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PROCEEDINGS

November 29, 2018

Judicial Merit Selection Commission, 2018

REPORTER: Jaime Newton

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARING

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BEFORE: LUKE A. RANKIN, CHAIRMAN

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REPRESENTATIVE G. MURRELL SMITH, JR.

10

SENATOR RONNIE A. SABB

11

SENATOR TOM YOUNG, JR.

12

ROBERT W. HAYES, JR.

13

REPRESENTATIVE CHRIS MURPHY

14

REPRESENTATIVE J. TODD RUTHERFORD

15

MICHAEL HITCHOCK

16

LUCY GREY MCIVER

17

ANDREW N. SAFRAN

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ERIN B. CRAWFORD, CHIEF COUNSEL

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DATE: November 29th, 2018

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TIME: 10:30 a.m.

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LOCATION: Gressette Building

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1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: JAIME D. NEWTON, COURT REPORTER

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Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- ... Indicates trailing off
- [ph] Denotes phonetically written
- [sic] Written as said

1 CHAIRMAN RANKIN: We are back on the record, and just for
2 the record I want to state that during executive
3 session no votes were cast and no decisions were made.
4 We'll now proceed to Judge Randall McGee's screening.
5 Welcome, Judge, good morning.

6 JUDGE MCGEE: Good morning, Mr. Chairman, members.

7 CHAIRMAN RANKIN: Let's start first by having you
8 raise your right hand.

9 JUDGE MCGEE: Yes, sir.

10 THE HONORABLE RANDALL MCGEE, being duly sworn and
11 cautioned to speak the truth, the whole truth and nothing
12 but the truth, testifies as follows:

13 CHAIRMAN RANKIN: You have before you two documents
14 that you have polished up on and hopefully
15 they're ready to go into the record; the PDQ and
16 the sworn statement?

17 JUDGE RANDALL: Yes, sir.

18 CHAIRMAN RANKIN: Any additions that need to be made
19 to those?

20 JUDGE RANDALL: No, sir.

21 CHAIRMAN RANKIN: And you don't object to them being
22 made a part of the record?

23 JUDGE RANDALL: No. These are the same that I
24 submitted. I have no objection at all.

25 (EXHIBIT 1 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL

1 DATA QUESTIONNAIRE OF THE HONORABLE RANDALL E. MCGEE)
2 (EXHIBIT 2 - JUDICIAL MERIT SELECTION COMMISSION SWORN
3 STATEMENT OF THE HONORABLE RANDALL E. MCGEE)

4 CHAIRMAN RANKIN: Right. Hand those to Lindi.

5 They'll go in the record itself. Judge, you're
6 familiar with our evaluative process and
7 investigation that we've conducted. There are
8 nine criteria which include the ballot box
9 survey, thorough study of your application
10 materials, verification of your compliance with
11 state ethics laws, search of newspaper articles
12 in which your name appears, study of past
13 screenings, and check for economic conflicts of
14 interest.

15 JUDGE RANDALL: Yes, sir.

16 CHAIRMAN RANKIN: No affidavits have been filed in
17 opposition to your campaign and no witnesses have
18 decided to be present. The floor is yours if you
19 would like to make brief opening remarks.
20 Otherwise, Ms. Mottel will fire away with
21 questions.

22 JUDGE RANDALL: All right. Well, I appreciate you all
23 having me here today. I appreciate the trust and
24 faith that the General Assembly showed in me when
25 I was elected back in 2013 and I've really

1 enjoyed the job. Hope to continue doing the job.
2 It's been one of the best experiences of my life.
3 I appreciate you giving me the opportunity.

4 CHAIRMAN RANDALL: Great. Great.

5 MS. MOTTEL: Thank you.

6 EXAMINATION BY MS. MOTTEL:

7 **Q: Judge McGee, after serving five years on the**
8 **Family Court bench, why do you want to continue**
9 **serving as a Family Court judge?**

10 A: Well, I said when I ran -- and this is the third
11 time I've run. I ran way back in 2000 for a
12 residency, and then in 2013 for the seat I have
13 now. But I've said each time I just felt like
14 this is the way that I could best do public
15 service. I wanted to be involved in public
16 service. And because of the experiences that I
17 had practicing law in the area of Family Court, I
18 felt like this was probably the best vehicle to
19 do that. I just can't tell you how much I've
20 enjoyed being a judge. It's everything I thought
21 it would be, plus some, and it's just a great,
22 great opportunity to serve. And I feel like I'm
23 -- with the skill set that I have, it's the best
24 place for me to be.

25 **Q: Thank you. Judge McGee, please explain to the**

1 Commission one or two brief accomplishments that
2 you feel you have completed during your tenure,
3 and then a goal you would like to accomplish if
4 reelected.

5 A: Well, as far as accomplishments, I think it's
6 just doing your job. I mean, the Family Court is
7 a tough place. I mean, it's an emotional place.
8 We don't get to do a lot of fun things in Family
9 Court except for maybe adoptions. So it's a
10 tough place to be. But I really try hard to let
11 the litigants and the lawyers know that I care.
12 That I'm worried about a case they have in front
13 of me. I take it very seriously. I want to
14 perform well in doing my job and making sure the
15 case proceeds the correct way. I try to get that
16 across to folks. I would hope that would be my
17 best accomplishment, that I've been able to do
18 that. I really enjoy an aspect of the case of
19 the job that I wasn't as familiar with until I
20 got the job, because I just think most private
21 attorneys aren't very familiar with juvenile
22 matters, but I enjoy being part of the process of
23 juvenile justice. I believe that's a very
24 important thing that we deal with with our state,
25 and I enjoyed having a hand in that process in

1 trying to help young people and be sure that
2 they've become productive citizens.

3 **Q: Thank you. Judge McGee, what do you think your**
4 **reputation is among attorneys that practice**
5 **before you?**

6 A: I hope it's good. I strive very diligently to
7 let attorneys know that I want their cases to
8 proceed correctly. I want to be diligent. I
9 want to be prepared. I want to be courteous. I
10 want to be fair. I want to be impartial. I
11 think it's important also to be consistent. When
12 I first got elected and I trained with Judge
13 Morehead over in Florence he told me, he said one
14 of the most important aspects that you can have
15 to give back to the Bar is to be consistent in
16 your rulings. Now, I understand all cases turn
17 on their own facts, but there's things that
18 happen over and over again, and I think it's fair
19 for the attorneys to know that this is kind of
20 where Judge McGee goes with these. This is kind
21 of how he handles it. This is kind of how he
22 does it. It makes it much easier on everybody to
23 do that. So I hope I have a good reputation as
24 having been that way.

25 MS. MOTTEL: Thank you. The Commission received 324

1 ballot box surveys regarding you with 23
2 additional comments. The ballot box surveys
3 contained the following positive comments.
4 "Tremendous temperament." "Excellent knowledge
5 of the law and cutting edge discovery issues."
6 "Truly impressive watching him deal with high
7 emotion clients and disagreeable lawyers in a
8 fashion where everyone is treated fairly and
9 played by the rules." "Judge McGee is an asset
10 to the Family Court as he is fair, reasoned and
11 has a superb judicial temperament." "He is
12 respectful to all parties and respected in kind.
13 Whenever I appear before Judge McGee I am
14 reminded of the important role we play in our
15 society." It is a pleasure to report to the
16 Commission that there were no negative comments
17 submitted for Judge McGee.

18 **Q: Judge McGee, what would you consider to be the**
19 **most important issue facing the Family Court**
20 **system today?**

21 **A:** Probably docket crunch is how I kind of would
22 describe it. The pressure, I guess, that the
23 agency cases have put on the Family Court docket
24 is tremendous. I think we have enough judges.
25 You all elected a lot of judges in the last few

1 years with the at large -- I think there's eight
2 at large now, me being one of them. I think we
3 probably have the right number of judges now.
4 But distributing the judges where the dockets can
5 be handled efficiently, that's probably something
6 that because of the pressures of the agency cases
7 that is hard to deal with. DSS and DJJ put a lot
8 of docket pressure on the private docket. And
9 that's probably one of the biggest things to deal
10 with to make sure the whole system runs
11 efficiently and smoothly.

12 MS. MOTTEL: Thank you. I would note that the Low
13 Country Citizens Committee reported that Judge
14 McGee was qualified in the criteria of
15 constitutional qualifications, physical health
16 and mental stability. The Committee found him
17 well qualified in the criteria of ethical
18 fitness, professional and academic ability,
19 character, reputation, experience and judicial
20 temperament. Additional comments that were
21 provided by the Committee include A plus. Now I
22 have a few housekeeping issues to address with
23 you.

24 JUDGE MCGEE: Yes, ma'am.

25 **Q: Judge McGee, since submitting your letter of**

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

3 A: No, ma'am.

4 Q: Are you familiar with Section 2-19-70, including
5 the limitations on contacting members of the
6 General Assembly regarding your screening?

7 A: Yes, ma'am.

8 Q: Since submitting your letter of intent, have you
9 sought or received the pledge of any legislature
10 either prior to this date or pending the outcome
11 of your screening?

12 A: No, ma'am.

13 Q: Have you asked any third parties to contact
14 members of the General Assembly on your behalf
15 or are you aware of anyone attempting to
16 intervene in this process on your behalf?

17 A: No, ma'am.

18 Q: Have you reviewed and do you understand the
19 Commission's guidelines on pledging in South
20 Carolina Code Section 2-19-70(e)?

21 A: Yes, ma'am.

22 MS. MOTTEL: I would just note for the record that any
23 concerns raised during the investigation
24 regarding the candidate were incorporated into
25 the questioning of Judge McGee today. And, Mr.

1 Chairman, I have no further questions.

2 CHAIRMAN RANKIN: All right. Questions of the
3 Commission? Senator Young?

4 SENATOR YOUNG: Thank you, Mr. Chairman. Judge McGee,
5 it's great to see you again and I want to just
6 complement you for the Bar comments. They are
7 exceptional.

8 JUDGE MCGEE: Thank you, sir.

9 SENATOR YOUNG: And I think it speaks volumes about
10 the reputation that you've earned from five years
11 on the bench so far.

12 EXAMINATION BY SENATOR YOUNG:

13 **Q: One question I have for you is in the area of**
14 **abuse and neglect cases.**

15 A: Yes, sir.

16 **Q: If you could suggest how that could be improved**
17 **for the children and the families that are in**
18 **that system. What suggestion would you make?**

19 A: Well, from general observation, and I spoke a
20 little bit about the docket pressure that the
21 agency cases put on the weekly dockets that we
22 have in Family Court. There are so many DSS
23 cases, and I'm a judge that travels from circuit
24 to circuit because I'm from little tiny St.
25 Matthews and we have Family Court three days a

1 month in Calhoun County. So every week I'm
2 somewhere else, and I've been in big places, I've
3 been in little places. I've seen how it works in
4 just about every type of court that we have --
5 Family Court that we have from county to county.
6 And it doesn't matter if you're in a big place or
7 a little place. They all have that docket
8 pressure because of the amount of DSS cases.
9 I've been someone that -- and I've talked about
10 it with some other judges, that it could get to
11 the point where maybe we need some sort of
12 centralized DSS type court. A suggestion that I
13 have, you know, batted about in my head would be
14 each circuit have a type of DSS court and that
15 the judges rotate through holding that court.
16 You would know from, you know, two weeks out of
17 the year you are going to be holding nothing but
18 DSS court, and move those cases away from the
19 regular courts where we are holding regular
20 family court cases but have a designated DSS type
21 court for each circuit. I don't know if that's
22 viable or not. It would probably take more DSS
23 caseworkers, it would probably take more DSS
24 attorneys to make that work, because they would
25 be continually trying cases all the time. But it

1 would relieve some of the pressure off of the
2 private docket, because I served as Chief
3 Administrative Judge for the First Circuit and I
4 had to work with DSS to come up with an
5 alternative day to try contested cases because,
6 as most of you probably know who practice, you'll
7 have an afternoon or a full day of DSS cases and,
8 you know, they'll have 25 cases scheduled from a
9 2:00 to five o'clock time period, and you've got
10 to try to come up with agreements and put those
11 on the record for as many of those as you can.
12 But that leaves a significant amount of those
13 that don't settle that have to be tried, and
14 typically that time comes from the time that
15 would have been docketed for private cases. So
16 like in Dorchester I got together with my head
17 DSS lawyer and the guardians head lawyer and we
18 came up with a system where we had a designated
19 day once a week where there was nothing but DSS
20 contested cases on that day. And it was just one
21 day a month. But it helped alleviate some of the
22 pressure where instead of where we'd show up on
23 Thursday with the regular cases and one of them
24 can't settle because it needs a two day trial,
25 we're having to just pick two days out of the

1 trial docket -- the regular trial docket. We
2 came up with a date that we would put that on for
3 that day. And you put more than one case on for
4 that day and hopefully you get rid of some of
5 those. And it did help with the docket pressure
6 there some, but it didn't completely relieve it.
7 If you had a system where you could just move
8 those cases out of the regular county court, the
9 Family Court, into a centralized location, then I
10 think that might could help. But obviously it
11 would be a new way of doing things.

12 **Q: You've been complemented in these Bar comments,**
13 **numerous comments complementing you on your**
14 **demeanor and your temperament. Do you make a**
15 **conscience effort to exercise a calm demeanor**
16 **and a good temperament in the courtroom?**

17 **A:** Yes, sir. I mean, I just think it's crucial. I
18 know as I practice law for 20 years the judges
19 that I thought were most effective were the
20 judges that were calm and in control. That's how
21 I wanted to be. It's more a matter of respect
22 than anything else. I want the litigants to know
23 that I respect the cases in front of me. I
24 respect them. I want the lawyers to know the
25 same thing. Because those litigants, I mean,

1 it's one of the most important things that's ever
2 going to happen in their life that case in front
3 of me. Now, for a lawyer and for me it's just
4 another case on a docket. But for those
5 litigants it's not that way, and it's important
6 for them to see, I think, that I believe it's
7 important, and one way you get that across is by
8 having compassion and keeping an even keel. You
9 can keep an even keel and stay in control of the
10 courtroom. I mean, it's an adversarial
11 proceeding, there's no question, and I've had
12 times where I've had to get firm. But I think
13 I'm versed enough in how to keep a calm demeanor
14 and to keep control of the courtroom without it
15 being a problem.

16 SENATOR YOUNG: Thank you, sir.

17 JUDGE MCGEE: Thank you.

18 CHAIRMAN RANKIN: Representative Smith.

19 REPRESENTATIVE SMITH: Thank you, Mr. Chairman. Judge
20 McGee, I just want to followup with what Senator
21 Young was saying with looked through your ballot
22 box surveys, looked through your JMQ interviews
23 and evaluations and your Citizens Committee and
24 they're all excellent.

25 JUDGE MCGEE: Thank you.

1 REPRESENTATIVE SMITH: So I just wanted to thank you.
2 I don't know what -- there's two Family Court
3 judges named McGee and both of you are competing
4 for being the nicest guy in Family Court, you
5 know, and it's unusual to see comments -- you
6 know, one of the other Judge McGee's comments was
7 he's too nice. And then I look at your comments
8 and he's one of the nicest judges in the court.
9 And, you know, you're like me. You're a couple
10 years head of me in the practice of law and we've
11 seen judges who have what I would call old
12 school, and you knew when you got out of line you
13 heard it, and you know what's intimidating is in
14 practicing, to have a courtroom where someone
15 actually goes through the trouble to say great
16 judge, reads the file before the hearing. So you
17 come into the courtroom, you're prepared, and
18 then you're tactful, compassionate and courteous
19 to litigants and attorneys. So when we go
20 through these comments, we see everything from
21 the worst to the best and everything in between.
22 And I just want to tell you, you know, it's
23 obvious in your first years on the bench, looking
24 at -- you're well qualified. It's 98 percent of
25 all the people who rated you state you are well

1 qualified in every aspect of what you do. So I
2 thank you, sir, for what you do. You're an asset
3 to the bench and the Family Court. I encourage
4 you to keep up the good work, and I encourage you
5 to continue to maintain that type of courtroom
6 environment because it represents the judiciary
7 so well to the public. And all of us attorneys
8 know, but also when people from the public come
9 inside and find the courtroom as inviting and
10 compassionate and prepared as what you're having
11 then you make all of us look good as attorneys in
12 this state. So thank you.

13 MR. MCGEE: Well, thank you. And it's very humbling
14 to hear those comments and I promise you, if you
15 allow me to keep doing the job, I'm going to try
16 to keep working the same way.

17 CHAIRMAN RANKIN: All right. Any other comments or
18 questions? Judge, I want to commend you as well.
19 And on every objective criteria that we have --
20 that, again, arguably is not objective. But
21 again, the system that we have in place --

22 JUDGE MCGEE: Yes.

23 CHAIRMAN RANKIN: -- that solicits information from
24 folks who have the ability to pass instead of
25 actually filling out a survey and going the

1 further step of writing comments about you and
2 others, good or bad, and then the interview
3 process that you had with the Citizens Committee,
4 again, on all fronts you are firing on all
5 cylinders. There are numerous attributes which
6 you've heard in your favor. And again, I've not
7 read an A plus comment from a Citizen Committee
8 before, you get that A plus. So whatever hard
9 class you had in college or high school, if that
10 teacher's still around, go take them that A plus
11 and show them. That B you got was not deserved.
12 You should have gotten an A plus. Last question.

13 EXAMINATION BY CHAIRMAN RANKIN:

14 **Q: Beyond this process it's got to be heartening to**
15 **be affirmed by the Appellate Courts, the Supreme**
16 **or the Court of Appeals, and in here you list**
17 **one case that involved a multi-month, at least**
18 **by the calendar, case and numerable issues. The**
19 **Menefee, M-e-n-e-f --**

20 A: Menefee.

21 **Q: -- double e case.**

22 A: Yes, sir.

23 **Q: Nine different issues raised on appeal. You**
24 **were affirmed on all fronts?**

25 A: Yes, sir.

1 CHAIRMAN RANKIN: So kudos to you. You're not going
2 to always get it right.

3 JUDGE MCGEE: No, sir. I understand that.

4 CHAIRMAN RANKIN: But yet another recent test with
5 another A plus.

6 J

JUDGE MCGEE: Well, thank you.

7 CHAIRMAN RANKIN: So Judge, we appreciate your
8 continued willingness to serve in this capacity
9 and represent folks who -- and litigate, decide
10 the hard task of being judge and jury.

11 Effectively the Solomon of our courts in Family
12 Court. So you wear your robe lightly and well
13 and we commend you for that.

14 JUDGE MCGEE: Thank you.

15 CHAIRMAN RANKIN: Judge, now, again unless there are
16 other comments or questions, this will conclude
17 this portion of our screening process. You are
18 aware again of our evaluative criteria. We
19 talked about it at the outset. One of which is
20 the compliance with the state ethics laws which
21 we deem very serious. Any violation of either
22 the letter or the spirit of the law would be
23 deserving of potential consideration by us having
24 you come back to answer questions of any
25 violation on that. We don't expect that's going

1 to be the case --

2 JUDGE MCGEE: Yes.

3 CHAIRMAN RANKIN: -- but you're aware of that,
4 correct?

5 JUDGE MCGEE: Yes, sir.

6 CHAIRMAN RANKIN: The record will not close until all
7 matters are finished. And again, until that
8 time, be aware that that exists and our right to
9 call you back.

10 JUDGE MCGEE: Yes, sir.

11 CHAIRMAN RANKIN: With that, Judge, we're finished. And
12 again, thank you for being here with us this morning
13 and thank you for your patience this morning.

14 JUDGE MCGEE: All right. Thank you.

15 CHAIRMAN RANKIN: Now this morning's hearing is
16 concluded.

17 JUDGE MCGEE: Thank you so much. I appreciate all of
18 your time.

19 (Candidate excused.)

20 CHAIRMAN RANKIN: Judge, welcome.

21 JUDGE PHILLIPS: Thank you.

22 CHAIRMAN RANKIN: Let's start first by having you
23 raise your right hand.

24 THE HONORABLE DAVID EARL PHILLIPS, being duly
25 sworn and cautioned to speak the truth, the whole truth and

1 nothing but the truth, testifies as follows:

2 CHAIRMAN RANKING: Judge David Earl Phillips?

3 JUDGE PHILLIPS: Yes, sir.

4 CHAIRMAN RANKIN: You've got before you two documents
5 that you have finished up and I want to make sure
6 that no issues need to be made with those.

7 JUDGE PHILLIPS: I'm not aware of any additions that
8 would need to be made at this time.

9 CHAIRMAN RANKIN: You don't object to those being made
10 a part of the record of your sworn testimony?

11 JUDGE PHILLIPS: No, sir. No objection.

12 (EXHIBIT 3 - JUDICIAL MERIT SELECTION COMMISSION

13 PERSONAL DATA QUESTIONNAIRE FOR THE HONORABLE DAVID EARL
14 PHILLIPS))

15 (EXHIBIT 4 - JUDICIAL MERIT SELECTION COMMISSION SWORN
16 STATEMENT OF THE HONORABLE DAVID EARL PHILLIPS)

17 CHAIRMAN RANKIN: If you'll hand those to Lindi, we'll
18 make those a part of the record. Judge, you're
19 familiar with our process and the nine evaluative
20 criteria that the Judicial Merit Selection
21 Commission looks at as we investigate your
22 candidacy. That includes a ballot box survey, a
23 study of your application materials and
24 verification of compliance with state ethics
25 laws, search of newspaper articles in which your

1 name appears, study of past screenings, and a
2 check for economic conflicts of interest. No one
3 has filed an affidavit in opposition to your
4 continued service for another term and no one has
5 desired to be present to testify for you or
6 against you. So the floor is yours to make brief
7 opening comments if you like, or jump right in
8 with answering questions of Mr. Triplett and the
9 other members.

10 JUDGE PHILLIPS: Thank you, Mr. Chairman. If I may, I
11 would just like to thank the members of this
12 Commission for the hard work that you all put
13 into this process. I've seen the agenda and I
14 know how hard you've been working for the two-
15 week period of time, and really probably a little
16 longer than that. And I'm also aware that you
17 were here very late last night. So on behalf of
18 me and the other citizens that I am familiar
19 enough with to know how good our judiciary is I
20 thank you for your work to make sure that we have
21 a qualified and independent judiciary. I would
22 also, if I may, state that my wife would have
23 liked to have been here today. She's been
24 suffering from some upper back pain that has been
25 causing her some significant problems. She has a

1 doctor's appointment today back home, otherwise
2 she would have been here with me today.

3 CHAIRMAN RANKIN: Very well. Best face of the
4 Phillips family is not before us today. Is that
5 what you're saying?

6 JUDGE PHILLIPS: That is by far the truth.

7 CHAIRMAN RANKIN: All right. Thank you.

8 EXAMINATION BY MR. TRIPLETT:

9 **Q: All right. Judge Phillips, after serving for**
10 **five years on the Family Court, why do you want**
11 **to continue serving as a Family Court judge?**

12 **A:** My five years has confirmed what I hoped would be
13 true when I ran the first time, and then the
14 second time which I was successful in 2013, and
15 that is that the Family Court really gives you an
16 opportunity to make a difference in the lives of
17 the people and the families of this state. I've
18 seen it firsthand in the hearings that I've held.
19 If I can share an example, I would share one
20 example from a hearing that I held during a very
21 difficult week in Greenville County. I had a
22 lengthy trial that was very contested. It was
23 tried over the course of three days, and then the
24 final day -- that was tried on a Tuesday,
25 Wednesday and Thursday. And then on Friday we

1 had an uncontested docket for the most part, and
2 one of the cases was adoption case. And this is
3 just an example of the kind of reward that you
4 get for the hard work that you put into being a
5 Family Court judge. But I had a wonderful family
6 who was adopting a young child. And they already
7 had a son of their own who was about five and the
8 child they were adopting was about three. At the
9 conclusion of the hearing I granted the adoption
10 and they asked if I would come around for a
11 photographic with the family. And most of the
12 judges I know -- in fact all of the judges I know
13 enjoy that opportunity because it's such a nice
14 time. The little boy who was getting a baby
15 brother out of this process was hiding behind the
16 pants leg of his father, and the father said, do
17 you want to say something to the judge. Well, he
18 came out from around his father -- behind his
19 father and grabbed me around the waist and hugged
20 me like I've never been hugged by any child other
21 than one of my own. And he was so excited that
22 when we took the picture he reached over and
23 grabbed me around the neck while his father was
24 holding him and hugged me again. So, you know,
25 it's just one of those things that it drove home

1 the point that all the hard work that we put in
2 really makes a difference to the lives of the
3 families that we touch. I mean, you have the
4 three-year-old little child who's getting a
5 wonderful family, you have a slightly older child
6 who's getting a little brother, and a family
7 that's never going to be the same again. And I
8 just really thank you all for the opportunity
9 that you've given me to serve in that capacity
10 over the past five and a half years, and I hope
11 that you'll give me the opportunity to continue
12 serving in that capacity.

13 **Q: Judge, thank you for sharing. Would you please**
14 **explain one or two brief accomplishments that**
15 **you feel like you've completed during your**
16 **tenure, and then a goal you'd like to accomplish**
17 **if reelected?**

18 **A:** I think one of the goals I would like to
19 accomplish -- if I could start backwards and
20 hopefully remember the first part of the question
21 we'll get there. But one of the things I would
22 like to accomplish is I've only served as chief
23 judge for administrative purposes one time, one
24 year during my first term. I hope that now that
25 I have a little more knowledge of how that role

1 is conducted, that I'll be able to implement some
2 more changes to help make the docket more
3 efficient and to make the court operate a little
4 more smoothly. I think that one of the things
5 that I have accomplished -- do I need to take a
6 break? I apologize.

7 CHAIRMAN RANKIN: Pay no attention to the man behind
8 the wet cloth.

9 A: Okay. I think I've accomplished, you know, a
10 number of things. One, I have been very
11 efficient in my handling of the docket. I've
12 improved greatly in my handling of cases and in
13 my ability to, I think, keep the court operating
14 efficiently as much as I can. I know we all get
15 behind, but I've gotten to where I've learned how
16 to handle that. I've also been able to
17 participate in two CLEs as a presenter during the
18 course of my first term, and I think that's been
19 very beneficial to the Bar. At least one of
20 those was just the members of the Tenth Circuit
21 Bar, and I think we really made an impact there
22 and helped them understand a little better,
23 especially the younger lawyers, about what to
24 expect and what we would like to see and how they
25 can improve their practice.

1 Q: Judge Phillips, what do you think your
2 reputation is among attorneys that practice
3 before you, as well as court personnel?

4 A: I believe my reputation is that I am firm but I'm
5 fair, that I am friendly, that I am polite and
6 courteous. But that, you know, when the time
7 comes -- the word I'm looking for is
8 professional. I mean, we handle court with a
9 degree of professionalism, and I think that's the
10 reputation that I have.

11 Q: Judge Phillips, the Commission received 266
12 ballot box surveys regarding you, with 13
13 additional comments only one with any concern.
14 The positive comments include the following.
15 First, "He takes matters seriously. Pleasant to
16 argue before. Unbiased and fair." Second,
17 "Judge Phillips is an outstanding judge, he has
18 a great temperament, he has a great work ethic,
19 he is smart, and he is an asset to the Family
20 Court bench. He is one of the best judges in
21 the state." And lastly, "Judge Phillips is one
22 of my favorite judges before which to appear.
23 He has an excellent courtroom demeanor and
24 issues fair and objective rulings from the
25 bench. He's one of the bright lights among our

1 **younger judges." The one concern expressed was**
2 **that "Judge Phillips is reluctant to rule." How**
3 **would you address that concern?**

4 A: I deny that. Obviously I don't know the context
5 of why that was shared, but I deny that. I would
6 also point out that I think it's out of line with
7 the other comments that were provided. Ninety-
8 nine -- I wouldn't say 99, but I would say well
9 in excess of 95 percent of the time I rule from
10 the bench in the hearings that I have. I take
11 things under advisement only when they're
12 extremely complicated or I need to do some
13 additional research, which is not very often.
14 And I do that when it's appropriate to do so.
15 But otherwise, I try to rule while the parties
16 are in the courtroom so that I can tell them what
17 the decision is and they hear me say it and
18 there's no question about what the ruling is
19 going to be.

20 Q: **Thank you, Judge Phillips. There are a few**
21 **housekeeping issues to address. Since**
22 **submitting your letter of intent, have you**
23 **contacted any members of Commission about**
24 **your candidacy?**

25 A: No.

1 Q: Are you familiar with section 2-19-70, including
2 the limitations on contacting members of the
3 General Assembly regarding your screening?

4 A: Yes, sir.

5 Q: Since submitting your letter of intent, have you
6 sought or received the pledge of any legislator
7 either prior to this date or pending the outcome
8 of your screening?

9 A: No, sir.

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

14 A: No, sir.

15 Q: Have you reviewed and do you understand the
16 Commission's guidelines on pledging in South
17 Carolina Code 2-19-70 subsection (e)?

18 A: Yes, sir.

19 MR. TRIPLETT: The Upstate Citizens Committee found
20 that Judge Phillips was well qualified in the
21 evaluative criteria of ethical fitness,
22 professional and academic ability, character,
23 reputation, experience and judicial temperament,
24 and qualified in the remaining evaluative
25 criteria of constitutional qualifications,

1 physical health and mental stability. I would
2 just note for the record that any concerns raised
3 during the investigation regarding the candidate
4 were incorporated into the questioning of the
5 candidate today. And with that, Mr. Chairman, I
6 have no further questions.

7 MR. CHAIRMAN: All right. Senator Young.

8 SENATOR YOUNG: Thank you, Mr. Chairman.

9 EXAMINATION BY SENATOR YOUNG:

10 Q: Judge Phillips, thank you for your interest in
11 continuing your service to our state. One of
12 the questions I have for you is in the area of
13 abuse and neglect cases.

14 A: Yes, sir.

15 Q: You've presided over a number of abuse and
16 neglect cases obviously from being on the Family
17 Court for a while, and one of the questions I
18 have for you is if you could recommend changes
19 to how those cases are handled in the Family
20 Court system to improve that for the children
21 and the families involved, what would those
22 changes be?

23 A: Thank you, Senator Young. I have given that some
24 thought as I anticipated that I may be asked a
25 question in that regard today. Unfortunately, I

1 can tell you that every time I come up with an
2 idea I come up with a reason why it is not
3 workable or has problems. One of the things I
4 think that we suffer with is a lack of court time
5 in some counties. Some of the smaller counties
6 that have fewer terms of court. I think they
7 have a disproportionate -- some of those counties
8 have a disproportionate number of abuse and
9 neglect -- new abuse and neglect matters that
10 need to be heard and they don't have the adequate
11 court time to handle it. I had thought about
12 maybe having weeks of court where one judge heard
13 all abuse and neglect cases. The problem I came
14 up with in that regard is that we rely so heavily
15 now on contract attorneys to defend parents in
16 those cases that they are often in other
17 counties. In the Upstate, I know in Greenville,
18 Anderson, Pickens, Oconee and Spartanburg we use
19 a number of the same lawyers to defend the
20 parents in a lot of these cases where they're
21 entitled to appointed counsel. So it makes it
22 very difficult to schedule matters when they have
23 to be in other places. I've not come up with a
24 good answer and I hate to be -- I hate to say
25 that. I wish I could come up with an answer. I

1 would be happy to serve in any capacity on any
2 kind of body to study that or to look at that if
3 I were called upon to do so. I feel very
4 strongly that that is a system that can be
5 improved if the right minds get together and
6 really do some diligent work on it.

7 **Q: Sounds like what you're saying is though that**
8 **you think that there needs to be more time in**
9 **the Family Court devoted to the DSS docket.**

10 A: I do think that is true.

11 **Q: Especially in the smaller counties.**

12 A: I would say so. I know that in Oconee County,
13 for instance, which is the other county with
14 Anderson, which is the circuit that I'm from,
15 Oconee County is a smaller county and they have
16 far fewer terms of court, but they have a pretty
17 significant number of DSS cases in comparison
18 with the number of terms of court that they have
19 there. They regularly ask for more time and we
20 regularly give it to them when we can. Even in
21 Anderson County where we have a good many more
22 terms of court than Oconee we regularly grant DSS
23 additional docket time when we're able to do so
24 because they need it.

25 **Q: One final question. The Bar comments were very**

1 complementary about your temperament and your
2 demeanor. Do you make a conscious effort to
3 exercise an excellent temperament and calm
4 demeanor on the bench?

5 A: I think it's partly who I am, and I have God and
6 my parents to thank for that. I think they set a
7 good example, and I'm somewhat that way by
8 nature. But there are times when I do have to
9 make a much more conscious effort to be mindful
10 that, you know, when things get a little elevated
11 in the courtroom, when the tensions rise a little
12 bit, that I have to assert myself, but to do so
13 in a manner that's professional and courteous to
14 everyone. And I do think about it. It's not
15 something that just all the time happens
16 naturally.

17 SENATOR YOUNG: Thank you.

18 JUDGE PHILLIPS: Yes, sir.

19 CHAIRMAN RANKIN: Representative Smith.

20 REPRESENTATIVE SMITH: Thank you, Mr. Chairman. Judge
21 Phillips, just follow along with what Senator
22 Young just asked you about and your demeanor and
23 the way you handle your courtroom. We obviously
24 have a process to which we go through. We
25 received the Citizens Committee's information and

1 we received information from the Bar from their
2 Judicial Evaluation Committee, and then we also
3 look at the ballot boxes. And so, in that
4 regard, when I look at this, I think it's
5 important that we have discussions with judges on
6 how they're doing among their peers and the
7 committees that evaluate them, and I'm extremely
8 impressed with how your evaluations are. You're
9 found well qualified in every aspect that you
10 could be -- well qualified by the Citizens
11 Committee and by the Judicial -- we call it JQC,
12 isn't it? Yeah, whatever their acronym is. We
13 always get it mixed up. We've got too many
14 acronyms up here. But more importantly is your
15 ballot box surveys. And I think you may be one
16 of the first candidates I've seen up here for
17 someone -- you always make an enemy. I don't
18 know how you go into Family Court and you can't
19 make an enemy among attorneys, but you have
20 succeeded in not making any enemies, because I
21 don't see one person that has qualified on any of
22 the evaluative criteria to the ballot box that
23 says you're unqualified. And you ought to take
24 that as an affirmation of the job you're doing.
25 I know you were recently elected. You're not --

1 what you been, five years? Is that what I heard?

2 JUDGE PHILLIPS: Yes, sir. Yes, sir.

3 MR. HAYES: But, you know, that's enough time to
4 accumulate at least one enemy. And so, you know,
5 today is the day we get judges up here -- sitting
6 judges who we are hearing how their biggest
7 complaint about you, you and the one that
8 preceded you, is you all are too nice. And so, I
9 want to commend you on that. You know, when you
10 zip up that robe, you not only represent yourself
11 but you represent the judiciary and the best of
12 what we have in the Bar. And so, I appreciate
13 when candidates like you, we have -- you know, we
14 get these things and have candidates who have bad
15 marks from these committees and from the ballot
16 box, and then we have people like you who have
17 nothing but glowing evaluations. And I think
18 it's important that we have a discussion on all
19 of these. Those who have bad evaluations and
20 those who have great evaluations. So my message
21 to you is keep up the good work. You're doing it
22 right. I hope you continue with your enthusiasm
23 and the way you handle your courtroom, ten, 20
24 years from now. I hope you stay on the bench,
25 because you represent what's right with attorneys

1 in South Carolina and I appreciate it.

2 JUDGE PHILLIPS: I very much appreciate that. I'm
3 humbled by that expression, and also by the
4 responses that the Bar provided.

5 CHAIRMAN RANKIN: Mr. Safran.

6 MR. SAFRAN: Just briefly I think I want to echo those
7 comments because, again, you know, we've sat
8 through a number of these hearings, and as
9 Representative Smith, who I referred to as
10 Senator Smith last night, basically --

11 REPRESENTATIVE SMITH: I did say don't you give me that
12 demotion.

13 MR. SAFRAN: Yeah, he doesn't want that demotion.

14 SENATOR SABB: I would beg to differ.

15 MR. SAFRAN: What I really think needs to be said is
16 that it's atypical for somebody to come in, you
17 know, after this length of time, five years,
18 where people have had the opportunity to kind of
19 go around a few times and see you enough to be
20 able to form a judgment, but not be able to pick
21 something they didn't like about it. And you're
22 looking at the other ones, and we've looked at a
23 bunch, the norm, even in some of the better
24 situations, if somebody finds a reason, and to
25 see that people here haven't, is really a

1 testament to your embracing the obligation, the
2 duty, as well as the honor of the job and really
3 taking it to the level we all expect when you got
4 elected. So I do commend you on it, and I just
5 hope that things continue to go in the right way
6 for you.

7 JUDGE PHILLIPS: I appreciate that. Thank you very
8 much, Mr. Safran.

9 CHAIRMAN RANKIN: Senator Hayes.

10 EXAMINATION BY MR. HAYES:

11 Q: **Very briefly. I don't want to pile on too much**
12 **and get a big head up here. But I think you**
13 **certainly have done a great job. Appreciate**
14 **your willingness to continue to serve. But one**
15 **thing we've noticed, and I think that you kind**
16 **of represented a good age bracket of people that**
17 **either have the experience before you became a**
18 **judge, which you're now a judge. We're seeing**
19 **somewhat of a lack of good candidates coming out**
20 **for judgeships. And what could the state of**
21 **South Carolina do that we're not doing to maybe**
22 **encourage, you know, good strong candidates to**
23 **come out to be a judge?**

24 A: Mr. Hayes, actually I don't know a good answer to
25 that. It's not a question that I anticipated,

1 and I don't know what could be done. I think we
2 are drawing out good candidates. I think that
3 this body is working diligently to identify who
4 they are among those who have offered for the
5 positions, and I don't know anything other than
6 just continue to screen them as you have been
7 doing and identify who those people are. And I'm
8 sure there are many more success stories out
9 there than there are otherwise, and I think that
10 -- I can't recommend any changes from any kind of
11 educated standpoint on what to do. But I think
12 that this body and the General Assembly in
13 general does a very good job in screening the
14 candidates and identifying who the good
15 candidates would be.

16 MR. HAYES: Thank you.

17 JUDGE PHILLIPS: Thank you, Mr. Hayes.

18 CHAIRMAN RANKIN: Anyone else?

19 EXAMINATION BY CHAIRMAN RANKIN:

20 **Q: Judge, I, too, want to pile on, because you**
21 **don't hear it enough and you've not been before**
22 **this Commission in how many years?**

23 **A:** Five and a half -- six years. Six years, I
24 believe.

25 **Q: Six years. To hear the good and call out the**

1 good when -- not just the expressions, the
2 demeanor, the personal sense of pleasure and
3 humility that you're expressing that we're
4 seeing and hearing, but also the passion that
5 you have for this job, it's a testament to you.
6 You're young. And I've looked back on your five
7 significant cases that you've listed, and
8 perhaps there's some other decisions that might
9 not be as positive. But if I'm reading this
10 correctly, every appealed case that you've
11 listed you were affirmed by the Court of Appeals
12 of the Supreme Court; is that right?

13 A: Out of the ones I've listed.

14 Q: Right.

15 A: Yes, sir.

16 Q: We don't brag about our losses. So you don't
17 have to tell me about your losses.

18 A: I think the ones reversed on an unpublished
19 opinion on a case.

20 Q: It doesn't count. If they didn't publish it, it
21 doesn't count. But particularly to be the first
22 one that you conducted as an out of the chute
23 new judge, Sweeney v. Sweeney, and that you
24 made, as the Court of Appeals found, extensive
25 findings in your order. They were so proud of

1 what you'd done that they published that
2 opinion. So that, again, it a testament. And
3 then moving forward out of your top five, let me
4 just echo back to Senator Young's questions in
5 the sense of this temperament, in your efforts
6 to maintain and do now six years, five years
7 later what you apparently were doing early on.
8 How have you maintained that, and is it a
9 struggle with the crush of the roster and the
10 affidavits that pile up before you with 15
11 minutes for you to define between yes, no,
12 whatever, how do you maintain an even steady
13 keel?

14 A: Well, there are days that it's easier than
15 others. Obviously, I think the days when you get
16 really busy and you feel like you're working from
17 behind on the clock a little bit it can be more
18 difficult. I pray every morning before I even
19 get to the courthouse that God will give me the
20 wisdom to do what I need to do, that he would
21 help me maintain that sense of demeanor and keep
22 the promises that I made to this body and make
23 good decisions. I also would have to say that
24 I've had excellent judges as role models in the
25 Tenth Circuit. Tommy Edwards who is recently --

1 he's going to retire at the end of June, I
2 believe, is one of my role models, and I've
3 almost always seen him be very appropriate and
4 professional in his demeanor. That's been an
5 example for me. Barry Noble, who served before
6 him, and a number of others have been excellent
7 examples to me. And sometimes I just, you know,
8 will pause in the middle of something and take a
9 breath and it seems to help, you know, when
10 things get a little heated. I've even had
11 someone give me the advice of take a short break
12 and let everybody calm down before you continue
13 on with the hearing. And it's amazing how much
14 that works. I mean, it just gives everybody a
15 chance to kind of settle down a little bit. And
16 then, you know, where appropriate I've had to
17 caution attorneys and remind them of their oaths
18 of civility. I do it in a way that's not
19 embarrassing to them and just remind them that
20 they represent the Bar to their clients and to
21 the people in the courtroom, so -- I've not had
22 to do that very much. It's a compliment to our
23 Bar that that really doesn't go on very often.

24 **Q: So the other reason that your wife is not here**
25 **is so that she would not make some visual**

1 reaction to how do you well maintain your sense
2 of even keel. She might have a different answer
3 on that.

4 A: And if she heard all these positive things she
5 would quickly bring me back down to earth when we
6 leave, I'm sure.

7 Q: There'll be a transcript. We can send it to you
8 framed with Christmas wrapping, if you like.

9 A: I might take that.

10 Q: Let me shift to the process itself. And again,
11 everyone we know of, and nine evaluative
12 criteria and how we get here and how we vet
13 candidates and sitting judges. Walk me through,
14 for example, your Citizens Committee --
15 interview with the Upstate Citizens Committee.

16 A: I did. Yes, sir.

17 Q: And tell me about that. Is it a five minute
18 deal? Is it a cup of coffee and a pat on the
19 back?

20 A: Our Citizens Committee spent a little bit of time
21 with us, but some of us who they'd not received
22 anything but positive remarks about talked to us
23 a little bit. The Bar evaluation, the Bar
24 Judicial Qualifications Committee, was a little
25 bit lengthier process. I was, again, fortunate

1 that in their surveys and their investigation,
2 there was nothing much of concern and everything
3 was very positive, I think, from their responses
4 as well. In my prior -- I guess prior -- well,
5 I'm trying to think of how to say this when I
6 went through the process in 2012 and went through
7 it again before that in 2008. It was -- you
8 know, obviously they were trying to find out if I
9 was one of the good candidates, as Mr. Hayes was
10 referring to, and they were trying to identify.
11 They didn't know much about me. I didn't have a
12 track record to set before them, and it was a
13 pretty detailed process where the questions were
14 asked, all these interviews, and they really did
15 dig in and try to find out what I was all about
16 and what I would do as I served on the bench.

17 **Q: And in terms of those interviews that you've**
18 **been a part of -- and again, this is the two**
19 **Citizens Committees, the Bar evaluation, the JQC**
20 **we call it, and the ballot box survey. Before**
21 **becoming a judge, did you participate in**
22 **responses on candidates for --**

23 **A: I did. I did.**

24 **Q: Do you think that that is a valuable tool that**
25 **we should give some weight to?**

1 A: I think it is a valuable tool. And I recognize
2 that, you know, one of the weaknesses of it is
3 that some of the responses that are negative are
4 anonymous and it's difficult for the candidate to
5 respond to it. However, this body, I believe has
6 the discernment and the wisdom to look at the
7 overall picture of all the evidence, including
8 the ballot box surveys, and use that as a tool to
9 identify candidates where there really are
10 concerns as opposed to candidates that would be a
11 good addition to the bench. So I don't have a
12 problem at all that. It could be a valuable tool
13 to this body. I think if it were anything other
14 than anonymous, you probably wouldn't receive as
15 many responses as you do.

16 Q: **They're good on you apparently, right?**

17 A: Good for me. Good for me, as it turns out. But
18 I think you get more responses from the ballot
19 box survey. And then if there were an
20 overwhelming number of negative responses, then I
21 certainly think this body would know what to do
22 and what to look at. So I think it would be a
23 good tool. I think it is a good tool.

24 Q: **I want to commend you, before I shift to Mr.**
25 **Safran, on all three; both the Upstate Citizens**

1 Committee has found you well qualified, and the
2 JQC, the Bar, well qualified in every aspect
3 that they can, and likewise on the ballot box
4 survey. Perhaps the Citizens Committee was
5 spending as much time with you because they were
6 wanting to find out if maybe you've got some
7 temper, thinking that you would do something
8 that crosses -- were there any Carolina fans on
9 that Citizens Committee?

10 A: There were some Carolina fans on that committee,
11 at least ---

12 Q: And you didn't offend them? I mean, you didn't
13 say anything?

14 A: I didn't wear an orange tie to the meeting at
15 all, nor did I bring up sports.

16 CHAIRMAN RANKIN: Very good. Mr. Safran.

17 EXAMINATION BY MR. SAFRAN:

18 Q: Just very quickly, I hope, just on two things.
19 Just kind of take a step from where the Chairman
20 was discussing. But for the Citizens Committee
21 and the ballot boxes, I mean, is there really
22 any other focused way that we as a group have to
23 kind of understand how those who are going in
24 front of you and who are more or less going to
25 ultimately become the subject of your rulings,

1 **how they feel about how you're doing? Is there**
2 **any other way we can do it?**

3 A: I can't think of any other way. And I think
4 that's where when you gather that evidence
5 through the ballot box surveys, then what you all
6 do with it is to be left to your wisdom and
7 discretion. I mean, this is a body of
8 experienced lawyers and legislatures, and I know
9 that you all know how to evaluate evidence and I
10 have no doubts about that. I have faith in the
11 process.

12 Q: **Well, and just again, when you were more or less**
13 **appearing with the Citizens Committee, did you**
14 **get any sense whatsoever that anybody had an**
15 **agenda there?**

16 A: I did not.

17 Q: I mean, did anybody say or do anything that led
18 you to believe that they were trying to cause
19 you to fail or to kind of push your buttons or
20 do anything other than just get, you know, an
21 honest and as full as possible appraisal of kind
22 of how you're doing?

23 A: I didn't have any experience like that at all.
24 In fact, every experience I've had, even going
25 back to 2008, 2012 when I ran previously, has

1 been very professional when I interacted with
2 these screening bodies, and I've not had any
3 problems. I'd also complement Mr. Triplett who
4 was my screening attorney and all his help has
5 been very professional. The attorneys that I had
6 in my prior screenings were also very
7 professional. I never got the sense that anyone
8 had an agenda, and I still don't think that
9 that's the case.

10 **Q:** **And, I guess, basically the converse of all that**
11 **would be that if they didn't have any of those**
12 **things to at least look at as a factor, and we'd**
13 **literally just have to be looking at street talk**
14 **basically.**

15 **A:** Yes, sir.

16 **Q:** **And I think, from what I'm understanding is,**
17 **that's probably going to be even a lower level**
18 **of reliability; is that fair?**

19 **A:** I would agree. Yeah, I think that's fair.

20 **Q:** **Let me ask you one final thing, and I've asked**
21 **this several times and it's probably because of**
22 **my lack of experience in Family Court. But I've**
23 **gotten some pretty differing opinions from the**
24 **judges. And not even opinions, but basically**
25 **confirmations of what they do. You know, my**

1 main concern has been that at least hearing from
2 a number of Family Court judges that some seem
3 more preoccupied with saying I got a schedule
4 and I got to meet it, and it seems to be to the
5 point where -- not that they would ever
6 purposely overlook their obligation as a judge,
7 but that they seem to take a backseat to the
8 clock as opposed to getting to the merits of
9 something, particularly in a temporary hearing
10 scenario.

11 A: Yes, sir.

12 Q: Do you find yourself many times going past 15
13 minutes on those temporary hearings because you
14 think it warrants more time?

15 A: Very often I do. Normally what happens during
16 the course of a morning where -- or an afternoon
17 when you have a lot of temporary hearings is that
18 a number of those hearings the parties are able
19 to work them out, and most of the time it works
20 out where you're not as far behind as you think
21 you are. But there are days when you find
22 yourself way behind. But when you're given, you
23 know, a limited amount of time to make a decision
24 on a number of issues that may be financial, they
25 may be pretty in-depth in terms of some of the

1 financial issues, as well as custody and
2 visitation and those kinds of things, and you
3 really have to think about it, it slows you down.
4 But I don't rush myself through that. I find
5 that I still don't often have to take those
6 matters under advisement very often. And it's
7 amazing how often those matters resolve somewhere
8 near the order that was issued by me or other
9 judges at the temporary hearing.

10 **Q:** Just lastly, Judge. My understanding is that in
11 many cases in the Family Court system that what
12 happens at the temporary hearing in terms of
13 those issues almost, even though they may not
14 be, you know, technically, but realistically
15 become kind of more or less set in stone in
16 terms of what the tone of the case is going to
17 be down the road. That a lot of times it's
18 difficult to change some of those rulings from a
19 practical standpoint as the attorney once
20 they're more or less established in the
21 temporary order. Not impossible, but difficult.
22 Is that basically kind of what you see?

23 **A:** I would say that's an accurate statement. I
24 think that's true.

25 **Q:** And so if, in fact, we are effectively going in

1 that first time and the potential to more or
2 less really set the framework of the litigation
3 is going to happen then, wouldn't it make more
4 sense to put the greater amount of time towards
5 the beginning of the process as opposed to
6 spending less time on things that are going to
7 have such a pervasive effect down the road?

8 A: I certainly would not be opposed to having a
9 longer period of time to evaluate the affidavits
10 that I receive at a temporary hearing which often
11 are accompanied by -- you should see some of the
12 stacks of documents that we receive at a
13 temporary hearing. I mean, they look like a
14 catalog sometimes, and we have to tell them that
15 we're limited to the eight pages each side in a
16 15 minute hearing and remind them that that's the
17 amount of time that we have.

18 Q: Because, you know, what's troubling is you have
19 situations where a 15 minute hearing is
20 potentially going to have 90 percent impact on
21 the case and that whatever you were going to
22 reserve for three or four hours down the road is
23 going to be negligible because pretty much
24 everything is already set. So it just seems
25 like, you know, we're kind of putting the cart

1 before the horse. And in your experience, at
2 least fundamentally is what I'm suggesting to
3 you, does it make sense?

4 A: It does. It does. And I will say that I -- and
5 I think most of the other judges, when we're
6 faced with a temporary hearing, a decision on a
7 temporary hearing -- or motion for temporary
8 relief, we don't limit ourselves to 15 minutes.
9 We take the extra time and go the extra mile to
10 make sure that we've given thoughtful and careful
11 consideration to the ruling that we're about to
12 make, because we recognize the potential long-
13 term impact that that's going to have on the
14 parties and on the case.

15 Q: And what I hear, frankly, is the judges that
16 have the same ratings that you do tell me the
17 same thing. I've had other ones though that
18 have said I don't even allow any argument, I
19 don't hear from the lawyers, and I'm in and out
20 of there in 15 minutes. I may take it under
21 advisement, but -- so I guess from what I'm
22 hearing, is it fair to say that there is kind of
23 a differing way that different judges handle
24 that particular situation and what we used to
25 call pendente lite hearing?

1 A: Yes. There definitely is, I would say, a
2 difference from one judge to the next. I think I
3 mentioned Judge Edwards. I know I mentioned
4 Judge Edwards earlier. He's been a little bit of
5 a role model for me, and he handles it a lot like
6 what I just described, erring on the side of
7 justice rather than maybe pushing a case through
8 a little faster than it needs to be pushed
9 through.

10 MR. SAFRAN: Thank you very much for your time.

11 JUDGE PHILLIPS: Thank you, Mr. Safran.

12 CHAIRMAN RANKIN: All right. Judge Phillips, I don't
13 think your head could get any bigger by applause
14 and affirmation in those that you heard. But for
15 the record, and for your wife's benefit, I will
16 attest that I've seen no inflation of the size of
17 your head. This will conclude this portion of
18 our screening. And I want to remind you that
19 pursuant to our evaluative criteria we expect
20 candidates to abide by both the spirit and the
21 letter of the South Carolina of ethics. You
22 heard that at the outset. The record will not
23 close under final qualifications have been
24 determined, and we would deem any violation by
25 you as a candidate of the letter or the spirit of

1 the law very serious and deserving of heavy
2 weight and potential deliberations. You're aware
3 of that, right?

4 JUDGE PHILLIPS: Yes, sir. Yes, Mr. Chairman.

5 CHAIRMAN RANKIN: We don't expect that'll be the case,
6 but none the less got to put that on the record.
7 And with that, Judge Phillips, thank you and go
8 Cocks.

9 JUDGE PHILLIPS: Thank you. You all have a nice day.

10 (Candidate excused.)

11 CHAIRMAN RANKIN: Quick break. We're going to go into
12 executive session on motion of Representative
13 Murphy, seconded by Representative Smith.

14 (Executive Session from 1:20 p.m. to 1:57 p.m.)

15 CHAIRMAN RANKIN: Folks, we're back on the record. I want
16 to state that while in executive session the Judicial
17 Merit Selection Commission cast no votes or took any
18 decisions, and we are now on the record screening
19 Judge Tripp Anderson, ALJ position. All right.

20 THE HONORABLE RALPH K. ANDERSON, III, being
21 duly sworn and cautioned to speak the truth, the
22 whole truth and nothing but the truth, testifies
23 as follows:

24 CHAIRMAN RANKIN: Judge, you've prepared for us the
25 Judicial Merit -- excuse me, PDQ. These acronyms

1 are running --

2 JUDGE ANDERSON: Yeah.

3 CHAIRMAN RANKIN: But your personal data questionnaire
4 and a sworn statement. Are they ready to be
5 introduced into the record?

6 JUDGE ANDERSON: Yes, sir.

7 CHAIRMAN RANKIN: Any changes need to be made?

8 JUDGE ANDERSON: No, sir.

9 CHAIRMAN RANKIN: All right. You don't object to them
10 being part of the sworn testimony?

11 JUDGE ANDERSON: No, sir.

12 (EXHIBIT 5 - JUDICIAL MERIT SELECTION COMMISSION

13 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE RALPH K.

14 ANDERSON, III)

15 (EXHIBIT 6 - JUDICIAL MERIT SELECTION COMMISSION SWORN

16 STATEMENT OF THE HONORABLE RALPH K. ANDERSON, III)

17 CHAIRMAN RANKIN: Judge, your familiar with this
18 process in the evaluative criteria that our
19 commission focuses on in our thorough
20 investigation of your candidacy, and you know
21 that there are nine of them which include the
22 ballot box survey, thorough study of your
23 application materials, verification of your
24 compliance with state ethics laws, search of
25 newspaper articles in which your name appears,

1 study of past screenings, and finally a check for
2 economic conflicts of interest. No affidavits
3 have been filed in opposition to your campaign.
4 No witnesses are present to testify. The floor
5 is yours. You can make brief opening remarks.
6 Given the slight delay in our reaching your
7 eleven o'clock hearing, now it's 11:10, we'll go
8 ahead and invite you to make opening statements
9 if you like or you can waive it otherwise.

10 JUDGE ANDERSON: Given how late things have gone for
11 you all, my opening statement will be simply
12 thank you for considering my candidacy.

13 CHAIRMAN RANKIN: Very good. Mr. Gentry.

14 EXAMINATION BY MR. GENTRY:

15 **Q: Judge Anderson, after serving over 23 years on**
16 **the Administrative Law Court, why do you want to**
17 **continue serving?**

18 **A:** Well, I enjoy what I do. I think I do a good job
19 at it, and I want to continue serving as a judge.
20 I think I've tried to write exemplary orders and
21 I want to continue to do that for the judicial
22 system.

23 **Q: Please explain one or two brief accomplishments**
24 **that you feel you've completed during your**
25 **tenure as an administrative court judge and then**

1 **a goal you'd like to accomplish if reelected.**

2 A: Well, from the outset, along the lines of what I
3 just said, I've always been one who wrote, I
4 think, very good orders, in-depth orders. Early
5 on the chief judge of the court then when I
6 started was Judge Kittrell. He gave me a good
7 bit of the complex cases. And also, whenever we
8 got new jurisdiction he would assigned those
9 cases, a significant number of the first ones to
10 me to help develop that area of the law. I think
11 that's a good accomplishment. I've always worked
12 hard. After I became chief judge I've
13 implemented -- or updated the case management
14 system. I fact, I went through the trouble
15 reading the contract and found out that they were
16 going to charge us a significant amount of money
17 to update the case management system, and I found
18 out that they were required to update it with a
19 minimal amount of money. And so, we've updated
20 it. We've updated the courtroom technology. And
21 that may not sound like much of an
22 accomplishment, but our cases are complex and it
23 really helps to have the courtroom technology to
24 facilitate the presentation of that evidence.
25 I've faired it through, with your all's help,

1 judicial retirement. And that may not sound like
2 a significant accomplishment for our court, but
3 it really helps get good judges on the court and
4 we need that. I think in the current stage of
5 the game the collegiality of our court is better
6 than it ever has been. I'm experienced, and one
7 of the accomplishments that I have gained through
8 that experience is all the other judges come to
9 me a significant amount when they have questions
10 about cases that are before them as to what to
11 do. And I advise them.

12 **Q: What do you think your reputation is among**
13 **attorneys that practice before you?**

14 **A: Well, I hear it's pretty good.**

15 **Q: The Commission received 633 ballot box surveys**
16 **regarding Judge Anderson with 45 additional**
17 **comments. The ballot box survey, for example,**
18 **contained the following positive comments.**
19 **"Judge Anderson daily exhibits his knowledge of**
20 **the law, respect for attorneys and litigants,**
21 **and his leadership skills as chief of the**
22 **court." "His temperament, intellect and work**
23 **ethic set him apart as one of the finest judges**
24 **in South Carolina." Twelve of the written**
25 **comments express concerns. Judge Anderson,**

1 three comments indicate a concern with your
2 ethics. One comment specifically indicated that
3 you unethically hired a lobbyist to lobby the
4 legislature for your personal interest. What
5 response would you offer for these concerns?

6 A: That would be a naive comment. Number one, the
7 -- and I can explain this a little down the road.
8 But to call what we have now as a lobbyist is an
9 inartful use of that term. And they're not even
10 hired right now. But the person that we had as
11 a, quote, lobbyist, end quote, was hired in 2007
12 by Chief Judge Kittrell. So when I became Chief
13 Judge that person was already helping the court.
14 After I became Chief Judge, we made the decision
15 of hiring the lobbyist through procurement review
16 process. And so, that is how that individual was
17 -- or the firm was hired. They don't really do
18 lobbying for the court anyway. Our court, when
19 the legislature wants to give us jurisdiction, we
20 take it. On the other hand, for lobbying
21 purposes, we don't go out and solicit
22 jurisdictions. So the lobbying effort that we
23 wish to receive is they inform us of the
24 legislation that's out there and help facilitate
25 us contacting senators and house members to

1 explain to them how that legislation needs to be
2 drafted to properly bring those cases to our
3 court.

4 **Q: Have you ever hired a lobbyist to lobby on your
5 behalf? Personal behalf?**

6 A: Absolutely not.

7 **Q: Six comments indicate a concern that you showed
8 bias towards state agencies, certain
9 corporations and legislatures. What response
10 would you offer to this concern?**

11 A: The first two are normally at odds against each
12 other, because the state agencies are normally
13 litigating cases against corporations or vice
14 versa. So if I'm showing bias to both sides,
15 then I'm probably doing the right thing. But I
16 don't show bias to either one of them. I just
17 call the cases like I see it. As far as
18 legislatures, right now very few legislatures
19 even appear at our court. I certainly wouldn't
20 show bias toward one.

21 **Q: Three comments indicate a concern with your
22 temperament. What response would you offer for
23 this concern?**

24 A: I would like to see an example where I've ever
25 displayed bad temperament in a courtroom. But

1 I'm known for doing quite the opposite. Bending
2 over backwards and being patient.

3 Q: Since submitting your letter of intent, have you
4 contacted any members of the Commission about
5 your candidacy?

6 A: No, sir.

7 Q: Are you familiar with Section 2-19-70 including
8 the limitations on contacting members of the
9 General Assembly regarding your screening?

10 A: Yes, sir.

11 Q: Since submitting your letter of intent, have you
12 sought or received a pledge of any legislature
13 either prior to this date or pending the outcome
14 of your screening?

15 A: No, sir.

16 Q: Have you asked any third parties to contact
17 members of the General Assembly on your behalf
18 or are you aware of anyone attempting to
19 intervene in this process on your behalf?

20 A: That would be no and no and no to both of them.

21 Q: Have you reviewed and do you understand the
22 Commission's guidelines on pledging in South
23 Carolina Code Section 2-19-70 subsection (e)?

24 A: Yes.

25 MR. GENTRY: Thank you, Judge Anderson. I would note

1 that the Midlands Citizens Committee found Judge
2 Anderson to be qualified as to constitutional
3 qualifications, physical health and mental
4 stability, and well qualified as to ethical
5 fitness, professional and academic ability,
6 character reputation, experience and judicial
7 temperament. The Committee commented that Judge
8 Anderson is well liked and well respected. I'd
9 also note for the record that any concerns raised
10 during the investigation regarding the candidate
11 were incorporated in the questioning of the
12 candidate today. Mr. Chairman, I have no further
13 questions.

14 CHAIRMAN RANKIN: Okay, thank you. Questions by the
15 members of the Commission. Representative Smith.

16 EXAMINATION BY REPRESENTATIVE SMITH:

17 **Q:** **Judge Anderson, let me just thank you for your**
18 **service to the state of South Carolina for**
19 **numerous years, and I just want to point out, I**
20 **look at your ballot box surveys, and that's one**
21 **of a multi-step process that we go through, and**
22 **you probably have won the distinction of this**
23 **screening of having the most people who take the**
24 **time to comment, and when they do comment it's**
25 **mostly paragraphs. And so, they're nothing but**

1 complementary of you, and I want to tell you --
2 I mean, literally one's filling a half a page of
3 a comment talking about your intellect, how you
4 have always treated people with courtesy and
5 respect. And so, you know, I think you're doing
6 a fine job. And I did want to mention, too, or
7 just bring to your attention -- I'm sorry
8 somebody commented about a lobbyist, and, you
9 know, that's one of the things that I regret
10 that has to happen. That court's have to hire
11 lobbyists to come to the legislature to assist
12 with funding and other issues. And, you know, I
13 would point out the Judicial Department hires a
14 lobbyist. And so, the Administrative Law Court
15 is not a part of the unified judicial system.
16 And unfortunately that had come through years.
17 And you mentioned some of those accomplishments
18 you have. One getting in the judicial
19 retirement. And you all are tied to the salary
20 of a Circuit Court judge, too; is that correct?

21 A: Yes, sir.

22 Q: And so, you know, one of the issues that we
23 debate over these years and continue to debate,
24 and you've kind of mentioned this, is there's a
25 direct correlation to the pay of a judge and the

1 quality of the candidates that we're receiving,
2 and the higher the pay, obviously that gives
3 people more incentive to bring their wealth of
4 experience to the bench. Has that been your
5 experience?

6 A: I don't think Judge Kimpson would have come to
7 our court if it was not for judicial retirement,
8 because a lot of state agency people probably get
9 paid more than we do. So the only incentive is
10 judicial retirement.

11 Q: Well, that was the other point I was going to
12 bring up. I mean, there are a lot of able
13 attorneys that represent state agencies and they
14 appear in front of you; is that correct?

15 A: Correct.

16 Q: As an Administrative Law Court judge. But
17 they're not running for the position because it
18 would be a pay cut, wouldn't it?

19 A: Yeah.

20 Q: And don't you have -- I mean, I would presume --
21 you know, like one of the issues I see, and
22 maybe I'm wrong with this, is like, you know,
23 when you talk about the Governor's salary and
24 the Governor's chief of staff's salary, he
25 almost makes double of what the Governor makes.

1 **Do you have lawyers in your office that are**
2 **making higher than the judges over there?**

3 A: No. Matter of fact, when I became Chief Judge,
4 one of the difficulties at my court, I didn't
5 mention that as an accomplishment, but was that
6 our lawyers, staff attorneys and law clerks, were
7 paid so much lower than the rest of the state.
8 I've gone before Ways and Means and the Senate
9 Finance twice since I've been judge asking for a
10 seven percent increase for those staff members
11 and got it. It's helped significantly. We're
12 getting good quality staff, and you need that to
13 function well as a court. And I don't want staff
14 members that serve just one or two years and
15 leave, because as I've told you all, our area is
16 a complex area of law. It's not one where people
17 can step right in and do well at. It's a
18 learning curve. But even with those pay
19 increases they're still below a lot of state
20 agencies.

21 Q: **And that's what I was going to mention, followup**
22 **with you on, is this is not a Circuit Court**
23 **where you have a law clerk for a year and they**
24 **kind of assist you with drafting and they get**
25 **the experience and they move on out to private**

1 practice. You're looking for law clerks and for
2 staff attorneys who can assist you, learn the
3 system, have the specialized knowledge. I don't
4 appear in the administrative law court. I
5 couldn't even probably tell you what you do half
6 the time except for CON cases I have to hear
7 about all the time over in the General Assembly.
8 But other than that, you know, I presume you're
9 looking for long-term attorneys who are going to
10 assist the court in having institutional
11 knowledge and knowledge in the areas of the law
12 in which you practice, and they are probably
13 making a lot less than the other state agency
14 attorneys in my review of salaries in this
15 state.

16 A: Correct.

17 Q: That makes it more difficult for you to attract
18 quality lawyers in addition to judges over
19 there, right?

20 A: A fair amount of them leave and go to other state
21 agencies. So I think we're educating the lawyers
22 for state agencies right now.

23 REPRESENTATIVE SMITH: Yeah. Well, Judge Anderson, you
24 know, and I say this and I look at your
25 qualifications, I look at the Midlands Citizens

1 Committee report, I look at the JQC report.
2 Obviously, I know your father. I've appeared in front
3 of him. Probably one of the most brilliant jurists
4 I've ever appeared in front of, and I think you're
5 right up there with him. And I appreciate the work
6 that you've done over the years and your contribution
7 to the state of South Carolina. And by looking at all
8 these comments, it's obvious that you're making your
9 courtroom a pleasant place for people to appear,
10 despite that fact that the two opposing parties
11 somehow you are favoring both of them. So if you can
12 figure out how that occurs, I'd be happy to see. I
13 would like to be educated on that.

14 JUDGE ANDERSON: Well, I think maybe some of that comes
15 from the standpoint -- my dad, when I became judge, he
16 gave me very little advice. But one of the things he
17 said is, Tripp, sometimes when you do the right thing
18 you tick off both sides.

19 REPRESENTATIVE SMITH: Very prophetic. Thank you.
20 That's all.

21 CHAIRMAN RANKIN: Senator Hayes.

22 MR. HAYES: Thank you. I think people in this group
23 are tired of hearing me, but I think Tripp's
24 mother went back to law school with. Most of
25 them don't want to hear it, and you probably

1 don't want to hear it either because that starts
2 to date you. But I appreciate all you've done.
3 I've worked with you over the years when I was in
4 the General Assembly. And you've not only done a
5 good job as a jurists, but also representing your
6 court as the Chief Judge, and you have to, you
7 know, represent them in dealing with the General
8 Assembly, and I appreciate the work you've done.
9 And I think Representative Smith stole some of my
10 thunder, because when you talked about taking
11 pride in your orders, I think you come by that
12 naturally, because I know your dad used to do
13 that same thing. So I commend you for that as
14 well.

15 JUDGE ANDERSON: Thank you.

16 CHAIRMAN RANKIN: Anyone else? Any other comments?

17 Judge, I want to call out in addition to the
18 other accolades and input that you've received
19 from, again, the three basic areas that we have
20 to gleam someone's reputation, the Bar report,
21 the Citizens Committee, and then the ballot box
22 surveys, you got two -- well, one other thing.
23 In terms of your standing in the legal community
24 before you ever became a judge, I'm sure, and
25 that being the highest grade, highest standard

1 that you can get with an A-B rating by
2 Martindale-Hubbell. So kudos in that fashion.
3 But two letters on your behalf. And this role as
4 Chair of this Committee and Commission is new and
5 alternating with, thus far, Representative Smith.
6 But I have the proud pleasure of having not one
7 but two letters that are of note to me --
8 addressed personally to me about you, and that
9 being a former Shandon Baptist Church preacher,
10 Dick Lincoln who was a force behind the pulpit
11 and grew greatly that church. I remember going
12 to the first Singing Christmas Tree over here on
13 either Woodrow or Maple. I don't know what the
14 little church street name was and watched how
15 they blossomed. So he sings your praises. And
16 then finally in perhaps the first and only time a
17 favorable note written to me by Judge Harwell
18 from the Federal Court who likewise sings your
19 praises. And in terms of as he describes you, a
20 unique perspective to the way and substantial
21 responsibilities of the court.

22 JUDGE ANDERSON: I'm proud of both of them because
23 Dick Lincoln has taught me a lot about the Bible
24 and the word of God, and Judge Harwell has
25 reviewed my work, so...

1 CHAIRMAN RANKIN: Well, very well. And I again want
2 to commend you for your willingness to continue
3 serving in such an honorable distinction and
4 wearing the robe lightly such that you get the
5 comments of humility and friendliness and
6 temperament that you continue to get. So with
7 that, unless there's anything else, Judge
8 Anderson, this will continue our portion of the
9 screening process. Let me remind you of the
10 Commission's evaluative criteria. We expect
11 candidates to follow the spirit, as well as the
12 letter of the South Carolina ethics laws. We
13 will view violations and the appearance of
14 impropriety as serious and deserving a heavy
15 weight in screening deliberations. On that note
16 -- and as you know the record will remain open
17 until the formal release of the report of
18 qualifications, and you may be called back at
19 such time as the need arises. You're aware of
20 that, correct?

21 JUDGE ANDERSON: Yes, sir.

22 CHAIRMAN RANKIN: All right. With that, Judge, again,
23 thank you for your willingness to serve and
24 that'll close this portion of the record.

25 JUDGE ANDERSON: Thank you all very much.

1 (Candidate excused.)

2 CHAIRMAN RANKIN: How are you, sir?

3 MR. SMITH: Good afternoon.

4 CHAIRMAN RANKIN: Thomas Rosamond Smith.

5 MR. SMITH: Correct.

6 CHAIRMAN RANKIN: Is that correct? Nice to meet you,
7 sir. Let's start by first having you raise your
8 right hand.

9 THOMAS ROSAMOND SMITH, being duly sworn and
10 cautioned to speak the truth, the whole truth and nothing
11 but the truth, testifies as follows:

12 CHAIRMAN RANKIN: Thank you for being here and being
13 patient with us. You have completed two
14 documents of PDQ and a sworn statement; is that
15 correct?

16 MR. SMITH: Yes, sir.

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

19 MR. SMITH: No, sir. Not that I'm aware of.

20 CHAIRMAN RANKIN: All right. You have no objection to
21 us entering those into the record?

22 MR. SMITH: No, sir.

23 (EXHIBIT 7 - JUDICIAL MERIT SELECTION COMMISSION
24 PERSONAL DATA QUESTIONNAIRE OF THOMAS ROSAMOND SMITH)
25 (EXHIBIT 8 - JUDICIAL MERIT SELECTION COMMISSION SWORN

1 STATEMENT OF THOMAS ROSAMOND SMITH)

2 CHAIRMAN RANKIN: All right. If you'll hand those
3 over to Ms. Lindi she'll turn them in. Mr.
4 Smith, you are familiar with our evaluative
5 criteria, of which there are nine, and we focus
6 on those including the ballot box survey,
7 thorough study of your application materials,
8 verification of your compliance with state ethics
9 laws, a search of newspaper articles in which
10 your name appears, a study of and check for
11 economic conflicts of interest. No one has filed
12 an affidavit in opposition of your campaign. No
13 witnesses requested to testify. So I will open
14 it up to you for brief comments before Mr.
15 Maldonado begins the questioning.

16 MR. SMITH: I look forward to answering your
17 questions. It's a lifelong dream to be a judge.
18 I was inspired many years ago. I worked for the
19 Honorable John L. Green, Jr., Circuit Court judge
20 out of Conway, South Carolina, and I admired him
21 a lot. I learned a lot from him. I appreciated
22 the way he handled himself in the courtroom as
23 well as out of the courtroom. He's a man with a
24 great sense of humor and had a way with
25 litigants, and I kind of was inspired by him, as

1 I said.

2 CHAIRMAN RANKIN: Did he teach you how to play a
3 harmonica?

4 MR. SMITH: No, sir, unfortunately. I got to see him
5 play the harmonica, but I'm afraid my musical
6 talent does not quite match his.

7 CHAIRMAN RANKIN: Very well. All right, Mr.
8 Maldonado.

9 MR. MALDONADO: Thank you, Mr. Chairman.

10 EXAMINATION BY MR. MALDONADO:

11 **Q: Before I begin my usual questions I wanted to**
12 **clarify a residency issue. Is it true that you**
13 **lived in North Carolina as part of your career?**

14 A: I did. Yes, sir.

15 **Q: Can you tell the Commission when that was?**

16 A: I moved to North Carolina -- I don't remember
17 exact -- it was in 2008. I lived there up until
18 2013. I moved to Columbia October 1st, 2013.

19 **Q: So by the time of your possible election you**
20 **would have lived in this state for five years;**
21 **is that correct?**

22 A: Yes, sir.

23 MR. MALDONADO: I note for the record that based on
24 the candidate's testimony and the testimony
25 contained in the candidates PDQ, which is

1 included in the record with the candidate's
2 consent, Thomas Rosamond Smith meets the
3 constitutional and/or statutory requirements for
4 this position regarding age, residency and years
5 of practice.

6 **Q: Mr. Smith, why do you want to serve as an**
7 **administrative law court judge and how do you**
8 **feel your legal and professional experience thus**
9 **far will assist you to be an effective judge?**

10 **A:** Well, I want to be an administrative law judge
11 because I think I would contribute to the system.
12 I've been a hearing officer for the last five
13 years. And in essence, I would like to say that
14 we do everything an administrative law judge does
15 except for -- there's probably three subtle
16 differences. We don't wear a robe, we don't
17 quite have the prestige, and we don't make as
18 much money. Other than that we do the very same
19 things. We, you know, issue orders. We conduct
20 conferences. We have hearings. We make
21 decisions. Issue those decisions. We have
22 attorneys appear before us, as well as pro se
23 folks.

24 **Q: Mr. Smith, are there any areas of the law for**
25 **which you would need additional preparation in**

1 **order to serve as an administrative law court**
2 **judge and how would you handle that additional**
3 **preparation?**

4 A: I don't believe I need any additional. I have
5 been working toward this goal for a long period
6 of time. I have been working on my master's in
7 judicial studies from the University of Nevada.
8 I'm scheduled to complete that course as a
9 professional certificate as an administrative law
10 judge. I'm two courses shy of that. I've been
11 working on that for the last four years, taking
12 courses as I could, as well as, you know, working
13 full-time. And I've been in the administrative
14 law area. That's kind of my lane. And I've been
15 doing that for, like I said, five years as a
16 hearing officer, and before that I was doing it
17 at the federal level as an attorney representing
18 -- and like I said, that was probably another
19 five years.

20 **Q: Mr. Smith, please explain the type of cases that**
21 **you handled for the administrative law court and**
22 **what experiences specifically qualify you for**
23 **the administrative law court.**

24 A: Well, as far as the administrative law court,
25 like I said, the majority of my practice was

1 before the federal ALJs. And that was social
2 security disability work was the number one thing
3 I did. I did a lot of that. I also appeared
4 before like the -- and represented folks in
5 unemployment hearings and some other small
6 administrative matters like that. I had a couple
7 DHEC cases, like people want to get a dock put in
8 and DHEC denied them or something like that. So
9 I had that kind of experience. And again, as a
10 hearing officer now, you know, we follow the
11 guidelines of the Administrative Procedures Act.
12 That's the regulations that guide us. And so, we
13 do the same thing that the ALJs do.

14 **Q: What is your vision for the Administrative Law**
15 **Court and what changes would you advocate and**
16 **why?**

17 **A:** I guess I see there's need for improvement. One
18 of the things that's well known for is the
19 slowness of issuing of decisions by the
20 Administrative Law Court. I mean, we just had a
21 decision that came out just a month or two ago
22 that took them eight years to issue a decision
23 and I'm just floored by that. Eight years? And
24 then what they do is issue an order for demand.
25 And that's just entirely too slow. As you're

1 well aware, for some folks to get into the other
2 courts, whether it's the state court or federal
3 court you have to complete the administrative
4 process. Until that's completed you can't go on
5 further. And so, if there's a delay in the
6 administration hearings, then you get delayed in
7 getting your time in court. So improving in the
8 timeliness and issuance of decisions, also I want
9 to improve on the clarity of the decisions that
10 are issued. If you've seen any of them in the
11 last couple of years, they seem to be poorly
12 written, hard to follow. And so, I think that
13 would be an immediate need.

14 **Q: The Commission received 64 ballot box surveys**
15 **regarding you and four additional comments. The**
16 **other comments include, I quote, "Mr. Smith is**
17 **an excellent lawyer. Always well prepared, with**
18 **extensive experience in administrative law. His**
19 **superb temperament is always courteous and kind.**
20 **He writes extremely well. He is a great**
21 **administrator and would serve well as chief**
22 **judge." Also, "Thomas is a good man. He is**
23 **well respected and liked in the community and**
24 **would prove a good leader for the ALC." One of**
25 **the comments expressed concerns stating, "He**

1 has, in my opinion, overstepped his bounds as a
2 hearing officer at the HHS in the past and has
3 made ill considered statements about his job as
4 a "judge". I do not think he has the necessary
5 talent or humility to be an Administrative Law
6 Court judge. The ALJ makes decisions that
7 involve highly complicated intermarriage between
8 traditional civil practice, administrative
9 practice, two different branches of government
10 and dealing with a wide range of unusual ethical
11 problems that I do not think he's equipped to
12 handle." What response would you offer this
13 concern?

14 A: For the concern? I smiled when you read that
15 because it sounded very familiar about a
16 particular individual that I would expect to
17 make. I just can only speculate who that might
18 have been. I would disagree with that highly. I
19 think I take my job very seriously. I try to be
20 a professional. I try to give both parties an
21 opportunity to be heard and make a fair and
22 considerate decision and ensure that all parties
23 receive due process.

24 Q: Mr. Smith, your SLED report indicated that a
25 Thomas Smith has been named in 17 different

1 lawsuits around the state. We went through
2 these 17 lawsuits. Were you a party to any of
3 these lawsuits?

4 A: No, sir.

5 Q: And so, do you believe that this was due to the
6 common name that you have?

7 A: It's the nature of having a common name. I mean,
8 I've run into it in the past. Especially like
9 some peoples' credit report, they seem to somehow
10 get nailed on mine for some reason.

11 Q: I'll finish up with some housekeeping questions.
12 Since submitting your letter of intent, have you
13 sought or received a pledge of any legislature,
14 either prior to this date or pending the outcome
15 of your screening?

16 A: No, sir.

17 Q: Have you asked any third parties to contact
18 members of the General Assembly on your behalf,
19 or are you aware of anyone attempting to
20 intervene in this process on your behalf?

21 A: No, sir.

22 Q: Since submitting your letter of intent to run
23 for this seat, have you contacted any member of
24 the Commission about your candidacy?

25 A: No, sir.

1 Q: You understand that you are prohibited from
2 seeking a pledge or commitment, directly or
3 indirectly, until 48 hours after the formal
4 release of the Commission's report, and are you
5 aware the penalties for violating the pledging
6 rules Section 2-19-70(e)?

7 A: Yes, I'm aware.

8 MR. MALDONADO: I would note that the Midlands
9 Citizens Committee reported Mr. Smith to be well
10 qualified as to ethical fitness, professional and
11 academic ability, character, reputation,
12 experience and judicial temperament. The
13 Committee found Mr. Smith to be qualified as to
14 constitutional qualifications, physical health
15 and mental stability. I would note for the
16 record that any concerns raised during the
17 investigation regarding the candidate were
18 incorporated in the questioning of the candidate
19 today. Mr. Chairman, I have no further
20 questions.

21 CHAIRMAN RANKIN: Questions by members of the
22 Commission? Senator Young.

23 SENATOR YOUNG: Thank you, Mr. Chairman.

24 EXAMINATION BY SENATOR YOUNG:

25 Q: Mr. Smith, thank you for your interest in

1 **-serving on the Administrative Law Court. I see**
2 **where you clerked for Judge John Breeden on the**
3 **South Carolina Circuit Court?**

4 A: Yes, sir.

5 Q: **Was that for the full term, full year?**

6 A: No, sir. The law clerk he had, had resigned and
7 went on to accept another job in another state as
8 I remember it. And so, they had a vacancy, and I
9 came in and filled the rest of that term.

10 Q: **How many cases do you think you've handled in**
11 **the Administrative Law Court in your legal**
12 **career?**

13 A: As an attorney?

14 Q: **Yes.**

15 A: I can't give you an exact number, sir.

16 Q: **You can estimate.**

17 A: Three or 400. I mean, it's in the hundreds. I
18 can't give you an exact number, but over the
19 course of time.

20 SENATOR YOUNG: That's all the questions.

21 CHAIRMAN RANKIN: Any other questions?

22 EXAMINATION BY CHAIRMAN RANKIN:

23 Q: **Mr. Smith, talk to me about your involvement in**
24 **the screening process with first the Citizens**
25 **Committee. Was that a productive valuable**

1 interview that you had with them?

2 A: Yes, sir. I thought it went fine. Yes, sir.

3 Q: All right. And was it a five minute cup of
4 coffee and see you later, or was it an
5 opportunity to exchange questions and answers?

6 A: I don't remember the length of time, sir. It was
7 longer than five minutes. It seems like it was
8 probably about 15, 20 minutes maybe. I don't
9 remember the exact time.

10 Q: And you had an opportunity to present your
11 qualifications to them?

12 A: Uh-huh (affirmative response). Yes.

13 Q: And no questions about that process with the
14 Citizens Committee?

15 A: No, sir. I don't have any questions.

16 Q: And they found you to be well qualified. And
17 the next question would be the area and the fact
18 they wrote well respected and compassionate,
19 well qualified, in their statements. Let me ask
20 you about the Bar interview. The Judicial
21 Qualifications Committee process. Tell me about
22 that.

23 A: That was actually the first interview I had. I
24 would say I was probably a little bit nervous the
25 first time. And I thought it went well. They

1 asked me a couple test questions, which I wasn't
2 familiar with. And so, they allowed me to take
3 leave and I went back that evening and did my
4 research and answered the question via email.
5 And so, and apparently I answered them correctly.
6 So that's the thing about the law is, if you
7 don't know, you just say let me take it under
8 advisement and go back and do your research and
9 get prepared.

10 **Q: And they found you qualified in all categories**
11 **again. You're familiar with that, right?**

12 **A: Yes, sir.**

13 **Q: And you think perhaps the lack of a well**
14 **qualified resulted from the question and answer**
15 **portion, or your being nervous perhaps?**

16 **A: I don't know, sir. Perhaps. Like said, I was --**

17 **Q: Okay. And then finally the bench Bar ballot box**
18 **survey. Again, not that many people. Sixty-four**
19 **I think was the number offered. But again that**
20 **process. Do you yourself participate in that?**
21 **Do you fill these anonymous surveys out about**
22 **candidates that you know?**

23 **A: I have in the past. Yes, sir.**

24 **Q: And do you see that as a productive process? Is**
25 **that something that should be considered as**

1 well?

2 A: Yes, I think it's valuable. Part of me which is
3 that, you know, that you would actually put your
4 Bar name in there, or your number and say, hey --
5 so you stand up. So if you have something to say
6 about the person, that you would, you know, say
7 it and be able to back it up. But other than
8 that, yeah, I think it's valuable.

9 Q: **And that for good or bad, right?**

10 A: Yes, correct.

11 Q: **And you do know that you can put your name and**
12 **your Bar number if you want to on that? You**
13 **could sign it if you wanted to.**

14 A: I was wondering how many people actually do that.

15 Q: **Well, you have the right to if you want. I've**
16 **never actually put my name. There is some sense**
17 **that there's not true anonymity there. But, in**
18 **fact, there is as best I know. And then finally**
19 **in terms of your desire to be a judge. You said**
20 **you've always wanted to be a judge since you**
21 **worked with Judge Breeden?**

22 A: Yes, sir. That's correct. I mean, I wanted to
23 be a lawyer, but once I worked with him, I really
24 enjoyed -- it was a great job. I believe you
25 know Judge Breeden, so --

1 Q: Sure.

2 A: -- he's just a heck of a man and a character and,
3 like I said, he inspired me.

4 CHAIRMAN RANKIN: Well, very good. Well, I appreciate
5 your willingness to offer for this candidacy and
6 your particular interest and your background. So
7 unless there are further questions that need to
8 be asked or comments offered by any other members
9 of the Commission. If not, we will close this
10 portion of the screening process. Let me remind
11 you that we expect candidates to maintain both
12 the spirit and the letter of the South Carolina
13 rules of ethics which we talked about at the
14 outset. You're aware of that, correct?

15 MR. SMITH: Yes, sir.

16 CHAIRMAN RANKIN: Any violation of either the letter
17 or the spirit of those laws would be deemed very
18 serious by us and potentially concerning any
19 consideration and deliberations that would be
20 taking place. You're aware of that?

21 MR. SMITH: Yes, sir.

22 CHAIRMAN RANKIN: And finally you know that we could
23 call you back to ask you, inquire as to any
24 potential violation, which we don't expect to be
25 the case, but you know we can call you back,

1 right?

2 MR. SMITH: Yes, sir. I know now.

3 CHAIRMAN RANKIN: The record is not closed, but you're
4 aware of that. And so, with that acknowledgment
5 and final words, we wish you well. We appreciate
6 your offering for this candidacy, and that will
7 close this portion of the hearing. Thank you so
8 much.

9 MR. SMITH: Thank you for your time.

10 (Candidate excused.)

11 CHAIRMAN RANKIN: Yes, sir. Motion by Senator Hayes,
12 seconded by Representative Murphy to go into
13 executive session.

14 (Executive Session from 2:36 p.m. to 3:35 p.m.)

15 CHAIRMAN RANKIN: We are back on the record. I want to
16 state that during executive session JMISC cast no votes
17 and made no decisions. We will now proceed to a vote
18 on the slate of candidates. And first we have the --
19 lets start in the order that we had yesterday morning,
20 again, through all candidates thus far.

21 MS. CRAWFORD: Mr. Chairman, the candidates up for
22 election that we need to vote on are the
23 Honorable Gerald Smoak, Fourteen Circuit Seat
24 One, Deborah Ann Malphrus, Family Court,
25 Fourteenth Circuit Seat Three, The Honorable Jan

1 Bromell Holmes, Family Court, Fifteenth Circuit
2 Seat One, Honorable David G. Guyton, Family
3 Court, Sixteenth Circuit Seat Two, the Honorable
4 Tony M. Jones, Family Court At-Large, Seat Two,
5 Honorable James G. McGhee, III, Family Court At-
6 Large, Seat Three.

7 CHAIRMAN RANKIN: All right. Poll the membership.
8 All in favor of finding those qualified and
9 nominated raise your hand. (At this time the
10 members signified by raising their hands.) Let
11 the record reflect with Representative
12 Rutherford's proxy that is a unanimous decision.

13 MS. CRAWFORD: The contested Family Court At-Large Seat
14 One we have two candidates; The Honorable Kelly
15 Pope-Black and David Michael Collins.

16 CHAIRMAN RANKIN: Let's call a vote on Judge Kelly
17 Pope-Black. Those finding her qualified and
18 nominated -- excuse me.

19 MS. CRAWFORD: The first vote to be as to her
20 qualifications.

21 CHAIRMAN RANKIN: Those in favor of finding Judge
22 Kelly Pope-Black qualified please raise your
23 hand. (At this time the members signified by
24 raising their hands.)

25 MS. CRAWFORD: Any proxies?

1 CHAIRMAN RANKIN: No proxies. Those finding Judge
2 Kelly Pope-Black unqualified please raise your
3 hand. (At this time the members signified by
4 raising their hands.)

5 MS. CRAWFORD: Voted two to eight The Honorable Kelly
6 Pope-Black, Family Court At-Large, Seat One is
7 found unqualified.

8 MR. HITCHCOCK: Mr. Chairman, I believe that pursuant
9 to Section 2-19-80, given the fact that we have
10 found an incumbent judge unqualified after their
11 application and prior to the election, that we
12 would need to reopen the seat at this time. I'm
13 sorry. I'll say that again, Madam Court
14 Reporter. Mr. Chairman, I would believe that
15 pursuant to Section 2-19-80, given that we have
16 found an incumbent judge unqualified after their
17 application for the office but prior to the
18 election, it is incumbent upon us to reopen the
19 seat. So I would bring that to the Chair's
20 attention.

21 CHAIRMAN RANKIN: That is the rule and, therefore, we
22 will report that to the --

23 MR. HITCHCOCK: Mr. Chairman.

24 CHAIRMAN RANKIN: Yes, sir.

25 MR. HITCHCOCK: I would like to make a statement for

1 the record regarding the action that we just took
2 in regards to Judge Pope-Black. Certainly any
3 time that we're called upon to judge the
4 qualifications of a sitting judge, or any
5 candidate for judicial office we certainly must
6 take seriously all of the evaluative criteria
7 that we have to take into consideration. And we
8 do need to -- I believe it's incumbent upon us to
9 ensure that we are treating both candidates for
10 judicial office as well as sitting judges equally
11 in that regard. And in this particular case, you
12 know, to give some color as to the reason that I
13 voted to find Judge Pope-Black unqualified I took
14 very seriously the comments. And as I indicated
15 yesterday, I don't often necessarily give as much
16 credence to the anonymous comments in the ballot
17 box that we find, unless there appears to be a
18 theme or a pattern that can be derived from those
19 comments. And if there's other information that
20 corroborates the concerns that are expressed in
21 those ballot box comments. In this instance we
22 had a very detailed description from the Citizens
23 Committee of concerns with Judge Pope-Black's
24 character that -- I'm sorry, judicial temperament
25 that corroborated those comments that were in the

1 ballot box. The Upstate Citizens Committee used
2 very strong language in expressing the types of
3 comments regarding Judge Pope-Black's temperament
4 that they had gleaned through their
5 investigation. I found those comments to be
6 disturbing, as well as persuasive, and I believe
7 that those combined with the comments and the
8 ballot box survey, those concerns. And just to
9 note for the record that, again, the Upstate
10 Citizens Committee did find her unqualified in
11 regards to judicial temperament. And that
12 balanced with the fact that the JQC only found
13 her qualified and not to be served as a
14 counterweight to that concern. So for my
15 purposes, taking that into consideration, as well
16 as all the other aspects that we're supposed to
17 consider, and the evidence that was before us,
18 and the candidate's testimony, it was my decision
19 to vote unqualified.

20 CHAIRMAN RANKIN: Any other Commission members want to
21 make a comment? Unfortunately, I concur, and as
22 expressed with Judge Kelly Pope-Black in our
23 colloquy yesterday. The concern of effectively
24 the three bench marks that we have, the only
25 objective evidence, however subjective some may

1 deem it, in an open debate we've heard
2 overwhelmingly candidates and judges say that we
3 should rely upon and consider -- and in fact,
4 Judge Kelly Pope-Black herself said these were
5 things to be considered and should be given
6 weight, with the exception, perhaps in her view
7 of the Citizens Committee report. Unfortunately,
8 I concur. It is a difficult decision, but one
9 which based on the nine evaluative criteria we
10 have, to do otherwise ignores what clearly is not
11 an aberration but unfortunately a pattern that
12 has not cured itself in six years. So
13 unfortunately, regrettably, I concur with the
14 comments made by Mr. Hitchcock. With that, we
15 will now proceed to the vote on the Family Court
16 At-Large Seat Five, and that is Judge --

17 MS. CRAWFORD: Randall E. McGee, Mr. Chairman. And
18 then --

19 MR. HAYES: Mr. Chairman, I just want to make it
20 clear. We're not going to vote on David Michael
21 Collins because we're opening back up --

22 CHAIRMAN RANKIN: That's correct.

23 MR. HAYES: -- for that reason?

24 CHAIRMAN RANKIN: Thank you.

25 CHAIRMAN RANKIN: Senator Hayes is correct in pointing

1 out that will not be casting a vote on Mr.
2 Collin's candidacy given the rule that with a
3 sitting judge that that slate is open, not only
4 the rule but the statute stating that that race
5 will be opened up.

6 MS. CRAWFORD: Mr. Chairman, we have two other
7 uncontested reelections. The Honorable Randall
8 E. McGee, reelection Family Court At-Large Seat
9 Five, and The Honorable David Earl Phillips,
10 reelection Family Court At-Large Seat Six.

11 CHAIRMAN RANKIN: Motion by Senator Hayes to find
12 these candidates both qualified and nominated.
13 Is there a second to that motion? Seconded by
14 Mr. Safran. All in favor say, "aye." (At this
15 time the members audibly say, "aye.")

16 COMMISSION MEMBERS: "Aye."

17 CHAIRMAN RANKIN: Any opposition? No show of hands
18 needed. It was unanimous with Representative
19 Rutherford's proxy.

20 MS. CRAWFORD: Mr. Chairman, the next race is a
21 contested Administrative Law Court Seat One. We
22 have two candidates; The Honorable Ralph King
23 (Tripp) Anderson, III, and Thomas Rosamond Smith.

24 REPRESENTATIVE SMITH: What about David Earl Phillips?

25 CHAIRMAN RANKIN: Is there a motion to find both

1 candidates qualified and nominated?

2 MR. HITCHCOCK: So move.

3 CHAIRMAN RANKIN: All right. Is there a second to
4 that motion? Seconded by Ms. McIver. All right.
5 All in favor say, "aye." (At this time the
6 members audibly say, "aye.")

7 COMMISSION MEMBERS: "Aye."

8 CHAIRMAN RANKIN: Any opposition? There being none,
9 therefore, a voice spoke works and unanimous
10 decision. And now we will proceed to the Master-
11 in-Equity judge -- excuse me. For the record,
12 candidate Hemphill. Roy R. Hemphill?

13 MR. HEMPHILL: Yes, that is who I am.

14 CHAIRMAN RANKIN: Very well. Nice to have you here,
15 sir. And we appreciate your being here early and
16 your patience in our beginning your hearing.
17 Let's first start by having you raise your right
18 hand.

19 HONORABLE ROY HEMPHILL, being duly sworn and
20 cautioned to speak the truth, the whole truth and nothing
21 but the truth, testifies as follows:

22 CHAIRMAN RANKIN: Judge -- candidate. I'm making
23 everybody a judge. You are running for the
24 Master-in-Equity seat in Abbeville County. In
25 that vein, you've completed both the personal

1 data questionnaire and a sworn statement; is that
2 right?

3 MR. HEMPHILL: That is true.

4 CHAIRMAN RANKIN: Are there any changes need to be
5 made to that --

6 MR. HEMPHILL: No.

7 CHAIRMAN RANKIN: -- either of those?

8 MR. HEMPHILL: No. I affirm what I've drafted.

9 (EXHIBIT 9 - JUDICIAL MERIT SELECTION COMMISSION
10 PERSONAL DATA QUESTIONNAIRE OF ROY R. HEMPHILL)
11 (EXHIBIT 10 - JUDICIAL MERIT SELECTION COMMISSION SWORN
12 STATEMENT OF ROY R. HEMPHILL)

13 CHAIRMAN RANKIN: If you will hand those to Lindi
14 we'll make those a part of the record. You are
15 familiar with, having gone through this process
16 these few -- or many months, our job in
17 investigating your qualifications. A thorough
18 investigation which is focused on nine evaluative
19 criteria including a ballot box survey, a study
20 of your application materials, verification of
21 your compliance with state ethics laws, checks of
22 economic conflicts of interest. We've received
23 no affidavits filed in opposition to your
24 election and no witnesses are present to testify.
25 You, sir, have the floor. You are welcome to

1 make ever so brief opening remarks. If not, Mr.
2 Pearce will begin questions of you, and then
3 perhaps other members of the Commission will take
4 it from there.

5 MR. HEMPHILL: Thank you, Senator. Briefly, greetings
6 from the western part of the state. I live in
7 Greenwood. I'm a resident of Greenwood County,
8 but I'm running for a seat in the adjoining
9 county of Abbeville County. It's a wonderful
10 area of the state. And I feel qualified to
11 handle this position and am grateful for the
12 opportunity to be able to serve in that capacity
13 if that is the wish of this Committee and beyond.

14 MR. PEARCE: Thank you, Mr. Chairman. Good afternoon,
15 Mr. Hemphill. I note for the record that based
16 on the testimony contained in the candidate's
17 personal data questionnaire, which has been
18 included in the record and with the candidate's
19 consent, Roy R. Hemphill meets the statutory
20 requirements for this position regarding age,
21 residence and years of practice.

22 EXAMINATION BY MR. PEARCE:

23 **Q: Mr. Hemphill, how do you feel your legal and**
24 **professional experience thus far renders you**
25 **qualified and would assist you to be an**

1 **effective Master-in-Equity for Abbeville County?**

2 A: Thank you, Mr. Pearce. I feel certain. I have
3 practice law for 28 years now in that area of the
4 state. I feel like I've earned the respect of
5 fellow Bar members, as well as sitting judges in
6 that area. I've appeared -- a large part of my
7 practice is in trial work, mostly in the civil
8 area. Being a Master-in-Equity, of course, deals
9 with equitable matters. I have handled a good
10 many foreclosure actions as it relates to
11 creditors and debtors before Masters-in-Equity
12 and special referees. I have also been a quasi-
13 judicial officer for the South Carolina OSHA
14 Review Board back in the '90s. I enjoyed that
15 opportunity to preside over situations where in a
16 lot of instances folks represented themselves and
17 they were pro se. I enjoyed that opportunity to
18 sort of get them introduced to the judicial
19 process in that setting, and I would like to
20 continue that as a part of these duties. I think
21 it's very important for people to be heard in the
22 judicial setting even if they're not represented.
23 And a lot of times Masters-in-Equity find
24 themselves presiding over situations where pro
25 se's are there and guiding them through the

1 process and feeling like they've been heard and
2 that sort of thing. So I certainly feel like I'm
3 qualified due to my past experience.

4 MR. PEARCE: Mr. Chairman, and members of the
5 Commission, the Commission received 128 ballot
6 box surveys regarding Mr. Hemphill with nine
7 additional comments. The ballot box survey
8 contained only positive comments such as,
9 "knowledgeable, outstanding, will make a fine
10 judge, frankly just a good guy, a wealth of
11 experience, comes from a distinguished civically
12 involved family."

13 **Q: Mr. Hemphill, in your information that you**
14 **filled with the Commission you've cited the**
15 **character trait of patience as an asset to your**
16 **potential service as the Abbeville County**
17 **Master-in-Equity. Would you please share with**
18 **the Commission an example of how you have shown**
19 **patience?**

20 A: I guess I would say that in terms of patience,
21 again, I think I would go back to feeling like --
22 or referencing that it's important to make sure
23 that folks are heard. I have certainly been
24 before judges who hurried litigants along and I
25 don't think that that served that particular case

1 very well. So at times I've seen how judges
2 shouldn't do it. I feel like that is a virtue
3 that my parents taught me is to be patient with
4 folks and certainly make sure that they feel like
5 they are being heard because that is probably one
6 of the most important things I've known being a
7 litigant and representing parties and being in
8 situations where the opposing side was not
9 represented. Oftentimes in Masters-in-Equity
10 proceedings, sort of meat and potatoes proceeding
11 is a foreclosure action. My predecessor in our
12 area who is holding this position until his term
13 is up has shown very good patience. His name is
14 Curtis Clarke. I've learned a lot by appearing
15 before him. He's taken the opportunity to
16 explain the foreclosure process to pro se
17 litigants, and he's had the patience of Job, and
18 I think that's been a good role model for me as
19 well.

20 **Q: I'm sorry. You said the name. Could you repeat**
21 **the name?**

22 **A:** Curtis Clarke is my predecessor.

23 **MR. PEARCE:** Thank you, Mr. Hemphill. I have some
24 housekeeping issues, Mr. Chairman.

25 **Q: Mr. Hemphill, are you aware that as a judicial**

1 candidate you are bound by the code of judicial
2 conduct as found in Rule 501 of the South
3 Carolina Appellate Court Rules?

4 A: Yes, I am aware.

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

8 A: I have not.

9 Q: Are you familiar with Section -- of the South
10 Carolina Code 2-19-70, including the limitations
11 on contacting members of the General Assembly
12 regarding your screening?

13 A: I am aware of that.

14 Q: Since submitting your letter of intent, have you
15 sought or received the pledge of any legislature
16 either prior to this date or pending the outcome
17 of your screening?

18 A: I have not.

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

23 A: I have not and I am not aware.

24 Q: Have you reviewed and do you understand the
25 Commission's guidelines on pledging, as well as

1 **South Carolina Code Section 2-19-70(e)?**

2 A: I am aware of that regulation.

3 MR. PEARCE: I would note for the record that the
4 Piedmont Citizens Committee reported that Mr.
5 Hemphill is qualified in the evaluative criteria
6 of constitutional qualifications, physical health
7 and mental stability. In addition, they found
8 him to be well qualified in the criteria of
9 ethical fitness, professional and academic
10 ability, character, reputation, experience and
11 judicial temperament. In addition, the Committee
12 also commented, quote, "Mr. Hemphill has
13 significant experience handling the sorts of
14 cases that come before the Master-in-Equity. His
15 calm, thoughtful demeanor suggests he would make
16 --" excuse me, "suggests that he would have good
17 judicial temperament. He would make a fine
18 judge." Mr. Chairman, I would note for the
19 record that any concerns raised during the
20 investigation by staff regarding the candidate
21 were incorporated into any questioning of him
22 today, and I have no further questions at this
23 time.

24 VICE-CHAIRMAN SMITH: Any questions of Mr. Hemphill,
25 Representative Murphy?

1 EXAMINATION BY REPRESENTATIVE MURPHY:

2 Q: Mr. Hemphill, are you class of '87?

3 A: I am.

4 Q: What company were you in?

5 A: Tango Company.

6 Q: Tango. I believe your classmate was John
7 Drennan?

8 A: Yes. Sad news.

9 Q: Sad news.

10 A: I have certainly heard that. I know his services
11 are about a week away.

12 REPRESENTATIVE MURPHY: Thank you. Thank you for your
13 willingness to serve.

14 MR. HEMPHILL: Thank you, Representative.

15 VICE-CHAIRMAN SMITH: Mr. Safran.

16 MR. SAFRAN: Good afternoon, Judge Hemphill. I could
17 say it's been a few years, but I've had some
18 cases in the past, it's been a while, when he was
19 defending some Workers' Comp, and everything from
20 my experience with him is consistent with the
21 very fine comments that came through the ballot
22 box. So I certainly, you know, appreciate your
23 willing to do it and I know you'll do a great
24 job.

25 MR. HEMPHILL: Thank you, Mr. Safran.

1 VICE-CHAIRMAN SMITH: Any further questions?

2 EXAMINATION BY VICE-CHAIRMAN SMITH:

3 Q: Mr. Hemphill, let me ask you one question,
4 because you caught my attention and maybe you
5 could educate me on the law. I know we're in
6 charge of passing them sometimes. We don't know
7 them all. But you live in Greenwood County and
8 you're going to be the Master of Abbeville
9 County?

10 A: That's right.

11 Q: Is there not a requirement for the judge to
12 reside in the county that he resides over as
13 Master-in-Equity?

14 A: Not that I'm aware of. And my predecessor for
15 the last 12 years has resided also in Greenwood
16 County.

17 VICE-CHAIRMAN SMITH: Well, I'm going then resign my
18 seat and challenge Mr. Doby who comes up here
19 shortly. Thank you. Any further questions? All
20 right. Mr. Hemphill, I want to thank you for
21 your time today and I want to take this
22 opportunity to remind you that pursuant to the
23 Commission's evaluative criteria the Commission
24 expects candidates to follow the spirit as well
25 as the letter of the ethics laws and would view

1 any violations or the appearance of impropriety
2 as seriously and potentially deserving heavy
3 weight in the screening deliberations. Do you
4 understand that?

5 MR. HEMPHILL: I do understand that.

6 VICE-CHAIRMAN SMITH: All right. And on that note, and
7 as you know, the record will remain open until
8 the formal release of the report of
9 qualifications and you may be called back at such
10 time if the need arises. I appreciate you being
11 here today. I appreciate your patience. I don't
12 know. I think we're running behind even on the
13 delayed scheduled we gave you. But I thank you
14 for patience and I wish you safe travels back
15 home.

16 MR. HEMPHILL: Thank you Mr. Vice-Chairman, members of
17 the Committee.

18 (Candidate excused.)

19 VICE-CHAIRMAN SMITH: Mr. Griffith?

20 JUDGE GRIFFITH: Yes, sir.

21 VICE-CHAIRMAN SMITH: Hi, how you doing today?

22 JUDGE GRIFFITH: Doing fine.

23 VICE-CHAIRMAN SMITH: Appreciate you being here.

24 Sorry for the delay in responding. The train
25 never operates on time.

1 JUDGE GRIFFITH: That's quite all right.

2 VICE-CHAIRMAN SMITH: Sorry, Judge Griffith. You're
3 currently a Master-in-Equity?

4 JUDGE GRIFFITH: Correct. Aiken County.

5 VICE-CHAIRMAN SMITH: All right. Will you please
6 raise your right hand, please, sir.

7 HONORABLE MAURICE ANDERSON GRIFFITH, being duly
8 sworn and cautioned to speak the truth, the whole truth and
9 nothing but the truth, testifies as follows:

10 VICE-CHAIRMAN SMITH: Before you, you have your
11 personal data questionnaire and your sworn
12 statement. Are those both the documents that
13 you've submitted to this Commission?

14 JUDGE GRIFFITH: That's correct.

15 VICE-CHAIRMAN SMITH: Are there any amendments or
16 corrections that you need to make in that?

17 JUDGE GRIFFITH: I think the only amendment I made was
18 the tax return. We had an extension, and I
19 submitted those already, so I think everything's
20 in.

21 VICE-CHAIRMAN SMITH: All right. Do you have any
22 objection to us making that as an exhibit to the
23 record of your hearing?

24 JUDGE GRIFFITH: No.

25

1 (EXHIBIT 11 - JUDICIAL MERIT SELECTION COMMISSION
2 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE MAURICE A.
3 GRIFFITH)

4 (EXHIBIT 12 - JUDICIAL MERIT SELECTION COMMISSION SWORN
5 STATEMENT OF THE HONORABLE MAURICE A. GRIFFITH)

6 VICE-CHAIRMAN SMITH: All right. Would you hand that
7 to Lindi for me, please, sir. Judge Griffith,
8 the Judicial Merit Selection Commission has
9 thoroughly investigated your qualifications for
10 the bench. Our inquiry is focused on nine
11 evaluative criteria and has included a ballot box
12 survey, a thorough study of your application
13 materials, verification of your compliance with
14 state ethics laws, search of newspaper articles
15 in which your name appears, study of previous
16 screenings and checks for economic conflicts of
17 interest. We've received no affidavits filed in
18 opposition to your election and no witnesses are
19 present to testify here today. You're welcome to
20 make an opening statement if you wish. You do
21 not have to, but if want, we'll be happy to hear
22 from you.

23 JUDGE GRIFFITH: Just briefly, and it's mainly just to
24 say I appreciate the work and effort that you all
25 have put in and I appreciate the opportunity to

1 be here before you today.

2 VICE-CHAIRMAN SMITH: Okay. All right. Well, answer
3 any questions that counsel may have for you.

4 JUDGE GRIFFITH: Sure.

5 EXAMINATION BY MR. PEARCE:

6 **Q: Good afternoon, Judge.**

7 **A:** Afternoon.

8 **Q: After serving seven years as Aiken County**
9 **Master-in-Equity, why do you want to continue to**
10 **serve?**

11 **A:** You know, my private practice, as it developed
12 over the years, primarily went towards Master-in-
13 Equity cases. So I had a lot of familiarity with
14 the type of cases that were heard in there, tried
15 a lot of them in there. That's what originally
16 peaked my interest in the position with Judge
17 Smoak retired. I have enjoyed that position. I
18 think the experience I had from private practice
19 certainly helped in that, although it is
20 different than being a practicing attorney, but
21 I've enjoyed that. I enjoy representing the
22 people in Aiken County there, and I find it
23 interesting, especially on some of the contested
24 matters that come through. And so, I think I
25 would do a good job at continuing that.

1 Q: What do you think your reputation is amongst
2 attorneys that practice before you as well as
3 the court personnel who work with you?

4 A: I think it would be good. I mean, I try to treat
5 everybody in a professional manner. I think
6 civility in the courtroom is important. Civility
7 when you're meeting with attorneys at trial in
8 chambers is important to handle yourself in a
9 proper manner. I also try and keep staff
10 apprised in what's going on with the office and
11 expect them to act on a professional level, but I
12 try to treat them the same way and I think I've
13 had pretty good relationship as far as
14 interoffice workings and with attorneys who come
15 before me.

16 Q: Thank you so much, Judge. The Commission has
17 received 63 ballot box surveys regarding Judge
18 Griffith with three additional comments. The
19 ballot box survey contained only positive
20 comments, including "doing a good job, we are
21 fortunate to have him, and honest, fair, kind
22 and dedicated to doing excellent work." There
23 were not concerns. No negative comments. We do
24 have some housekeeping issues, Judge. Since
25 submitting your letter of intent, have you

1 contacted any members of the Commission about
2 your candidacy?

3 A: I have not.

4 Q: Are you familiar with South Carolina Code
5 Section 2-19-70, including the limitations on
6 contacting members of the General Assembly
7 regarding your screening?

8 A: I am.

9 Q: Since submitting your letter of intent, have you
10 sought or received the pledge of any legislature
11 either prior to this date or pending the outcome
12 of your screening?

13 A: I have not sought or received any.

14 Q: Have you asked any third parties to contact
15 members of the General Assembly on your behalf,
16 or are you aware of anyone attempting to
17 intervene in this process on your behalf?

18 A: I have not.

19 Q: Have you reviewed and do you understand the
20 Commissions guidelines on pledging, as well as
21 South Carolina Code Section 2-19-70(e)?

22 A: I am.

23 MR. PEARCE: I would note, Mr. Chairman, and members
24 of the Commission that the Midlands Citizen
25 Committee reported that Judge Griffith is

1 qualified in the evaluative criteria of
2 constitutional qualifications, physical health
3 and mental stability. He's also found to be well
4 qualified as to ethical fitness, professional and
5 academic ability, character, reputation,
6 experience and judicial temperament. The
7 Committee provide an additional comment, quote,
8 "Seemed well experienced and pleasant to
9 litigants," unquote. I would just note for the
10 record that if there are any concerns raised
11 during my investigation regarding this candidate,
12 they were incorporated into my questioning of him
13 today. And, Mr. Chairman, I have no further
14 questions.

15 VICE-CHAIRMAN SMITH: All right. Any questions for
16 Judge Griffith? Judge let me say Senator Young
17 just left and I know he is from your area and a
18 practicing attorney.

19 JUDGE GRIFFITH: Yes.

20 VICE-CHAIRMAN SMITH: I don't know if he appears in
21 front of you, but he had a prior commitment that
22 he had to be at this afternoon, so I know he
23 wants to send his regrets. But I just want to
24 thank you for your service. You know, one thing
25 that's important to us is to look over the ballot

1 box surveys, the Citizens Committees and the JQC.
2 We're using so many acronyms this weeks it's hard
3 for me to keep it all straight.

4 JUDGE GRIFFITH: Right.

5 VICE-CHAIRMAN SMITH: But, you know, you have nothing
6 but positive references. You have very little
7 negative comments or even marks on your ballot
8 box. So I want to thank you. That means you're
9 doing a good job. The people who appear in front
10 of you have confidence in you and you are
11 treating them fairly, with courtesy, and you are
12 treating litigants -- it talks about in here how
13 well you treat the litigants. So you uphold some
14 of the highest values of the judiciary and I
15 appreciate your service in that regard.

16 JUDGE GRIFFITH: Thank you.

17 VICE-CHAIRMAN SMITH: All right. Any further
18 questions? Judge Griffith, with that being said
19 I want to take this opportunity to remind you
20 that pursuant to the Commission's evaluative
21 criteria the Commission expects candidate's to
22 follow the spirit, as well as the letter of the
23 ethics law, and we will view violations or the
24 appearance of impropriety as serious and
25 potentially deserving a heavy weight in the

1 screening process. Do you understand that?

2 JUDGE GRIFFITH: I do understand that.

3 VICE-CHAIRMAN SMITH: All right. On that note, as you
4 know, the record will remain open until the
5 formal release of the report of qualifications
6 and you may be called back at such time if the
7 need arises. I appreciate your patience today.
8 I appreciate you appearing before us. I
9 appreciate your service to the state of South
10 Carolina. I wish you safe travels back to Aiken
11 on I-20.

12 JUDGE GRIFFITH: All right. Thank you. Thank you all
13 of you.

14 (Candidate excused.)

15 VICE-CHAIRMAN SMITH: Judge Crosby.

16 JUDGE CROSBY: Yes.

17 VICE-CHAIRMAN SMITH: Good afternoon. How are you
18 doing today?

19 JUDGE CROSBY: Good. Good, thank you.

20 VICE-CHAIRMAN SMITH: Appreciate your patience with
21 us. We are trying to get us back on time here
22 shortly. Will you raise your right hand, please,
23 sir.

24 HONORABLE JOE M. CROSBY, being duly sworn and
25 cautioned to speak the truth, the whole truth and nothing

1 but the truth, testifies as follows:

2 VICE-CHAIRMAN SMITH: Judge Griffith, before you -- I
3 mean, Judge Griffith. Judge Crosby, before you
4 you have your personal data questionnaire and
5 your sworn statement. Are both of those
6 documents that you have submitted to this
7 Commission?

8 JUDGE CROSBY: They are.

9 VICE-CHAIRMAN SMITH: Any changes or amendments that
10 need to be made to that?

11 JUDGE CROSBY: No.

12 VICE-CHAIRMAN SMITH: Do you have any objection to us
13 making that a part of the record and an exhibit
14 to your hearing today?

15 JUDGE CROSBY: I do not.

16 (EXHIBIT 13 - JUDICIAL MERIT SELECTION COMMISSION
17 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE JOE M. CROSBY)
18 (EXHIBIT 14 - JUDICIAL MERIT SELECTION COMMISSION
19 SWORN STATEMENT OF THE HONORABLE JOE M. CROSBY)

20 VICE-CHAIRMAN SMITH: Will you hand those to Lindi for
21 me, please, sir. Judge Crosby, the Judicial
22 Merit Selection Commission has thoroughly
23 investigated your qualifications for the bench.
24 Our inquiry is focused on the nine evaluative
25 criteria. Those are the ballot box survey, a

1 thorough study of your application materials,
2 verification of your compliance with state ethics
3 laws, search of newspaper articles in which your
4 name appears, study of previous screenings and
5 checks for economic conflicts of interest. We
6 received no affidavits in opposition to your
7 candidacy today. No witnesses are here to
8 testify against you. Would you like to make a
9 brief opening statement at this time? You don't
10 have to, but if you desire, we'd be glad to hear
11 from you.

12 JUDGE CROSBY: I'll pass. Thank you.

13 VICE-CHAIRMAN SMITH: Thank you very much. Please
14 answer any questions counsel may have for you.

15 EXAMINATION BY MR. PEARCE:

16 **Q: Good afternoon, Judge Crosby.**

17 **A:** Good afternoon.

18 **Q: After serving 11 years as the Georgetown County**
19 **Master-in-Equity, why do you want to continue to**
20 **serve?**

21 **A:** It's a position that I've enjoyed over my tenure.
22 I enjoy dealing with the public and the
23 litigants. And also, I think it's an honor and a
24 privilege to serve. These are individuals who
25 appear before us, and certainly the attorneys as

1 well. The attorneys, of course, are doing their
2 job. But the litigants, I try and treat them
3 with dignity and respect. And also considering
4 the nature of most of the Master-in-Equity some
5 of it is tough and a bit of a heartbreak if it's
6 a foreclosure and things like that. But it's
7 been a professionally fulfilling job over the
8 past 11 years.

9 **Q: What do you think your reputation is amongst the**
10 **attorneys that practice before you as well as**
11 **the court personnel you have the opportunity to**
12 **work with?**

13 **A:** I think I have a fair reputation. I enjoy
14 working with the bailiffs. I've known them in
15 private practice and I've known them frankly a
16 long time. Well, Mr. Little, who I served on the
17 School Board with years ago, is a bailiff and
18 he's 91-years-old. Anyway, I've loved working
19 with Mr. Little and Ms. Jackie, and certainly
20 former bailiffs. As far as the litigants, I
21 think I have a fair reputation. Again, I treat
22 them with respect and I think the dignity that
23 someone who appears before the court deserves.
24 And again, I think the lawyers understand that
25 I'm a respectful and I treat them with respect

1 and fair in my rules.

2 MR. PEARCE: Mr. Chairman and Commission members, the
3 Commission did receive 130 ballot box surveys
4 regarding Judge Crosby with five additional
5 comments, all of which were positive. Examples
6 of these positive comments include, "always fair
7 and reasonable, an honorable man who's highly
8 respected, respectful with parties and counsel,
9 and recommended without any reservation."

10 Q: **Judge Crosby, I do have some housekeeping issues**
11 **to review as well. Since submitting your letter**
12 **of intent, have you contacted any members of the**
13 **Commission about your candidacy?**

14 A: No.

15 Q: **Are you familiar with South Carolina Code**
16 **Section 2-19-70, including the limitations on**
17 **contacting members of the General Assembly**
18 **regarding your screening?**

19 A: I am.

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

24 A: I have not sought nor have I received any pledge.

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

1 **members of the General Assembly on your behalf**
2 **or are you aware of anyone attempting to**
3 **intervene in this process on your behalf?**

4 A: No, I have not. And I'm not aware of anybody
5 doing that.

6 Q: **Have you reviewed and after your review, if you**
7 **did so, do you understand the Commission's**
8 **guidelines on pledging, as well as the**
9 **provisions of South Carolina Code Section 2-19-**
10 **70(e)?**

11 A: I have reviewed those and I am aware of it.

12 MR. PEARCE: I would note, Mr. Chairman, and members
13 of the Commission that the Pee Dee Citizens
14 Committee reported that Judge Crosby is qualified
15 in the evaluative criteria of physical health and
16 mental stability. They reported him to be well
17 qualified in the areas of ethical fitness,
18 professional and academic abilities, character,
19 reputation, experience and judicial temperament.
20 While no finding was indicated for Judge Crosby
21 on his constitutional qualifications, this
22 investigation has shown that Judge Crosby is
23 constitutionally qualified to continue serving as
24 the Georgetown County Master-in-Equity. And the
25 failure for that to be checked just appears to be

1 a clerical error -- just a scrivener's error. I
2 would just note for the record that any concerns
3 raised during the investigation regarding Judge
4 Crosby were incorporated in my questioning of him
5 today and, Mr. Chairman, I have no further
6 questions.

7 VICE-CHAIRMAN SMITH: Appreciate it. Any questions
8 for Judge Crosby? Senator Sabb.

9 SENATOR SABB: Thank you, Mr. Chairman. And it's
10 really not a question. But I will just tell you
11 that Judge Crosby enjoys an excellent reputation
12 down our way. And he indicated in his statement
13 that one of the things that he tries to do is to
14 -- he's respectful with the litigants, and some
15 of them find themselves being the subject of
16 foreclosure actions and all of that, and he goes
17 out of his way to make sure that people leave in
18 a dignified manner that they should. And so,
19 he's enjoyed an excellent reputation with our Bar
20 and I'm just proud of the way that he handles
21 matters down our way.

22 JUDGE CROSBY: Thank you, Senator.

23 VICE-CHAIRMAN SMITH: Representative Murphy.

24 EXAMINATION BY REPRESENTATIVE MURPHY:

25 **Q: Judge Crosby, you were class of '91?**

1 A: Yes.

2 Q: **What company?**

3 A: Romeo.

4 Q: **Romeo, okay. I was a November class of '90. I**
5 **thought you looked a little familiar. Thank you**
6 **for your --**

7 A: A little bit.

8 Q: **A little bit. Thank you for your willingness to**
9 **serve.**

10 A: Thank you, sir.

11 VICE-CHAIRMAN SMITH: Someone explain to me the
12 connection between Citadel graduates and Master-
13 in-Equities here today, especially when you were
14 in attendance in college. Mr. Crosby, let me ask
15 you this. Georgetown, is that where Crosby
16 Seafood?

17 JUDGE CROSBY: I don't. It was Charleston and --

18 VICE-CHAIRMAN SMITH: Charleston.

19 JUDGE CROSBY: -- it was a sad day when they bulldozed
20 that Crosby Seafood, down by the Citadel. Of
21 course, I had to say that. But to build the
22 condos and that development. But we are
23 unfortunately not related to Crosby Seafood.

24 VICE-CHAIRMAN SMITH: Well, I'm just thinking on the
25 coast, and Crosby, that's -- I knew there was a

1 Crosby Seafood somewhere. Let me echo was
2 Senator Sabb said. You know, I personally, as I
3 sit over here, I review the Judicial
4 Qualifications Committee's report, I review the
5 Citizens report, and I review the ballot box
6 surveys, and they all seem, when you mesh them
7 together, you get a pretty good snapshot of
8 especially a sitting judge of how they are. And,
9 you know, we raise these with candidates whether
10 they're good or they're bad and, you know,
11 normally you just hear about them when they're
12 not as good as they need to be. But I want to
13 remark on yours right here because, you know, I'm
14 looking at this. And we have one other
15 candidate, I think, in this whole screening that
16 has the same thing that you have and that's zero
17 people who find you unqualified in any aspect of
18 what you do. And so, that is a testament to
19 what Senator Sabb says, how you're conducting
20 your courtroom, how you treat the litigants and
21 how you treat the lawyers in there. And more
22 importantly about your knowledge, your character,
23 your reputation and your professional ability.
24 And so, you ought to be proud of the job that
25 you're doing over there. Thank you for the

1 service. And I think it's always good for
2 someone to come and tell you when you're doing a
3 good job. It's not from us telling you you're
4 doing a good job.

5 JUDGE CROSBY: Right.

6 VICE-CHAIRMAN SMITH: It's from your peers and you
7 ought to be proud of that. So thank you for your
8 service.

9 JUDGE CROSBY: Thank you, and I'm humbled by those
10 comments.

11 VICE-CHAIRMAN SMITH: All right. Any further
12 questions for Judge Crosby?

13 SENATOR SABB: No.

14 VICE-CHAIRMAN SMITH: All right. Judge Crosby, let me
15 take this opportunity to remind you that pursuant
16 to the Commission's evaluative criteria the
17 Commission expects candidates to follow the
18 spirit as well as the letter of the ethics laws
19 and will view the violations or the appearance of
20 impropriety as serious and potentially deserving
21 of heavy weight in the screening deliberations.
22 Do you understand that?

23 JUDGE CROSBY: I do.

24 VICE-CHAIRMAN SMITH: And on that note, and as you
25 know, the record will remain open until the

1 formal release of the report of qualifications
2 and you may be called back at any time if the
3 need arises. I appreciate your service today. I
4 appreciate your patience with us. I know you
5 probably spent a couple hours over here sitting
6 in the room by yourself, or maybe with some other
7 candidates, but sorry about that. I wish you
8 safe travels back to Georgetown.

9 JUDGE CROSBY: Yes.

10 VICE-CHAIRMAN SMITH: Thank you for your service to
11 the state of South Carolina.

12 JUDGE CROSBY: Thank you for your time. Thank you.

13 (Candidate excused.)

14 VICE-CHAIRMAN SMITH: Judge Tzerman, how you doing
15 today? Am I pronouncing it correctly?

16 JUDGE TZERMAN: You are. Thank you.

17 VICE-CHAIRMAN SMITH: I've met you before on a couple
18 of occasions, I believe. Raise your hand for me,
19 please, sir, and let's swear you before you get
20 started.

21 HONORABLE JEFFREY M. TZERMAN, being duly sworn
22 and cautioned to speak the truth, the whole truth and
23 nothing but the truth, testifies as follows:

24 VICE-CHAIRMAN SMITH: Judge Tzerman, before you you
25 have your PDQ and your sworn statement. Are both

1 those documents that you've submitted to the
2 Commission?

3 JUDGE TZERMAN: Yes, they are.

4 VICE-CHAIRMAN SMITH: Any changes or additions that
5 need to be made to those?

6 JUDGE TZERMAN: I don't think so. I had one amendment
7 to my address that I addressed before I came
8 today.

9 VICE-CHAIRMAN SMITH: And that's included in those
10 documents, correct?

11 JUDGE TZERMAN: I believe so.

12 VICE-CHAIRMAN SMITH: Do you have any objection of
13 making this as an exhibit to this record and part
14 of your hearing today?

15 JUDGE TZERMAN: No, sir.

16 (EXHIBIT 15 - JUDICIAL MERIT SELECTION COMMISSION
17 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE JEFFREY M.
18 TZERMAN)

19 (EXHIBIT 16 - JUDICIAL MERIT SELECTION COMMISSION
20 PERSONAL DATA QUESTIONNAIRE AMENDMENT OF THE HONORABLE
21 JEFFREY M. TZERMAN)

22 (EXHIBIT 17 - JUDICIAL MERIT SELECTION COMMISSION
23 SWORN STATEMENT OF THE HONORABLE JEFFREY M. TZERMAN)

24 VICE-CHAIRMAN SMITH: All right. Will you hand that
25 to Lindi for me, please, sir. Judge Tzerman, the

1 Judicial Merit Selection Commission has
2 thoroughly investigated your qualifications for
3 the bench. Our inquiry is focused on the nine
4 evaluative criteria. Those include a ballot box
5 survey, thorough study of your application
6 materials, verification of your compliance with
7 state ethics laws, search of newspaper articles
8 in which your name appears, study of previous
9 screenings and checks for economic conflicts of
10 interest. There have been no affidavits filed
11 today in opposition to your candidacy and there
12 are no witnesses here to testify today. Do you
13 wish to make an ever so slight opening argument
14 to this Commission?

15 JUDGE TZERMAN: I'll waive my argument.

16 VICE-CHAIRMAN SMITH: Thank you very much. That's the
17 best argument you can make.

18 JUDGE TZERMAN: Yes, sir.

19 VICE-CHAIRMAN SMITH: If you'll answer any questions
20 that counsel may have for you, please, sir.

21 JUDGE TZERMAN: Thank you.

22 EXAMINATION BY MR. STIMSON:

23 **Q: Judge Tzerman, after serving 18 years as Kershaw**
24 **County's Master-in-Equity, why do you want to**
25 **continue servicing as Master-in-Equity?**

1 A: I enjoy the public service.

2 Q: Judge Tzerman, please explain one or two brief
3 accomplishments that you feel you've completed
4 during your tenure and a goal you would like to
5 accomplish if reappointed?

6 A: I've been a lawyer since 1981 and a judge since
7 the year 2000. I have enjoyed the advocacy of
8 being a lawyer. But I really, truly enjoy
9 resolving disputes for the citizens of my county.

10 Q: Judge Tzerman, what do you think your reputation
11 is among attorneys that practice before you and
12 court personnel that you work with?

13 A: Well, Mr. Stimson, I've had the blessing of
14 someone telling me about the Bar review and
15 report and I'm confident that I have the best
16 wishes of my Bar, my local Bar, as well as the
17 At-Large Bar, particularly the Foreclosure Bar,
18 which more often than any other appear before me.
19 I think I have a good reputation amongst my
20 peers.

21 Q: Judge Tzerman, the Commission received 221
22 ballot box surveys regarding you with five
23 additional comments. All of those five comments
24 were positive, which some included, "I've
25 appeared before the judge and he does a good job

1 and should remain on the bench." Another
2 comment stated, "good Master. The best." And a
3 third comment said, "experienced legal
4 professional." And let me reiterate, not one of
5 the written comments expressed anything
6 negative. Judge Tzerman, I think you've already
7 answered this question a little bit, but what
8 have you enjoyed most about serving as a Master-
9 in-Equity?

10 A: I won't repeat that. Let me see if I can add
11 something to it, Mr. Stimson. And, by the way, I
12 appreciate all your assistance in this matter as
13 well. I like being a judge because I don't have
14 to deal with clients so much. I really do. You
15 know, the clients, you got to take them the way
16 they are. But the parties that come into my
17 courtroom, I try to treat all of them with the
18 same level of respect. I know they all
19 appreciate it. I like to listen. And again, I
20 will be repetitive. I enjoy dispensing justice
21 by resolving disputes among my fellow county
22 citizens. And, of course, I only serve within my
23 county.

24 Q: Thank you, Judge. Judge Tzerman, what is one
25 piece of advice you can give to a newly

1 **appointed Master-in-Equity that you wish someone**
2 **had told you before taking the bench?**

3 A: Well, I'm going to share with you what the
4 Honorable Earnest Kinnard, who was my resident
5 Circuit Court judge for many years. Perhaps some
6 of you know of him. God rest his soul. He gave
7 me the best advice that I could -- and I tell
8 other judges this. New judges that come in to be
9 a part of our Master-in-Equity group. I say
10 listen carefully, but decide quickly and move on.

11 **Q: Thank you, Judge Tzerman. I just have a few**
12 **more housekeeping issues.**

13 A: Sure.

14 **Q: Since submitting your letter of intent, have you**
15 **contacted any members of the Commission about**
16 **your candidacy?**

17 A: No, I have not.

18 **Q: Are you familiar with South Carolina Code**
19 **Section 2-19-70(e), including the limitations in**
20 **contacting members of the General Assembly**
21 **regarding your screening?**

22 A: I'll have to be honest with you. I wouldn't
23 remember the statutory -- I have to look stuff up
24 like that. But I do know it and understand it
25 and comply with it.

1 Q: Since submitting your letter of intent, have you
2 sought or received a pledge of any legislator
3 either prior to this date or pending the outcome
4 of your screening?

5 A: I have not.

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

10 A: I have not, and I don't know of anyone that has.

11 Q: Have you reviewed and do you understand the
12 Commission's guidelines on pledging as contained
13 in South Carolina Code Section 2-19-70(e)?

14 A: I do.

15 MR. STIMSON: I would note that the Midlands Citizens
16 Committee reported that Judge Tzerman is
17 qualified in the evaluative criteria of
18 constitutional qualifications, physical health
19 and mental stability. The Committee found Judge
20 Tzerman well qualified in the evaluative criteria
21 of ethical fitness, professional and academic
22 ability, character, reputation, experience and
23 judicial temperament. The Committee wrote that
24 Judge Tzerman is seasoned and well versed in the
25 law. I would just note for the record that any

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

5 VICE-CHAIRMAN SMITH: All right. Any questions of
6 Judge Tzerman? Judge, you mentioned Earnest
7 Kinnard and I just wanted to -- you said he was -
8 - what was the -- rule quickly and --

9 JUDGE TZERMAN: Listen carefully, rule quickly and
10 move on.

11 VICE-CHAIRMAN SMITH: All right. I will have to say,
12 Judge, the first case I ever questioned a witness
13 in a jury trial was in front of Judge Kinnard,
14 and I'm sure you know this. So when someone
15 would object, he would just do like this
16 (demonstrating).

17 JUDGE TZERMAN: Yes, sir, I do.

18 VICE-CHAIRMAN SMITH: Did you ever figure out what
19 that meant?

20 JUDGE TZERMAN: Not really.

21 VICE-CHAIRMAN SMITH: I didn't know whether it was
22 sustained or overruled or what, and I just would
23 always -- I'll never forget that.

24 JUDGE TZERMAN: Earnest always gave all the evidence
25 it's proper weight.

1 VICE-CHAIRMAN SMITH: That's correct. You experienced
2 that, Mr. Sabb?

3 SENATOR SABB: I always thought he ruled with me.

4 JUDGE TZERMAN: Then you must have had the proper
5 weight, sir.

6 VICE-CHAIRMAN SMITH: When I was a brand new lawyer in
7 the first trial, I sat there and was just frozen
8 when he did it. And then he just said, sir, go
9 ahead. Go ahead. Go ahead. So I always take
10 that as overruled when someone was objecting to
11 my line of questioning.

12 JUDGE TZERMAN: I had the pleasure of having his last
13 trial as a lawyer. I was on the other side of
14 that case. And he had already served for a
15 number of months. The first really big case he
16 had -- you all might have even found a newspaper
17 article about it, when I sued the Hardwick
18 Chemical Company. This has to be back in 1986 or
19 '87, before I was Master. And he was the same as
20 you are right there. Just the same. And he was
21 a new judge then.

22 VICE-CHAIRMAN SMITH: Never changed.

23 JUDGE TZERMAN: No, sir. No, sir.

24 VICE-CHAIRMAN SMITH: The last trial, I had one
25 probably in early 2000, same way.

1 JUDGE TZERMAN: I miss him.

2 VICE-CHAIRMAN SMITH: I do, too. It was always a
3 pleasure for him to come to Sumter County. He
4 was kind to everybody. It added a little humor
5 to the bench every once in a while.

6 SENATOR SABB: I need to add this one, if you don't
7 mind. So I was prosecuting in Williamsburg
8 County and Judge Kinnard came, and there was a
9 young man who clearly had psychological issues
10 and came before the judge, and he did everything
11 except use some of the greatest profanity you
12 ever want to see. And so, started making remarks
13 at the judge. And he just absolutely maintained
14 his cool and said, you know, what. I think I'll
15 just send you for an evaluation and they'll talk
16 to you. They'll find out all kind of information
17 about you, and then they'll give it to me, and
18 I'll bring you back before me and then you and I
19 will talk. Okay? I mean, but I just had such a
20 deep appreciation for how he deflected all of
21 that. Looked beyond it. Recognized the young
22 man had a mental problem. Didn't hold it against
23 him and got him evaluated and came back. And I
24 could tell more Kinnard stories, but --

25 JUDGE TZERMAN: Yes. Thank you so much for today.

1 VICE-CHAIRMAN SMITH: Well, we appreciate it. And let
2 me just conclude with this telling you that, you
3 know, I know I'm in Sumter County, so I neighbor
4 you and hear great things about you from your Bar
5 over there in Kershaw County. And, you know,
6 I've been saying this again. You know, I was
7 just joking a little while ago about the Citadel,
8 all the Masters that have been up before you that
9 were Citadel graduates and were there at the same
10 time as Representative Murphy. You don't hold
11 that distinction, fortunately for yourself.

12 JUDGE TZERMAN: I'm a Gamecock.

13 VICE-CHAIRMAN SMITH: Go Gamecocks. But you do have a
14 similar trait as the others, you know, which is
15 impressive, is that nobody has found you
16 unqualified on any of the nine evaluative
17 criteria from the ballot box surveys. And again,
18 we look at that, coupled with the Citizens
19 Committee report, as well as the Judicial
20 Qualifications Committee. You know, it's just a
21 testament to the job you're doing. I don't
22 appear in front of Masters-in-Equity. I don't
23 know anything about foreclosure. I've still got
24 one foreclosure file sitting on my desk that
25 someone asked me to file, and hopefully they've

1 now paid up the mortgage by the time. I still
2 haven't filed that foreclosure. So, you know, I
3 don't get to see you all as much. But I'm
4 telling you, it's nice for me to look through
5 this and see that the current Masters are just
6 receiving rave reviews. So that's a testament to
7 the job you're doing and to your ability. Both
8 your professional, your academic ability, as well
9 as your temperament. So I thank you for that and
10 I thank you for your service to the state of
11 South Carolina.

12 JUDGE TZERMAN: It's always my pleasure.

13 VICE-CHAIRMAN SMITH: All right. I want to take this
14 opportunity to remind you that pursuant to the
15 Commissions evaluative criteria the Commission
16 expects candidates to follow the spirit as well
17 as the letter of the ethics law and we will view
18 violations or the appearance of impropriety as
19 serious and potentially deserving a heavy weight
20 in the screening deliberations. Do you
21 understand that?

22 JUDGE TZERMAN: I do.

23 VICE-CHAIRMAN SMITH: All right. On that note then
24 you know the record will remain open until the
25 formal release of the report of qualifications

1 and you may be called back at such time if
2 necessary. Hopefully that won't be necessary.
3 So I appreciate you being here today. I
4 appreciate your service to the state of South
5 Carolina. And I wish you safe, brief travels
6 down I-20 right before the five o'clock traffic.

7 JUDGE TZERMAN: Thank you. Thank all of you.

8 VICE-CHAIRMAN SMITH: Thank you.

9 (Candidate excused.)

10 JUDGE DOBY: Good afternoon.

11 VICE-CHAIRMAN SMITH: Judge Doby. How are you doing?

12 JUDGE DOBY: How you doing, Mr. Smith?

13 VICE-CHAIRMAN SMITH: I'm doing well.

14 JUDGE DOBY: Thank you.

15 VICE-CHAIRMAN SMITH: Just for everybody's
16 information, Judge Doby says if I ever appear in
17 front of his court, he's going to hold me in
18 contempt. So now the roles are reversed, Judge
19 Doby.

20 JUDGE DOBY: I can't tell you I didn't think about
21 that on the way over here.

22 VICE-CHAIRMAN SMITH: Judge Doby, raise your right
23 hand, please.

24 HONORABLE STEPHEN BRYAN DOBY, being duly sworn
25 and cautioned to speak the truth, the whole truth and

1 nothing but the truth, testifies as follows:

2 VICE-CHAIRMAN SMITH: Judge Doby, before you is your
3 PDQ and your sworn statement. Are those both
4 documents that you have submitted to this
5 Commission?

6 JUDGE DOBY: It is.

7 VICE-CHAIRMAN SMITH: Do you have any amendments or
8 changes that you need to make at this time?

9 JUDGE DOBY: I do not.

10 VICE-CHAIRMAN SMITH: Do you have any objection to us
11 making those documents as part of this record and
12 a part of the record of your hearing today?

13 JUDGE DOBY: No objection at all.

14 (EXHIBIT 18 - JUDICIAL MERIT SELECTION COMMISSION
15 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE STEPHEN BRYAN
16 DOBY)

17 (EXHIBIT 19 - JUDICIAL MERIT SELECTION COMMISSION
18 SWORN STATEMENT OF THE HONORABLE STEPHEN BRYAN DOBY)

19 VICE-CHAIRMAN SMITH: All right. Without objection,
20 will you hand those to Lindi for me, please, sir.
21 Judge Doby, the Judicial Merit Selection
22 Commission has thoroughly investigated your
23 qualifications for the bench. Our inquiry is
24 focused on the nine evaluative criteria. Those
25 include a ballot box survey, a thorough study of

1 your application materials, verification of your
2 compliance with state ethics laws, search of
3 newspaper articles in which your name appears,
4 study of previous screenings and checks for
5 economic conflicts of interest. There have been
6 no affidavits filed in opposition to your
7 candidacy today. No one is here to testify. Do
8 you wish to make a brief opening statement to the
9 Commission? It's not necessary but you're
10 welcome to if you like.

11 JUDGE DOBY: I'm honored to serve and would like to
12 continue to serve.

13 VICE-CHAIRMAN SMITH: Thank you, Judge Doby. Answer
14 any questions that counsel may have for you,
15 please.

16 EXAMINATION BY MR. GENTRY:

17 **Q: Judge Doby, after serving over ten years as a**
18 **Master-in-Equity, why do you want to continue to**
19 **serve?**

20 **A:** Because I do enjoy the service. I enjoy the job
21 and believe that it is a service both to the
22 legal community and to Lee County and would like
23 to continue to do that.

24 **Q: Please explain one or two brief accomplishments**
25 **that you feel you've completed during your**

1 **tenure as a Master-in-Equity, and if you have**
2 **any goals you're like to accomplish if**
3 **reelected?**

4 A: Probably the biggest accomplishment is that we
5 were one of the first counties to have CMFs as
6 part of our Master-in-Equity job, and we were
7 able to successfully negotiate that, and I
8 believe that our office runs very efficiently at
9 this point. And obviously the continued service
10 that I would like to have to Lee County and to
11 the citizens of South Carolina is what I would
12 like to continue.

13 **Q: What do you think your reputation is among**
14 **attorneys that practice before you?**

15 A: I would hope that it's a good reputation. I try
16 to treat people with the kindness and with the
17 idea that if that was me appearing in front of
18 that judge, or that court, how would I want to be
19 treated, and I try to treat people the same way.

20 **Q: The Commission received 212 ballot box surveys**
21 **regarding Judge Doby with three additional**
22 **comments, none of which expressed concerns. The**
23 **ballot box survey, for example, contained the**
24 **following positive comments. "Judge Doby is**
25 **fair, well liked and hard working. He does a**

1 great job for the people of Lee County." Since
2 submitting your letter of intent, have you
3 contacted any members of the Commission about
4 your candidacy?

5 A: I have not.

6 Q: Are you familiar with Section 2-19-70, including
7 the limitations on contacting members of the
8 General Assembly regarding your screening?

9 A: I am aware of that.

10 Q: Since submitting your letter of intent, have you
11 sought or received a pledge of any legislator
12 either prior to the state or pending the outcome
13 of your screening?

14 A: I have not.

15 Q: Have you asked any third parties to contact
16 members of the General Assembly on your behalf,
17 are you aware of anyone attempting to intervene
18 in the process on your behalf?

19 A: I have not asked anyone to intervene on my
20 behalf.

21 Q: Have you reviewed and do you understand the
22 Commission's guidelines on pledging and Code
23 Section 2-19-70 subsection (e)?

24 A: I do.

25 MR. GENTRY: Thank you, Judge Doby. I would note that

1 the Pee Dee Citizens Committee found Judge Doby
2 to be qualified as to constitutional
3 qualifications, physical health and mental
4 stability and well qualified as to ethical
5 fitness, professional and academic ability,
6 character reputation, experience and judicial
7 temperament. I would also note for the record
8 that any concerns raised during the investigation
9 regarding the candidate were incorporated in the
10 questioning of the candidate today. Mr.
11 Chairman, I have no further questions.

12 VICE-CHAIRMAN SMITH: Thank you. Are there any
13 questions? Judge Doby, let me point out what's
14 becoming a trend over here with the sitting
15 Masters-in-Equity is, you know, I look at your
16 Pee Dee Citizens report, I look at your Judicial
17 Qualifications Committee report, and your ballot
18 boxes. And again, on your ballot boxes all of
19 them are glowing, well qualified in every
20 evaluative criteria. None of them are finding
21 you unqualified. So that's a testament to the
22 job you're doing. I always said when I first
23 started practicing defense work, doing insurance
24 defense work, I cut my teeth over in Lee County
25 and Mr. Doby always used to tell me, Mr. Senator

1 Sabb, how -- you would say it, too. He would
2 introduce me to Lee County justice over there in
3 front of the juries and they never turned out the
4 way I liked it but always the way Mr. Doby and
5 his partners liked it over there. So you
6 administered hopefully a more fair Lee County
7 justice to the citizens that appear in front of
8 you now.

9 JUDGE DOBY: That's all non-jury. All Master-in-
10 Equity, so --

11 VICE-CHAIRMAN SMITH: Whether it's back in the jury
12 and you're the lawyer, hopefully you still --
13 well, except for me. You would hopefully be
14 giving Lee County justice to the other defense
15 lawyers coming over there now?

16 JUDGE DOBY: I've learned from Jacob Jennings on how
17 to dispense justice. So I'll leave the answer at
18 that then.

19 SENATOR SABB: I like that answer.

20 VICE-CHAIRMAN SMITH: How's Jacob doing these days?

21 JUDGE DOBY: He's doing fairly well for --

22 VICE-CHAIRMAN SMITH: Is he still coming into the
23 office some?

24 JUDGE DOBY: Just about every day. Eighty-eight years
25 old and coming in just about every day.

1 VICE-CHAIRMAN SMITH: Just a pillar of the South
2 Carolina legal community. He was the president
3 of the Bar, just a prince of a man and a
4 gentleman. I couldn't think of anyone better to
5 practice with. And I'll say just for the --
6 since we're getting on schedule now. One of the
7 most interesting things, if you ever go to Lee
8 County please stop into their office and see
9 Jacob's and Robert Jennings' grandfather -- or
10 father? Was it father?

11 JUDGE DOBY: Father. Father.

12 VICE-CHAIRMAN SMITH: Was in World War I, and his
13 commanding officer was General -- not then. It
14 was Colonel.

15 JUDGE DOBY: Colonel Patton.

16 VICE-CHAIRMAN SMITH: Colonel George S. Patton. They
17 have the uniform and they have his regimental
18 photograph in their conference room. So not only
19 is it interesting to go over there, it's a
20 history lesson when you go over to their office.
21 So they've been over in Lee County forever. So
22 Judge Doby, thank you so much for your service
23 and I appreciate you being here today. I
24 appreciate your patience while we were running a
25 little bit behind. And so, this will now

1 conclude this portion of your hearing. Let me
2 take this opportunity to remind you that pursuant
3 to the Commission's evaluative criteria, the
4 Commission expects candidates to follow the
5 spirit as well as the letter of the ethics laws,
6 and we will view violations or the appearance of
7 impropriety as serious and potentially deserving
8 of heavy weight in the screening deliberations.
9 Do you understand that?

10 JUDGE DOBY: I do.

11 VICE-CHAIRMAN SMITH: All right. On that note, as you
12 know, the record will remain open until the
13 formal release of the report of qualifications
14 and you may be called back at such time if the
15 need arises. Hopefully it will not. Appreciate
16 you being here today, and more importantly,
17 appreciate your service to the state of South
18 Carolina.

19 JUDGE DOBY: Thank you, Mr. Chairman, and thank you
20 Committee.

21 (Candidate excused.)

22 VICE-CHAIRMAN SMITH: Judge Spence.

23 JUDGE SPENCE: Yes, sir.

24 VICE-CHAIRMAN SMITH: How are you doing today?

25 JUDGE SPENCE: I'm good. I hope you're well.

1 VICE-CHAIRMAN SMITH: I'm well. Judge Spence, would
2 you raise your right hand, please, sir.

3 HONORABLE JAMES OTTO SPENCE, being duly sworn and
4 cautioned to speak the truth, the whole truth and nothing
5 but the truth, testifies as follows:

6 VICE-CHAIRMAN SMITH: Judge Spence, before you is your
7 personal data questionnaire, your sworn
8 statement. Are those both documents that you've
9 submitted to this Committee?

10 JUDGE SPENCE: Yes, sir.

11 VICE-CHAIRMAN SMITH: Any changes or amendments that
12 need to be made at this time?

13 JUDGE SPENCE: The only thing was, when I met with Mr.
14 Hinson, he asked me to submit some additional
15 information on a seminar which I did. I sent
16 that over to him.

17 VICE-CHAIRMAN SMITH: And I believe that's already
18 part of the record.

19 JUDGE SPENCE: Yeah. Yeah.

20 VICE-CHAIRMAN SMITH: So do you have any objection to
21 us marking this as an exhibit to the record of
22 the transcript of this hearing?

23 JUDGE SPENCE: No, sir.

24 (EXHIBIT 20 - JUDICIAL MERIT SELECTION COMMISSION
25 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE JAMES OTTO

1 SPENCE)

2 (EXHIBIT 21 - JUDICIAL MERIT SELECTION COMMISSION
3 SWORN STATEMENT OF THE HONORABLE JAMES OTTO SPENCE)

4 VICE-CHAIRMAN SMITH: With that being said, will you
5 hand it to Lindi for me, please sir. Judge
6 Spence, the Judicial Merit Selection Commission
7 has thoroughly investigated your qualifications
8 for the bench. Our inquiry is focused on the
9 nine evaluative criteria. Those criteria include
10 a ballot box survey, an thorough study of your
11 application materials, verification of compliance
12 with the state ethics laws, search of newspaper
13 articles in which your name appears, study of
14 previous screenings, checks for economic
15 conflicts of interest. There have been no
16 affidavits filed today in opposition to your
17 candidacy and nobody is present to testify. Do
18 you wish to make a brief opening statement to the
19 Commission? You don't have to if you don't want
20 to.

21 JUDGE SPENCE: I would just say just very briefly
22 thank you all for doing this. I know you all
23 have been here a long time, a bunch of days.
24 This is something that I think you all should do
25 and continue to do because judges need this sort

1 of this film review. So thank you all for doing
2 this.

3 VICE-CHAIRMAN SMITH: Thank you so much. Answer any
4 questions that counsel may have for you.

5 JUDGE SPENCE: Yes, sir.

6 EXAMINATION BY MR. HINSON:

7 **Q: Good afternoon, Judge Spence.**

8 **A:** Yes, sir.

9 **Q: Judge Spence, after serving ten years, over ten**
10 **years as a Master-in-Equity, why do you want to**
11 **continue to serve in that role?**

12 **A:** I like the fact that we deal with real problems
13 with people. We do foreclosures, we do
14 partitions, we do land-line disputes. I like
15 being part of the dispute resolve process. I
16 like the fact that it is non-jury because we're
17 able to control our docket and we can come in
18 through status conferences and things like that
19 and I think helping shepherd people through it.
20 We have lots of pro se people now more and more,
21 and I like to have the ability to explain the law
22 to them and be a part of that process. So I like
23 being part of a dispute resolving process.

24 **Q: Thank you. Judge Spence, please explain one or**
25 **two brief accomplishments that you feel you have**

1 **completed during your tenure, and then a goal**
2 **you would like to accomplish if reappointed.**

3 A: In 2011, when I was president of Equity Court
4 Association, then Chief Justice Toal asked me, as
5 the president of Equity Association, along with
6 other past presidents, for assistance in drafting
7 the 2011 administrative order that dealt with the
8 foreclosure crises about loan modification. We
9 did a lot of work on that. That was something
10 that was lauded nationwide. It has been very
11 effective in helping homeowners during the
12 foreclosure crises. So I was proud of our group
13 of judges for doing that. We also do a Lexington
14 County Bench Bar four times a year just for our
15 own local attorneys. I think that's worked well.
16 I've been appointed to a couple state
17 commissions. One, Access to Justice. We're
18 doing a lot of work on limited scope and
19 unbundling services. I think that is a promising
20 area that will help the citizens of South
21 Carolina. So I'm looking forward to that
22 continued work.

23 Q: **Thank you, Judge. Judge Spence, what do you**
24 **think your reputation is among the attorneys**
25 **that practice before you?**

1 A: I don't know because I don't ask them. I feel we
2 have a good working relationship. In the Bench
3 Bar and with the attorneys, I constantly tell
4 them that -- you know, my dad was a Marine
5 Colonel and his saying with four boys was
6 permission to speak frankly. So I always tell
7 the attorneys please talk to me and tell me what
8 I need to hear. I feel I've got a good
9 relationship with them and we seem to have good
10 communication, but I can't answer for them.

11 Q: Thank you, Judge. Judge, the Commission
12 received 294 ballot box surveys regarding you
13 with 23 additional comments. The ballot box
14 survey, for example, contained the following
15 positive comments. One stated, "The best Master
16 I've ever appeared before." Another stated, "If
17 every judge in South Carolina were like Judge
18 Spence, practicing law in South Carolina would
19 be an absolute pleasure." Only two expressed
20 concern. One questioned your temperament
21 towards attorneys, while another said their
22 impression of you is overall favorable but
23 perhaps you were too friendly with familiar
24 attorneys. How would you address these
25 concerns?

1 A: The temperament I'm not sure, because I just
2 don't know. I mean, I'm not saying that's not
3 accurate. But I try to listen, listen, listen,
4 listen, listen, listen, listen. The other
5 familiar item, we talked about that. I think
6 that is a very, very legitimate concern all
7 judges should have. After our conversation about
8 that, we brought that up at our Bench Bar, and I
9 have added a section in our scheduling order now
10 that directs that the two attorneys after a trial
11 don't approach the bench unless they ask for
12 permission, and then when they come up, they're
13 only supposed to talk about legal things and not
14 personal or social because it can create the
15 appearance of impropriety. And the judges have
16 to control that. I mean, when attorneys come up
17 and want to shake your hand, you're in a little
18 bit of an awkward position and that could look
19 wrong. So that was a good thing that whoever
20 pointed out pointed out and I hope we're
21 addressing it by this new procedure.

22 **Q: Thank you, Judge. Just a few housekeeping**
23 **questions. Judge Spence, since submitting your**
24 **letter of intent, have you contacted any members**
25 **of the Commission about your candidacy?**

1 A: No, sir.

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

5 A: Yes.

6 Q: Since submitting your letter of intent, have you
7 sought or received a pledge of any legislator
8 either prior to this date or pending the outcome
9 of your screening?

10 A: No.

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

15 A: No to both questions.

16 Q: Have you reviewed and do you understand the
17 Commission's guidelines on pledging and SC Code
18 2-19-70(e)?

19 A: Is that the --

20 Q: Regarding the penalties if --

21 A: Yes. Yes. Yes.

22 MR. HINSON: I would note that the Midlands Citizens
23 Committee reported that Judge Spence is qualified
24 in the areas of constitutional qualifications,
25 physical and mental health. He was found to be

1 well qualified in the area of ethical fitness,
2 professional and academic ability, character,
3 reputation, experience and judicial temperament.
4 The Committee further commented that Judge Spence
5 is very well respected. I would just note for
6 the record that any concerns raised during the
7 investigation regarding the candidate were
8 incorporated into the questioning of the
9 candidate today. And with that, Mr. Chairman, I
10 have no further questions.

11 VICE-CHAIRMAN SMITH: Thank you, Jimmy. Any questions
12 of Judge Spence? Judge, just the observation I
13 want to make is the same observation I've been
14 making with all these Masters before. I'm just
15 impressed with -- you know, we collect from
16 outside sources. That's part of the
17 investigation. We do our own investigation, and
18 then we go out and get the Judicial Qualification
19 Committee, and then the Citizens Committee and
20 the ballot box surveys, and all those are
21 glowing. And you've served how long again?

22 JUDGE SPENCE: This will be year 12.

23 VICE-CHAIRMAN SMITH: Twelve years.

24 JUDGE SPENCE: Yes, sir.

25 VICE-CHAIRMAN SMITH: And so, you have accumulated no

1 enemies in 12 years. No one's saying anything
2 bad about you on the ballot box survey, which is
3 a testament to the job that you're doing. I
4 appreciate how you're handling your courtroom.
5 Just well qualified in all criteria; ethical
6 fitness, professional academic ability, judicial
7 temperament, reputation, experience. All those
8 evaluative criteria. So you're at the top of
9 your game over there in Lexington County and
10 you're a shining example of what's right with the
11 judiciary over there. So I want to tell you how
12 much I appreciate this, how much the Commission
13 appreciates it. You make our job easy when we
14 get the input such as we have received with you.
15 So I appreciate your job here today. I
16 appreciate your service to the state of South
17 Carolina. And I just want you to know how well
18 respected you are among your peers.

19 JUDGE SPENCE: Thank you. And again, thank everybody.
20 And again, I know you all have an opportunity
21 sometime to waive this, and I know you all work
22 real long and a lot of late hours. But when it's
23 even, don't waive it. Ask us the hard questions,
24 because judges need this. I mean, this is good
25 film review.

1 VICE-CHAIRMAN SMITH: Let me tell you, thank you for
2 saying that, because you're exactly right. We
3 could waive these, and we have waived them in the
4 past, and I think the Commission over the last
5 few years has taken the position that, you know,
6 these aren't lifetime appointments.

7 JUDGE SPENCE: Yes, sir.

8 VICE-CHAIRMAN SMITH: They're six-year appointments or
9 -- Master-in-Equity is six years?

10 JUDGE SPENCE: We're six, and we all need to be
11 reminded that we're not kings, we're stewards,
12 and we need good eye contact and be reminded of
13 that.

14 VICE-CHAIRMAN SMITH: Well, and that's the point is,
15 as someone said, that you have a job interview
16 every six years.

17 JUDGE SPENCE: That's right.

18 VICE-CHAIRMAN SMITH: All of us need reviews. As an
19 elected official, I have a review every two
20 years.

21 JUDGE SPENCE: That's right.

22 VICE-CHAIRMAN SMITH: The Senators have one every four
23 years, and they can tell us we're not doing a
24 good job and put us out and, you know, having a
25 check on your job performance is not a bad thing

1 every once in a while.

2 JUDGE SPENCE: Absolutely.

3 VICE-CHAIRMAN SMITH: And fortunately your performance
4 is extraordinary and I appreciate it. Judge, let
5 me take this opportunity to remind you that
6 pursuant to the Commission's evaluative criteria
7 the Commission expects candidates to follow the
8 spirit as well as the letter of the ethics law,
9 and we review violations or the appearance of
10 impropriety as serious and potentially deserving
11 a heavy weight in the screening deliberations.
12 Do you understand that?

13 JUDGE SPENCE: Yes, sir.

14 VICE-CHAIRMAN SMITH: On that note, as you know, the
15 record will remain open until the formal release
16 of the report of qualifications and you may be
17 called back at such time if the need arises.
18 Hopefully it will not. I appreciate your being
19 here today. I appreciate your patience. I think
20 we're running a little bit behind. You're
21 probably the closest one today to start on time.
22 And I wish you safe travels back across the
23 Congaree River to Lexington County.

24 JUDGE SPENCE: Yes, sir. Thank you, and thank
25 everybody else. Thank you.

1 VICE-CHAIRMAN SMITH: Thank you, sir. Appreciate it.

2 JUDGE SPENCE: May I be excused?

3 VICE-CHAIRMAN SMITH: Yes, sir.

4 JUDGE SPENCE: Thank you.

5 (Candidate excused.)

6 VICE-CHAIRMAN SMITH: Mr. Jordan, how you doing today?

7 MR. JORDAN: Hi, Mr. Smith. How are you?

8 VICE-CHAIRMAN SMITH: I'm well. I see you've brought
9 some company with you today. I know one of them
10 is very important to you. The other one I'm not
11 so sure about. But would you like to introduce
12 them to the Committee?

13 MR. JORDAN: I would. Behind me is my wife, Debbie
14 Jordan.

15 VICE-CHAIRMAN SMITH: Welcome.

16 MR. JORDAN: Thank you.

17 MR. JORDAN: And the former law associate, Todd
18 Williams.

19 VICE-CHAIRMAN SMITH: Hey, Todd. How you doing?

20 MR. WILLIAMS: Good afternoon.

21 VICE-CHAIRMAN SMITH: All right. Mr. Jordan, before
22 you is your personal data questionnaire and your
23 sworn statement. Are those both documents that
24 you have submitted to this Commission?

25 MR. JORDAN: That's correct.

1 VICE-CHAIRMAN SMITH: Are there any changes or
2 amendments that need to be made to those
3 documents?

4 MR. JORDAN: I mailed in amendments to the financial
5 and to the PDQ. I'm not sure if --

6 VICE-CHAIRMAN SMITH: Financial is not an exhibit.
7 That's confidential within this Committee. So
8 the PDQ. You have the amendment?

9 MR. JORDAN: I do have it. I do have it. Yes, sir.

10 VICE-CHAIRMAN SMITH: Do you have any objection to us
11 making these as exhibits to the record of your
12 hearing today?

13 MR. JORDAN: I do not.

14 (EXHIBIT 22 - JUDICIAL MERIT SELECTION COMMISSION
15 PERSONAL DATA QUESTIONNAIRE OF MICHAEL MCKINNEY JORDAN)

16 (EXHIBIT 23 - JUDICIAL MERIT SELECTION COMMISSION
17 PERSONAL DATA QUESTIONNAIRE AMENDMENT OF MICHAEL MCKINNEY
18 JORDAN)

19 (EXHIBIT 24 - JUDICIAL MERIT SELECTION COMMISSION
20 SWORN STATEMENT OF MICHAEL MCKINNEY JORDAN)

21 VICE-CHAIRMAN SMITH: All right. If you'll hand that
22 to Lindi for me, please sir. Mr. Jordan, the
23 Judicial Merit Selection Committee has thoroughly
24 investigated your qualifications for the bench.
25 Our inquiry is focused on the nine evaluative

1 criteria. Those include a ballot box survey, a
2 thorough study of your application materials,
3 verification of your compliance with state ethics
4 laws, search of newspaper articles in which your
5 name appears, a study of previous screenings and
6 checks for economic conflicts of interest. There
7 have been no affidavits filed today in opposition
8 to your candidacy and there are no witnesses
9 present to testify. You can make a ever so brief
10 opening statement, if you like, but you're not
11 required to at this late hour.

12 MR. JORDAN: Okay. I'll waive that.

13 VICE-CHAIRMAN SMITH: Thank you. All right. Answer
14 any questions that counsel may have.

15 MR. FRANKLIN: Thank you, Mr. Chairman.

16 EXAMINATION BY MR. FRANKLIN:

17 **Q: Good evening, Mr. Jordan.**

18 **A:** Thank you.

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

25 **Q: Mr. Jordan, how do you feel your legal and**

1 professional experience thus far renders you
2 qualified and will assist you to be an effective
3 Master-in-Equity?

4 A: Well, after 24 years of practice, I've been in
5 various courtrooms and various settings on both
6 sides, plaintiff and defense. I've done Family
7 Court work. I've done criminal work. So I have
8 a broad base of experience with litigants. Some
9 in difficult circumstances. Some prevailing,
10 some not prevailing. So I believe that those
11 years of experience in the different courtrooms
12 that I've been in -- I have practiced in the
13 Master-in-Equity court. But I believe those
14 years of experience and the practice that I've
15 had qualifies me to sit as a judge and make
16 determinations about real estate matters, the
17 matters before the Master-in-Equity, with
18 understanding from prior experience of both sides
19 of the aisle or both sides of the issue in trying
20 to render a judgement that balances both sides
21 but also follows the law and ends the issue or
22 the litigation.

23 Q: Thank you. Mr. Jordan, the Commission received
24 123 ballot box surveys regarding you with five
25 additional comments. The ballot box survey, for

1 example, contained the following positive
2 comments. "Mr. Jordan has a solid reputation
3 and would be an excellent Master-in-Equity. The
4 breadth of his current practice has permitted
5 him to deal with a wide variety of Sumter
6 citizens which is an important aspect of the
7 position." And also, "well qualified in all
8 respects." One of the written comments
9 expressed a concern that you were unfit for the
10 bench as a Master-in-Equity. How would you
11 respond to that concern?

12 A: Well, I'll just have to say that, you know, one
13 out of 120 plus, obviously after 24 years of
14 practice somebody in some setting was offended
15 by, I guess, maybe the ruling of a court or what
16 happened in the litigation. Obviously, it's an
17 adversarial system. But I do not believe that
18 that one comment depicts, you know, my experience
19 or my character or what I bring to the office of
20 Master-in-Equity as a potential candidate. So I
21 wish I knew maybe the context or when it was
22 said. It's not uncommon. We all try not to take
23 things personal. However, in litigation ruling
24 often times affects you one way or the other, and
25 sometimes we speak before we've really balanced

1 that and thought about it over a period of time.
2 I would think it's maybe an overreaction to
3 something that happened in court. Most likely
4 Family Court.

5 **Q: What do you think the appropriate demeanor is**
6 **for a Master-in-Equity?**

7 A: I think the appropriate demeanor would be kind
8 but also firm and decisive. Mostly what the
9 Master-in-Equity handles is foreclosure. And so,
10 obviously these folks on the defendant side would
11 come before the court risking losing their home,
12 their property. Something that they, you know,
13 spent a lot of money, time and effort, blood,
14 sweat and tears to attain or obtain. So I
15 believe the appropriate demeanor of the Master-
16 in-Equity is, you know, not to be condescending
17 or not to be formulaic, but to be somewhat
18 understanding, but follow the law and make sure
19 that the law is applied evenly, fair-handedly in
20 both for the lender or the mortgage holder and
21 for the mortgagee who made that agreement -- or
22 to the mortgagor who made that agreement to make
23 those payments. So I would say firm but, you
24 know, certainly not condescending or overbearing
25 or demeaning. I know those are challenging times

1 for the folks who are facing foreclosure.

2 **Q: What are you anticipating being the biggest**
3 **challenge of serving as a Master-in-Equity?**

4 A: Well, in Sumter County it is a part-time
5 position. And so, you also have a part-time law
6 practice. So one challenge would be, you know,
7 making sure that the county that pays the
8 Master's salary did not subsidize a private
9 practice. Also making sure that a private
10 practice did not subsidize the efforts of the
11 Master-in-Equity. Unfortunately, in Sumter
12 County the history of the Master-in-Equity
13 includes a situation where monies were missing
14 from the Master's account from foreclosures, and
15 that's led to litigation, some reported cases,
16 and, you know, a difficulty of, I guess,
17 communication and good will between the county
18 and the position of the Master-in-Equity. I
19 think that's for the most part been repaired.
20 But I think any time that there's a
21 misappropriation of funds, loss of funds, then,
22 you know, that leaves hard feelings and something
23 that has to be dealt with. So I believe the
24 biggest issue facing it is continuation of
25 restoration of that confidence and making sure

1 that all of the accounts are balanced and all of
2 the monies are accounted for and there's no loss.

3 **Q:** **Now for a few housekeeping issues.**

4 **A:** Sure.

5 **Q:** **Mr. Jordan, are you aware that as a judicial**
6 **candidate you are bound by the code of judicial**
7 **conduct as found in Rule 501 of the South**
8 **Carolina Appellate Court Rules?**

9 **A:** I am.

10 **Q:** **Since submitting your letter of intent, have you**
11 **contacted any members of the Commission about**
12 **your candidacy?**

13 **A:** I have not.

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

17 **A:** I'm familiar with the 48-hour rule.

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

22 **A:** I have not.

23 **Q:** **Have you asked any third parties to contact**
24 **members of the General Assembly on your behalf**
25 **or are you aware of anyone attempting to**

1 **intervene in this process on your behalf?**

2 A: I am not and I have not.

3 **Q: And finally, have you reviewed and do you**
4 **understand the Commission's guidelines on**
5 **pledging in SC Code Section 2-19-70(e)?**

6 A: I do.

7 MR. FRANKLIN: I would note that Pee Dee Citizens
8 Committee found Mr. Jordan qualified in the
9 evaluative criteria of constitutional
10 qualifications, physical health and mental
11 stability. The Pee Dee also found Mr. Jordan
12 well qualified in the evaluative criteria of
13 ethical fitness, professional and academic
14 ability, character, reputation, experience and
15 judicial temperament. The Committee did not
16 offer any written comments. Mr. Chairman, I
17 would note for the record that any concerns
18 raised during the investigation by staff
19 regarding the candidate were incorporated into
20 questioning of the candidate today. Mr.
21 Chairman, I have no further questions.

22 VICE-CHAIRMAN SMITH: Thank you. Any questions for
23 Mr. Jordan? Representative Murphy?

24 EXAMINATION BY REPRESENTATIVE MURPHY:

25 **Q: Mr. Jordan, I see that you attended Cumberland**

1 **School of Law?**

2 A: Yes, sir.

3 **Q: Graduated in '93, class of '94?**

4 A: Yes, sir.

5 **Q: Do you remember a classmate of yours by the name**
6 **of Fred Conrad? Does that name ring a bell?**

7 A: I do not.

8 **Q: Yeah, I graduated college with him and I know he**
9 **went to -- I'm pretty sure he's either a**
10 **classmate of yours or maybe graduated the year**
11 **after you.**

12 A: Did he go to the Citadel and --

13 **Q: Yeah.**

14 A: -- play in a band? Fred --

15 **Q: That's him.**

16 A: I do know him.

17 REPRESENTATIVE MURPHY: That's him. All right. Thank
18 you.

19 VICE-CHAIRMAN SMITH: I'm glad we had the opportunity
20 to bring up another Citadel story, Representative
21 Murphy. Yeah, we're running on time now, so I
22 guess you can ask your Citadel questions. Too
23 many connections. Mr. Jordan, appreciate you
24 being here today.

25 MR. JORDAN: Yes, sir.

1 VICE-CHAIRMAN SMITH: Any further questions?

2 Obviously this is an open seat, you look at it. I
3 just want to remark throughout this process we've
4 examined your qualifications, both through our
5 own evaluations as well as outside evaluations,
6 and your evaluated criteria pursuant to the
7 ballot box and the Judicial Qualifications
8 Committee and the Citizens Committee all are
9 glowing recommendations. So obviously I know you
10 practice law. You came a year after -- I know
11 both the candidates over here real well. Small
12 Bar in Sumter. But obviously you've got a great
13 reputation among your peers. There's probably
14 nothing more satisfying as an attorney. You're
15 always scared of the anonymous evaluations when
16 you offer yourself into the fray and worry what
17 people think about you. But, you know, you ought
18 to at least feel comforted through this process
19 that here your peers think very highly of you,
20 find you well qualified and are impressed and
21 have very -- well, hardly any, except one,
22 negative comments. So you only ticked one person
23 off in your 24 years of practicing law you're
24 doing okay.

25 MR. JORDAN: Thank you very much.

1 VICE-CHAIRMAN SMITH: Mr. Jordan, this will conclude
2 this portion of your screening. Let me remind
3 you that pursuant to the Commission's evaluative
4 criteria the Commission expects candidates to
5 continue to follow the spirit as well as the
6 letter of the ethics laws and we will view
7 violations or the appearance of impropriety as
8 serious and potentially observing a heavy weight
9 in the screening deliberations. Do you
10 understand that?

11 MR. JORDAN: I do.

12 VICE-CHAIRMAN SMITH: As you know, the record will
13 remain open until the formal release of the
14 report of qualifications and you may be called
15 back at such time if the need arises. Hopefully
16 the need will not arise. I appreciate you being
17 here today. I appreciate your patience. More
18 importantly I appreciate your former law partner
19 and your wife accompanying you to this hearing
20 today. I'm sure they're probably a little
21 disappointed that there weren't more negative
22 questions asked about you.

23 MR. JORDAN: Probably so.

24 VICE-CHAIRMAN SMITH: And I'm sorry to praise you in
25 front of your wife because I'm sure she doesn't

1 A. PAUL WEISSENSTEIN, JR., being duly sworn and
2 cautioned to speak the truth, the whole truth and nothing
3 but the truth, testifies as follows:

4 VICE-CHAIRMAN SMITH: Mr. Weissenstein, before you you
5 have your personal data questionnaire and your
6 sworn statement. Are both those documents that
7 you have submitted to this Commission?

8 MR. WEISSENSTEIN: Yes.

9 VICE-CHAIRMAN SMITH: Any amendments or changes that
10 need to be made to those documents at this time?

11 MR. WEISSENSTEIN: No.

12 VICE-CHAIRMAN SMITH: Do you have any objection to
13 making those documents as an exhibit to the
14 transcript of your hearing?

15 MR. WEISSENSTEIN: No objection.

16 (EXHIBIT 25 - JUDICIAL MERIT SELECTION COMMISSION
17 PERSONAL DATA QUESTIONNAIRE OF A. PAUL WEISSENSTEIN, JR.)
18 (EXHIBIT 26 - JUDICIAL MERIT SELECTION COMMISSION
19 SWORN STATEMENT OF A. PAUL WEISSENSTEIN, JR.)

20 VICE-CHAIRMAN SMITH: All right. If you'll hand those
21 to Lindi for me, please, sir. Mr. Weissenstein,
22 the Judicial Merit Selection Commission has
23 thoroughly investigated your qualifications for
24 the bench. Our inquiry has focused on the nine
25 evaluative criteria. Those criteria include a

1 ballot box survey, a thorough study of your
2 application materials, verification of your
3 compliance with state ethics laws, search of
4 newspaper articles in which your name appears,
5 study of previous screenings and checks for
6 economic conflicts of interest. We received no
7 affidavits today filed in opposition to your
8 candidacy and no witnesses are here to testify.

9 MR. WEISSENSTEIN: Good.

10 VICE-CHAIRMAN SMITH: Do you wish to make a brief
11 opening statement? You don't have to. And due
12 to the time right now, we would encourage you to
13 make it brief if you want.

14 MR. WEISSENSTEIN: I will waive an opening statement.

15 VICE-CHAIRMAN SMITH: Good. Your opponent did the
16 same thing, so you all are both even on that.
17 Thank you very much. Answer any questions
18 counsel may have.

19 MR. FRANKLIN: Thank you, Mr. Chairman. I note for
20 the record that based on the testimony contained
21 in the candidate's PDQ which has been included in
22 the record with the candidate's consent, Paul
23 Weissenstein meets the statutory requirements for
24 this position regarding age, residence and years
25 of practice.

1 EXAMINATION BY MR. FRANKLIN:

2 Q: Mr. Weissenstein, how do you feel your legal and
3 professional experience thus far renders you
4 qualified and will assist you to be an effective
5 Master-in-Equity?

6 A: Well, I've been practicing law since 1978. A lot
7 of that practice, or during most of the practice
8 time, I've had a lot of focus on real estate.
9 Real estate litigation, which, of course, is what
10 the Master-in-Equity office deals with. So I've
11 had a lot of that. Different areas of practice -
12 - or different areas of real estate litigation.
13 I've had some partition suites, some quiet
14 titles, some foreclosures where I'm representing
15 plaintiff, foreclosures where I'm representing
16 defendants. All of those are kinds of cases that
17 appear before Master-in-Equity. So I've had a
18 lot of that. I've also served as a Special
19 Referee in Sumter County for about 12 years, so
20 I've had a fair amount of experience doing that
21 as well.

22 Q: The Commission received 130 ballot box surveys
23 regarding you with three additional positive
24 comments, namely, "Great guy; great judge."
25 "This is the perfect job for him, especially in

1 a smaller county." "Mr. Weissenstein has a
2 reputation for being trustworthy. His
3 experience as a Special Referee and his
4 litigation experience involving collections,
5 foreclosures, partition and bankruptcy lends him
6 the experience to understand the matters brought
7 before the court." And there were really no
8 negative comments.

9 Mr. Weissenstein, you indicate in your PDQ that
10 20 years ago you were named as an additional
11 defendant in a case in which the property
12 purchaser-plaintiff, sued the seller. I believe
13 your recollection is that you were the closing
14 attorney. Please explain a little more about
15 the nature and/or disposition of that lawsuit.

16 A: When I received the summons and complaint, I
17 called the plaintiff's attorney and asked him why
18 he had named me as a defendant, and he said
19 basically he was covering the kitchen sink, or
20 using a shotgun method, or something to that
21 effect. And so, I reported this to my
22 malpractice carrier and my malpractice carrier
23 ultimately got the case dismissed. I also
24 contacted the attorney's senior partner. The
25 attorney that sued me was an associate. I called

1 the senior partner that I'd known quite well and
2 asked him about it and he said he did not know
3 about the action. But anyway, it was ultimately
4 dismissed. I do not remember the name of the
5 attorney that was the plaintiff and I do not
6 remember the name of the case. But that was,
7 like you said, probably about 20 years ago.

8 **Q: Additionally your SLED report indicates that you**
9 **were named as a defendant in several other**
10 **cases. First in 2012 you were named as a**
11 **defendant in a series of cases involving state**
12 **court involving Wafa Investments, LLC.**

13 **A:** Right.

14 **Q: Those cases were all entitled First Citizens**
15 **Bank and Trust Company versus Wafa Investments,**
16 **LLC. Please explain to the Commission the type**
17 **of business Wafa Investments engages in, your**
18 **role in the company, and finally the disposition**
19 **of those lawsuits.**

20 **A:** All right. Well, Wafa Investments was organized
21 by me and a real estate agent buddy of mine that
22 I'd known for, at that time, about 15 years, and
23 we purchased what was -- it was a subdivision in
24 Sumter known as Sherwood Forrest, and Sherwood
25 Forrest had about 15 or so lots left in it. Plus

1 it had about 80 or 90 extra acres that had been
2 undeveloped, plus about a 25 or so lot that had
3 been developed on a street that had been
4 abandoned and grown up. So the owner of that
5 property -- the real estate agent was able to
6 sell one or two of the lots after umpteen years
7 of the subdivision sitting without any activity.
8 So the owner from North Carolina contacted the
9 agent and said can you get rid of the rest of
10 this property for us. So we bought the rest of
11 the property as WAFA Investments, LLC, and
12 developed some property and things of that
13 nature. And during the course of this, we
14 obtained loans from a predecessor to what became
15 First Citizens Bank. And my partner and I each
16 had to personally guarantee those loans, and the
17 loans were set up as 15 year amortizations with a
18 five year balloon. And when the five year
19 balloon came and they took a look at the cash
20 flow that WAFA was experiencing, they determined
21 that it was probably unlikely that WAFA was going
22 to be able to maintain the cash flow. So they
23 filed a foreclosure -- or they filed three
24 foreclosures because there were three loans. And
25 ultimately WAFA sold the piece of property that

1 netted about 15 or so thousand dollars cash after
2 paying off another loan, and we paid that \$15,000
3 to First Citizens and First Citizens then settled
4 the foreclosures by dismissing them and reworking
5 the loans. So that's what happened there.

6 **Q: Are you still a member of WAFA?**

7 A: Still a member of WAFA. Still got two of the
8 loans. We paid off one. And, in fact, we have
9 another balloon that's come up and we are in the
10 process of resigning those loans.

11 **Q: In 2009, you were named as a defendant in a**
12 **foreclosure action entitled Safe Federal Credit**
13 **Union versus Housen. Please explain the facts**
14 **behind this action and the disposition of that**
15 **action.**

16 A: Safe Federal Credit -- well, Ms. Housen was an
17 elderly lady who was deemed possibly incompetent.
18 I was appointed as her guardian-ad-litem for
19 purposes of litigation to determine her
20 competency and to whom should be appointed as her
21 conservator and guardian. And so, in the course
22 of that litigation I ended incurring a right
23 substantial attorney fee because the hearing
24 lasted multiple days, and ultimately I was given
25 a judgment for -- I forget. Six or \$7,000 in

1 attorneys fees because there was no money to pay.
2 Well, when the conservator then defaulted on the
3 house payment, Safe did a foreclosure and I was
4 named as a defendant because I was a judgment
5 creditor.

6 **Q: In 1999, a lis pendens action was filed by**
7 **Marvin McMillan against Canal, Inc. of which you**
8 **were one of five members.**

9 A: Right.

10 **Q: Please explain the nature and disposition of**
11 **that action.**

12 A: Well, Canal, Inc. was owned by five lawyers,
13 including me and Mr. McMillan, and Canal, Inc.
14 owned some property, an office -- or a future
15 office in downtown Sumter. And at some point
16 apparently there was an issue as to how to divvy
17 up the -- or what to do with that property. And
18 basically the idea from at least another one of
19 the partners was maybe not to do anything with it
20 for a while, so we filed that lis pendens, and as
21 a result then the other partners I believe bought
22 us out.

23 **Q: Finally, Mr. Weissenstein, your SLED report**
24 **indicates that in 1992 you were a plaintiff in a**
25 **case entitled Weissenstein versus Davis which**

1 **appeared you were received a judgment in the**
2 **amount of \$392.50. Please explain the nature**
3 **and disposition of that action.**

4 A: I actually have no recollection of that. When
5 you contacted me about it, I tried to check
6 courthouse records and the courthouse had no
7 record of it, other than a copy of the judgment
8 and a copy of the satisfaction. And I did not
9 have the file. That was when I was with another
10 law firm that has since dissolved and closed and
11 the records from that firm have been destroyed.
12 I mean, this was back in 19 -- I left the firm at
13 the beginning of 1998. And so, there was no way
14 for me to be able to find any more information
15 than a copy of the judgment and a copy of the
16 satisfaction which was available at the Clerk of
17 Court's office.

18 Q: **Thank you. Mr. Weissenstein, you stated in your**
19 **PDQ that in the past you became delinquent on**
20 **IRS and South Carolina DOR personal income tax**
21 **liabilities but you brought them current about**
22 **15 years ago. You further stated that no**
23 **federal tax liens were filed but three SCDOR tax**
24 **liens were filed between 1997 and 2002. A**
25 **review of your records reveals the following.**

1 First, it appears that in 1995 you had a lien in
2 the amount of \$352.32 that was satisfied on May
3 2nd, 1997. Second, in 1997, you had a lien in
4 the amount of \$355.11 that was satisfied on
5 March 10th, 1999. Thirdly, in 2000, you had a
6 lien in the amount of \$1,729.46 that was
7 satisfied on January 14th, 2003. Are those the
8 liens that you were referring to and is there
9 anything else you can offer about why you became
10 delinquent on your taxes and incurred those
11 liens?

12 A: Yeah, when I was preparing the question -- or
13 preparing the questionnaire to submit and that
14 was one of the questions, have you ever had any
15 tax liens filed against you, my reaction was no,
16 but I said, you know, I probably ought to check
17 that. Went to the courthouse and found those.
18 And so, I reported them because honestly I didn't
19 remember them. But when I was with the other law
20 firm, the firm had some problems, and as a result
21 the cash flow in the firm decreased. One of the
22 attorneys in the firm basically got suspended and
23 had incurred a significant amount of debt that
24 the firm had to cover. And so, the cash flow was
25 reduced in the firm. And so, with a reduction in

1 cash flow there was a reduction in cash flow,
2 so...

3 MR. FRANKLIN: Mr. Chairman, I'd like to request that
4 we now go into executive session.

5 VICE-CHAIRMAN SMITH: All right. Senator Sabb moves
6 we go into executive session, seconded by
7 Representative Murphy. All in favor say, "aye."
8 (At this time the members audibly say, "aye.")

9 COMMISSION MEMBER: "Aye."

10 VICE-CHAIRMAN SMITH: We'll go in executive session.

11 We'll clear the room of our one occupant.

12 (Executive Session from 5:23 p.m to 5:27 p.m.)

13 VICE-CHAIRMAN SMITH: Mr. Franklin, continue.

14 MR. FRANKLIN: I just have a few housekeeping issues.

15 VICE-CHAIRMAN SMITH: Hold on a second. Hold on.

16 Hold on. Since I've not been Chairman, I have to
17 be reminded of my duties. Let the record reflect
18 we've been in executive session, and while we
19 were in executive session there were no votes
20 taken nor any matters decided. So now, Mr.
21 Franklin, you can presume your questioning.

22 **Q: Now for a few housekeeping issues. Mr.**
23 **Weissenstein, are you aware that as a judicial**
24 **candidate you are bound by the code of judicial**
25 **conduct as found in Rule 501 of the South**

1 Carolina Appellate Court Rules?

2 A: I am.

3 Q: Since submitting your letter of intent, have you
4 contacted any members of the Commission about
5 your candidacy?

6 A: I have not.

7 Q: And are you familiar with Section 2-19-70,
8 including the limitations on contacting members
9 of the General Assembly regarding your
10 screening?

11 A: I am.

12 Q: Since submitting your letter of intent, have you
13 sought or received a pledge of any legislator
14 either prior to this date or pending the outcome
15 of your screening?

16 A: I have not.

17 Q: Have you asked any third parties to contact
18 members of the General Assembly on your behalf
19 or are you aware of anyone attempting to
20 intervene in this process on your behalf?

21 A: I have not tried to contact anyone. I am not
22 aware of anyone who has made a contact. I've had
23 a couple of people ask me if they should make
24 contacts and I said no, so...

25 Q: And finally, have you reviewed and do you

1 **understand the Commission's guidelines on**
2 **pledging in SC Code Section 2-19-70(e)?**

3 A: Yes.

4 MR. FRANKLIN: I would note that the Pee Dee Citizens
5 Committee report reported that Paul Weissenstein
6 is qualified in the areas of constitution
7 qualifications, physical health and mental
8 stability and well qualified in the areas of
9 ethical fitness, professional and academic
10 ability, character, reputation, experience and
11 judicial temperament. Mr. Chairman, I would note
12 for the record that any concerns raised during
13 the investigation by staff regarding Mr.
14 Weissenstein were incorporated into the
15 questioning of the candidate today. Mr.
16 Chairman, I have no further questions.

17 VICE-CHAIRMAN SMITH: Thank you, Mr. Franklin. Any
18 questions by the Commission? All right. No
19 questions. Mr. Weissenstein, appreciate your
20 appearing before us. Actually, I think we're on
21 time or may even be ahead of schedule. So you're
22 probably the only candidate this entire week who
23 has been on time, so I want to congratulate you
24 for that. You're the only one that did not have
25 to suffer through painstaking delays that we've

1 incurred over this past week. Let me say this.
2 I will say the same thing as I told Mr. Jordan
3 that came before you. You know, it's interesting
4 we do our own investigation and then we get the
5 outside groups that do their investigations. You
6 went through the Judicial Qualifications
7 Committee of the Bar and went through the
8 Citizens Committee. The Pee Dee Citizens
9 Committee, and then you got the ballot box
10 surveys. And like I pointed out to Mr. Jordan, I
11 always will be scared about what other lawyers
12 would say about me, especially when it's
13 anonymous, and you have glowing recommendations,
14 well qualified and everything, no negative
15 comments, and that's a testament to the type of
16 practice you've had for 40 years. So it's
17 something you ought to take comfort in and you
18 ought to be proud of. When you have not
19 accumulated any enemies in your 40 years of
20 practicing law. I don't know that there's many
21 people that can say, but I want to congratulate
22 you on that and ---

23 MR. WEISSENSTEIN: Thanks.

24 VICE-CHAIRMAN SMITH: -- tell you how that is
25 something that you ought to be very proud of. So

1 I appreciate you being here today. And let me
2 take this opportunity at this time to remind you
3 that pursuant to the Commission's evaluative
4 criteria the Commission expects candidates to
5 follow the spirit as well as the letter of the
6 ethics laws and we view violations or the
7 appearance of impropriety as serious and
8 potentially deserving of heavy weight in the
9 screening process. Do you understand that?

10 MR. WEISSENSTEIN: I do.

11 VICE-CHAIRMAN SMITH: On that note, as you know, the
12 record will remain open until the formal release
13 of the report of qualifications and you may be
14 called back at such time if the need arises.
15 Hopefully, that need will not arise. I thank you
16 for offering for this position and I appreciate
17 your patience with us today, and I wish you safe
18 travels at 5:30 back to Sumter County. Enjoy
19 that trip. It's going to be packed until you get
20 to the river.

21 MR. WEISSENSTEIN: Oh, yeah. Oh, yeah.

22 VICE-CHAIRMAN SMITH: All right. Thank you, Mr.
23 Weissenstein.

24 MR. WEISSENSTEIN: Thank you very much. Thank you
25 everybody. Appreciate it.

1 (Candidate excused.)

2 VICE-CHAIRMAN SMITH: You came in at the perfect time,
3 because now we get to ask you to leave again. So
4 we're going back into executive session, so you
5 should have stayed where you are. Representative
6 Murphy moves that we go into executive session,
7 seconded by Senator Sabb. All in favor say,
8 "aye." (At this time the members audibly say,
9 "aye.")

10 COMMISSION MEMBERS: "Aye."

11 VICE-CHAIRMAN SMITH: We're in executive session.

12 (Executive Session from 5:32 p.m. to 5:37 p.m.)

13 VICE-CHAIRMAN SMITH: All right. We're back on the
14 record, and let me state while we're in executive
15 session there were no votes taken and no matters
16 decided. With that being said, we're
17 entertaining motions to the Master-in-Equity.
18 Mr. Safran.

19 MR. SAFRAN: I just move to find all qualified.

20 VICE-CHAIRMAN SMITH: Okay. And Mr. Safran moves to
21 find all qualified, seconded by Senator Sabb.
22 All in favor of that motion indicate by raising
23 your hand. (At this time the members signified by
24 raising their hands.) Mr. Hitchcock --

25 MR. HITCHOCK: Yes, sir. I've got three.

1 VICE-CHAIRMAN SMITH: All right. Tell us your
2 proxies, please.

3 MR. HITCHOCK: I have proxies for Senator Young and
4 Senator Hayes.

5 VICE-CHAIRMAN SMITH: And then I have the proxy of
6 Representative Rutherford and he votes to find
7 all of the candidates qualified. All right. Any
8 further business? Yeah, I think we do adjourn at
9 the call of the Chair. So Representative Murphy
10 moves that we adjourn to the call of the Chair,
11 seconded by Senator Sabb. All in favor say,
12 "aye." (At this time the members audibly say,
13 "aye.")

14 COMMISSION MEMBERS: "Aye."

15 VICE-CHAIRMAN SMITH: All opposed? The "ayes" have
16 it. Let me thank you all for your service for
17 two and a half weeks of this with a Thanksgiving
18 break. And more importantly, there's no staff
19 here. We've let all our staff out of here. So I
20 want to thank those who remain. The most
21 important ones are here. Thank you. Although
22 everyone talks about how hard we work, I can tell
23 you the staff works twice as hard to get prepared
24 for this time, as well as working to keep this
25 train running on some type of schedule. I

1 wouldn't say it was running on time. Mr.
2 Tzerman, congratulations, you are found
3 qualified. And same to you Mr. Jordan and Mr.
4 Weissenstein. All you all were found qualified,
5 so the reports will go to your delegations and
6 good luck to you all. You all have a Merry
7 Christmas. With that being said, we stand
8 adjourned.

9 (There being nothing further, the proceeding concluded at
10 5:40 p.m.)

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CERTIFICATE OF REPORTER

I, JAIME D. NEWTON, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THIS PROCEEDING, ON THURSDAY, THE 29TH DAY OF NOVEMBER, 2018, AND THAT THE FOREGOING 187 PAGES CONSTITUTE A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 10TH DAY OF DECEMBER, 2018.



JAIME D. NEWTON, COURT REPORTER
MY COMMISSION EXPIRES MAY 19, 2027

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