have your complaint,
20 and everyone has read it. Ms. Valenzuela's going to ask
21 you some questions about it. And not to cut you off in any
22 way, or to limit you from the outset, but do understand we
23 have all read your information. So if there's something
24 that we need beyond that, again, we would ask you to limit
25 it to what has been submitted, okay?

1 MR. GINTER: Absolutely, sir.

2 CHAIRMAN RANKIN: Thank you. Ms.
3 Valenzuela.

4 MS. VALENZUELA: Good evening, Mr. Ginter.
5 And thanks for your patience. And Mr. Younginer, I meant
6 to thank you earlier for your patience as well.

7 CHAIRMAN RANKIN: A quick interruption. And
8 I apologize. I'm messing all these up. Do you have anyone
9 here with you that you would like to introduce?

10 MR. GINTER: Just support friends, sir.

11 CHAIRMAN RANKIN: Okay. That's all right.
12 Go ahead.

13 EXAMINATION BY MS. VALENZUELA:

14 Q. Mr. Ginter, your complaint relates to a 2014
15 custody action. Mr. Ginter alleges that Judge Pincus
16 awarded joint custody to the child's mother, despite the
17 mother being [redacted] and despite a [redacted] raising
18 concerns about her ability to care for the child, which led
19 to the child being injured, abused and neglected.

20 He also alleges that Judge Pincus signed a court
21 order with multiple factual inaccuracies, and that this
22 action led to his incarceration.

23 Now, Mr. Ginter we have your affidavit of
24 complaint. And you have two attachments to that. We have
25 the transcript from May 28, 2014, and we also have a

1 document entitled "Temporary Order" in a case with a docket
2 number 2014-DR-40-1658. The Commission has those documents
3 and has reviewed those documents.

4 I'm going to remind you of the same thing we
5 reminded Mr. Younginer of: Please remember that committee's
6 purpose is to review the qualifications of the candidate.
7 They're not here to re-litigate your case and cannot --
8 they do not have the ability to change the result in your
9 case. Knowing that, is there anything you wish to testify
10 to tonight that is not already covered in the documents
11 before the committee?

12 A. I do. First, I'd like to thank everybody for the
13 patience. And I promise I'll be nice, short, and sweet.
14 I've got about a page and a half. And, Senator Young, it's
15 good seeing you again. I see you hiding from me. Every
16 time I run into you, you're behind one of those microphones
17 and I'm testifying.

18 But again, thank you for your patience. I know
19 it's very, very late.

20 SENATOR YOUNG: Mr. Chairman.

21 CHAIRMAN RANKIN: Senator Young.

22 SENATOR YOUNG: I want the record to reflect
23 I'm not hiding from you. I'm eating a bag of potato chips,
24 because it's 9:32 at night and I haven't had anything to
25 eat since about three o'clock this afternoon. And I still

1 got to drive home to Aiken when we finish tonight.

2 MR. GINTER: Well, I will make sure to make
3 this as short and precise as possible.

4 A. What I'd like to do is go over just a few
5 portions of what I have written. It may sound redundant,
6 but it's exceptionally important to my testimony, to make
7 sure everything is chronologically correct so we can avoid
8 some confusion which may have happened to Matt over here.

9 I think it's more important to start off by
10 telling you why I stand here before you today. And I want
11 this committee to understand that I don't stand here before
12 you as a disgruntled past-litigant of Monet Pincus'
13 courtroom. Nor do I stand in front of you as a -- as a
14 disgruntled single parent.

15 I stand in front of you today as a father, a
16 citizen of this state, and also a guardian ad litem. But
17 more importantly than all of those combined, I'm here today
18 because of my moral convictions, something that Monet
19 Pincus seriously lacks.

20 On May 28th, 2014, before that date I had full
21 custody of my daughter. An action was brought against me
22 by an individual that was out [redacted] of her own child.
23 The normalcy for the state of South Carolina to reverse
24 custody, much less any sort of visitation, is a substantial
25 change in circumstances. Monet Pincus had listed no change

1 in circumstances on her final order, nor did she have any
2 finding of fact.

3 So as Monet Pincus, and I will quote her as
4 saying earlier, "There are no norms in family court." That
5 is a facade. That is why we have standard orders issued,
6 such as Judge Brown's order -- Judge Brown's visitation
7 orders or Judge Morris -- Dana Morris' visitation orders to
8 build off of.

9 Each and every case in the state of South
10 Carolina is custom because no one is the same. However,
11 there are standards. Because if we had no standards, then
12 the court would turn into the civil version of the Wild,
13 Wild West.

14 After that hearing and custody was awarded to an
15 individual [redacted] who also had questionable [redacted]
16 and issues with her, reflected in information that was
17 submitted to Monet Pincus, yet she chose to ignore them, my
18 daughter ended up hurt. She became a product in the
19 [redacted].

20 And it took years to reverse this order. As time
21 grew -- as time went on, the effects of Monet Pincus' order
22 took an effect on myself, and it also took effect on my
23 daughter. It took literally years to get past it, all the
24 way to a final order.

25 Now, I find something also curious in what Monet

1 said earlier that we are able to reverse decisions, but yet
2 she seemingly only has one final hearing per year. So I
3 can only insinuate that Monet Pincus believes that you can
4 reverse a temporary order where the appellate courts will
5 actually hear a temporary order. That's not true either.

6 So whenever a temporary order is issued in the
7 state of South Carolina, a precedence is set. The
8 precedence, meaning the next judge will then follow that
9 order and build off of it, very rarely do we have judges in
10 this state reverse each other's orders, not unless it's a
11 final hearing itself.

12 With that being said my hearings -- my court case
13 has ended. And I'm very happy. I'm not here today just
14 like as -- just like as Matt said earlier, I'm not here to
15 relitigate my case. I'm not here to rewind the past. I am
16 here for my own moral convictions to let this panel know
17 how reckless and negligent this judge is.

18 CHAIRMAN RANKIN: Ms. Valenzuela.

19 BY MS. VALENZUELA:

20 Q. Thank you, Mr. Ginter. Mr. Ginter, I have a few
21 questions for you.

22 A. Go ahead.

23 Q. The order you attached to your complaint was
24 issued by Judge Pincus and entitled "Temporary Order,"
25 correct?

1 A. Yes, ma'am.

2 Q. Have the issues in the case reached a final
3 resolution?

4 A. They have.

5 Q. Was Judge Pincus the judge who ordered the final
6 resolution in the case?

7 A. She was not.

8 Q. What was the final resolution of the case?

9 A. The final resolution is that I [redacted].

10 Q. So there was a separate judge who ordered the
11 relief that you just discussed?

12 A. That is correct. A final order.

13 Q. And that final order was a similar resolution to
14 what Judge Pincus ordered in her temporary order?

15 A. Portions of it were adopted. That is correct.

16 Q. And did a separate judge, aside from Judge Pincus
17 and the final judge, review the case before the final order
18 was issued?

19 A. Yes, they did. However, it was in a different
20 style of hearing. So in this state, most of you know that
21 you have temporary hearings, motions for relief, rules to
22 show cause -- rule to show causes and so forth.

23 Q. I'm so sorry, Mr. Ginter. I apologize.

24 A. That's okay.

25 Q. Could you repeat what you said?

1 A. Could you repeat the question again?

2 Q. **Sure. I said, "Did a separate judge, aside from**
3 **Judge Pincus, review the case before the final order was**
4 **issued?" And you were explaining to me that it was a**
5 **different type of case.**

6 A. That's correct. We were in court, multiple
7 times, in multiple different types of cases. So again, I'm
8 not sure if this panel understands the type of cases that
9 can go before a family court judge, but you have motions of
10 relief, temporary hearings, you have rule to show causes,
11 which are obviously infractions or someone -- one party
12 accusing the other of an infraction of the order.

13 A rule to show cause is obviously almost its own
14 animal. It does not have the ability to necessarily change
15 a final order, because it is its own separate order by
16 itself.

17 Q. **Thank you. But so there was a separate judge.**
18 **And did that separate judge -- so separate from Judge**
19 **Pincus and separate from the judge who ordered the final**
20 **ruling, the final order, make a finding that [redacted] in**
21 **your case?**

22 A. That's correct. That's what they said.

23 Q. **Did that judge make a finding that [redacted]?**

24 A. To my recollection, that's correct as well.

25 Q. **Did that judge make a finding that [redacted]?**

1 A. That, I do not recall.

2 Q. Mr. Ginter, were you represented by an attorney
3 throughout this process?

4 A. Several. That is correct.

5 Q. So at all times you were represented by an
6 attorney?

7 A. That is correct.

8 Q. Was there a guardian ad litem in this case?

9 A. Unfortunately, yes.

10 Q. And was that guardian ad litem involved
11 throughout the entirety of the case?

12 A. If you can relate one site visit in two years,
13 then the answer is "yes."

14 EXAMINATION BY CHAIRMAN RANKIN:

15 Q. Mr. Ginter, I think I heard this, but there was
16 no appeal by you of that final decision?

17 A. Of the final order?

18 Q. Yes, sir.

19 A. No, sir, there was not. Sir, when you -- and
20 again, I believe that earlier you stated that you are also
21 a product of family court, in a heavily -- and it was a
22 heavily litigated matter. When you're able to break free
23 of those chains, being free of individuals such as the one
24 that sits behind me, that makes erroneous decisions, the
25 last thing you ever want to do is go back.

1 Q. But I'm saying from not the temporary, but from
2 the final order which you have admitted --

3 A. That is correct.

4 Q. -- reflected --

5 A. That is correct. That's what I'm referring to,
6 the final order.

7 Q. Reflect the temporary order which Judge Pincus
8 issued?

9 A. So you're asking if I ever refuted the temporary
10 order? Is that correct?

11 Q. No, sir. I'm asking you did you appeal the final
12 order, which you've said essentially adopted what Judge
13 Pincus concluded in the temporary order?

14 A. Portions of it.

15 Q. All right.

16 A. No, sir, we did not. And again, I explained why.
17 When you have spent so many years in family court, you
18 don't want to go back.

19 Q. And I'm not begrudging the fact that you didn't.
20 And again, I've been there and done that. The Lord blessed
21 me with a beautiful result. It took a little time, but the
22 -- I'm blessed as a result. And all parties involved, I
23 think, have been blessed as a result of it. I didn't think
24 so at the time. But in the end, I did.

25 And so my question is not certainly wanting to go

1 back because of what your experience was but --

2 A. I did not believe it was in the best interest of
3 the child.

4 Q. All right.

5 A. No more fighting.

6 Q. Right.

7 A. And at that time there was another reason. One
8 of most concerning issues of Monet Pincus' decision --
9 initial decision was the indiscretions with the [redacted].
10 So as the years rolled on, because this did take
11 several years -- or nearly several years, this individual,
12 somewhat to a certain extent, through that time period did
13 reform themselves.

14 Q. What I want to now ask -- just a couple questions
15 before I turn this over, if there are questions. As to the
16 temporary order, again I think I know the answer to this.
17 But for the record, did you file a motion to reconsider or
18 alter or amend the temporary order after Judge Pincus
19 issued it?

20 A. The time period had elapsed, unfortunately. See,
21 there is a nice trick that certain attorneys participate
22 in, and certain judges do. There's a certain amount of
23 time typically set for an order to allow it to set, or for
24 to allow to be signed, and then have that document sent
25 back to you. It was very clever on what occurred.

1 Now, whether that was Monet Pincus, or whether
2 that was the opposing attorney, Sandra Parise. I will
3 never know. But the time had elapsed by the time my
4 attorney and myself had received that. There is a certain
5 amount of time that you can request.

6 **Q. Your attorney was who at that time?**

7 A. Jeff Goodwin.

8 **Q. And you're saying that Mr. Goodwin did not catch**
9 **the lapsed date to file a motion to reconsider or --**

10 A. It wasn't -- it wasn't received. It wasn't sent.
11 The order was sat on by the opposing attorney. It was also
12 added to. So regardless of what Monet Pincus may have
13 ordered verbally in that court that day, that was far from
14 what the actual order that was received.

15 **Q. And no disrespect, Mr. Ginter, but that order,**
16 **you have admitted, was affirmed at the end of this**
17 **litigation --**

18 A. No, sir.

19 **Q. -- by another judge.**

20 A. I'm sorry, I mis-poke. Let me clarify the fact.
21 Certain portions of the order. Certain portions. Not the
22 order. Certain portions of the order.

23 **Q. Did custody change from the temporary to the**
24 **final order?**

25 A. No, it did not.

1 **Q. And again, I'm not -- I've been there and done**
2 **that.**

3 A. I'm not necessarily here to whine to you that I
4 lost full custody. I am here to explain very clearly that
5 I walked into a courtroom, and I had a judge hand my
6 [redacted] child over to a person out on a [redacted] --
7 let's stick to the facts. Out on [redacted]. Are any of
8 you criminal attorneys in here? I hope you are. We
9 understand how serious that is. [Redacted] for her own
10 child.

11 **Q. Mr. Ginter, did you enter into an agreement**
12 **regarding [redacted]?**

13 A. If you can explain that. Can you repeat that
14 again?

15 **Q. Did you enter into an agreement regarding**
16 **[redacted]?**

17 A. Yes, sir, I did. And the reason being is because
18 I was guilty. It's what was written. There's nothing to
19 negate what was said at that time, what Monet Pincus had
20 said and what was written, because the transcripts were not
21 ordered at that date. They were not ready. There was no
22 way for me to prove to the judge, that, that had not
23 occurred.

24 **Q. And again, no disrespect. But you were**
25 **represented by an attorney at every turn --**

1 A. That's correct, sir.

2 Q. -- at every event before Judge Pincus, and every
3 other family court judge in this -- in your litigation.

4 A. That's correct, sir.

5 Q. And again, do I agree with all decisions? No.
6 Do you have the funds to appeal? Again, that doesn't --

7 A. Well, that's why we're here. We're here to
8 figure out why does a judge, who just gave prior testimony,
9 state that there are no norms but then turn around and
10 state that there are? Obviously, this judge is not
11 following any set standard in this state.

12 The set standards have been in place for a long
13 while. The set of rules, the standards set by the Supreme
14 Court, this judge obviously does not follow them. She
15 ships children off to other states, possibly.

16 Q. Mr. Ginter, I'm going to nudge you to your
17 experience --

18 A. Sure.

19 Q. -- and your testimony. Is there anything further
20 from your complaint that you would have us know?

21 A. No, sir.

22 Q. Thank you so much.

23 A. Thank you.

24 CHAIRMAN RANKIN: Now, are there questions
25 of Mr. Ginter by the Commission?

1 (Hearing none.)

2 CHAIRMAN RANKIN: Sir, thank you.

3 MR. GINTER: Thank you, sir.

4 CHAIRMAN RANKIN: Judge, again, in the
5 interest of time if you will, come on back up. And again,
6 you're under oath.

7 JUDGE PINCUS: Yes, sir.

8 CHAIRMAN RANKIN: And you have responded to
9 Mr. Ginter's complaint with a written document. Do you
10 have any objection to that document being introduced into
11 the record?

12 JUDGE PINCUS: No, sir.

13 (EXHIBIT NO. 27 - CANDIDATE'S WRITTEN
14 RESPONSE)

15 EXAMINATION BY CHAIRMAN RANKIN:

16 Q. Without reading it verbatim, if you'll give us,
17 again, the information. Summarize it as best you can.
18 Tell us what we need to know, recognizing that it is late
19 and we have kept you all here a long time. We apologize.
20 I don't want to cut you off, but succinctly as you can,
21 tell us what we need to know in response to Mr. Ginter's
22 complaint.

23 A. This was a temporary hearing. The parties were
24 involved in prior litigation, I believe, the year before in
25 family court. If you don't finish your case in 365 days,

1 it can be dismissed. At some point during their prior
2 litigation they had some temporary orders unsuccessfully
3 mediated. It was dismissed.

4 So oftentimes what happens is an attorney will
5 file, which is what happened in this case, a new complaint
6 asking for relief on a temporary basis.

7 So in this particular hearing it was scheduled
8 for fifteen minutes. I spent forty-eight minutes on the
9 record. I did the same thing as I described in the former
10 case, I read the documents and heard from counsel.

11 This was a unique case because there was a
12 guardian at the temporary hearing. In the prior case a
13 guardian had been appointed and had investigated for over a
14 year, and so he appeared at this temporary hearing to be
15 reappointed. And he had done a lengthy investigation, so
16 he was able to present a report to the court -- a verbal
17 report. And he did.

18 My order did not go against what he recommended.
19 I didn't order what I ordered just because he believed it
20 was in the best interest of the children. But
21 nevertheless, it did not oppose the guardian's
22 recommendations.

23 And in essence, I changed [redacted]. I didn't
24 actually change their underlying -- what they were doing
25 [redacted]. [Redacted] -- and again, I had the benefit of

1 the guardian in that -- in that situation.

2 There were several other judges that did hear the
3 matter. There was a second temporary hearing that involved
4 -- even though there was no motion -- somebody asked about
5 that. There was no motion for me to reconsider or to
6 change any errors, if there were any. Nothing -- nothing
7 was filed. The rules allow attorneys to do that, once they
8 receive an order, so I'm not sure what the complaint is
9 there. But Mr. Ginter's attorney had the right to file a
10 motion if he -- if he had wanted to do that.

11 But nevertheless, even though he didn't file a
12 motion to reconsider of my order, it was reviewed several
13 times during the course of his litigation by other
14 independent judges. The second temporary order was even
15 more constricting than mine as far as the [redacted].

16 So in general -- you know, I would say I didn't
17 act unethically. I held the temporary hearing the way that
18 we're charged with doing it under the rules. I did
19 everything open on the record. I read the documents. I
20 issued an order. I heard from the guardian. And never --
21 never did hear on a motion to reconsider.

22 There was an appeal. Mr. Ginter, either him or
23 through his attorney, didn't meet a certain deadline and
24 the appeal was dismissed. So he did appeal Judge Taylor's
25 final order.

1 I'm happy to answer questions that you have. I
2 just -- the other points that I would make are that I -- I
3 didn't act out of any negligence or with emotional urges.
4 I deny the characterization of me as a judge, that Mr.
5 Ginter has made.

6 CHAIRMAN RANKIN: Mr. Safran.

7 EXAMINATION BY MR. SAFRAN:

8 Q. Just quickly. On one point, I just wanted to
9 make sure. As I understood it, you made an oral ruling at
10 the time of the hearing. Is that --

11 A. I did rule from the bench this time, yes, sir.

12 Q. And then you asked for a proposed order.

13 A. I did.

14 Q. And as I understand the process, and I'm sure you
15 follow it as proposed orders are exchanged, so other
16 counsel would get it, correct?

17 A. Yes, sir.

18 Q. And if other counsel had any reason to object to
19 it, they had an opportunity to at least make you aware of
20 any problems they had with the content of the order.

21 A. Yes, sir.

22 Q. And if that didn't occur, the order would
23 ultimately be presented to you for signature, correct?

24 A. That's right.

25 Q. And then once it's done, it's out of your hands,

1 isn't it? It goes to the clerk's office -- the clerk is
2 charged with the responsibility of serving the order,
3 correct?

4 A. No, sir the -- whatever the attorney asks for in
5 the letter submitting the order, whether there's an
6 envelope to send it, or to send it down to the clerk's
7 office, but we -- we get the order back to the attorney
8 that submitted it, either by putting it in their box or
9 after it's filed, returning it to them in a self-addressed
10 envelope.

11 Q. Okay. Well, I'm --

12 A. But, yes, the clerk does that. I don't do that.

13 Q. Right. I'm saying --

14 A. So I sign it and it goes down, yes, sir.

15 Q. Once you sign it, any service is really out of
16 your hands.

17 A. Right. Yes, sir. I'm sorry.

18 Q. And then basically during that process, everybody
19 goes by the same rules; they have a certain amount of time
20 in which to file a motion for reconsideration. And that's
21 all something that's laid out, correct?

22 A. Yes, sir.

23 Q. Thank you.

24 CHAIRMAN RANKIN: Any other questions of
25 Judge Pincus?

1 (Hearing none.)

2 CHAIRMAN RANKIN: Johanna?

3 EXAMINATION BY MS. VALENZUELA:

4 Q. Judge Pincus, I have housekeeping questions for
5 you. These are separate from the complaints that we've
6 been discussing. These are questions that are asked of
7 each candidate at the end of the staff's portion of the
8 public hearing.

9 Judge Pincus, since submitting your letter of
10 intent have you contacted any members of the Commission
11 about your candidacy?

12 A. No, ma'am.

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

16 A. Yes, ma'am.

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

21 A. No, ma'am.

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

24 A. No, ma'am.

25 Q. Are you aware of anyone attempting to intervene

1 in this process on your behalf?

2 A. I am not.

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

6 A. Yes, ma'am.

7 MS. VALENZUELA: Those are all the
8 housekeeping questions.

9 CHAIRMAN RANKIN: Any questions of Judge
10 Pincus?

11 (Hearing none.)

12 CHAIRMAN RANKIN: I want to just touch on a
13 few things, to end it for this portion. We are -- Mr.
14 Younginer and Mr. Ginter, we are -- again, we are -- will
15 be no further testimony from you all. You're welcome to
16 stay. We are about to wrap up, but you all welcome to
17 leave. Thank you all for joining us. You don't have to
18 leave, but again we're done with your portion.

19 Mr. Younginer, you understand that we will -
20 - do you understand how those contacts are going to be
21 about the record?

22 MR. YOUNGINER: Yes, sir.

23 CHAIRMAN RANKIN: Thank you.

24 MR. YOUNGINER: Thank you, sir.

25 CHAIRMAN RANKIN: For this portion of the

1 record, I just want to call out the ballot box survey, of
2 which you had 341 people reply. And you are deemed very --
3 you get high marks. You've heard the good and the bad in
4 terms of the anonymous comments. And you have been rated
5 very highly by the citizens committee, who found you well
6 qualified, and the Bar report as well.

7 So obviously, we're not finished. But in
8 terms of the record that we have as to the evaluative
9 criteria, for the world to know at this point, you have
10 very high marks.

11 JUDGE PINCUS: Thank you for pointing it
12 out.

13 CHAIRMAN RANKIN: So we'll have an
14 opportunity to develop more questions about this later on,
15 but again we are going to recede to gather information
16 about Mr. Younginer's complaint. And we'll be in touch in
17 terms of the time line as how we'll do that and when we
18 will get you back here -- both back here.

19 And that will conclude this portion of the
20 hearing. Let me remind you again, the record is not closed
21 certainly.

22 JUDGE PINCUS: Okay.

23 CHAIRMAN RANKIN: So I would advise you to
24 maintain the same strict adherence to both the letter and
25 the spirit of the ethics laws, the criteria itself, the

1 questions that Ms. Valenzuela has asked you about
2 contacting anyone. And I trust that you're going to do
3 that.

4 JUDGE PINCUS: Yes, sir.

5 CHAIRMAN RANKIN: Unless there are other
6 points, we will recede. Family, we're sorry you all are
7 here as well and leaving so late. Judge, we're sorry for
8 the delay.

9 JUDGE PINCUS: Thank you.

10 CHAIRMAN RANKIN: So with that, we will
11 close in recess.

12 JUDGE PINCUS: Thank you to all the Members.
13 Have a nice night.

14 (Candidate excused.)

15 CHAIRMAN RANKIN: We're going to go into
16 executive session on the motion of Senator Young and
17 Representative Smith.

18 (Off the record at 10:01 p.m.)

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