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JUDICIAL MERIT SELECTION COMMISSION

PUBLIC FACT FINDING HEARING

Thursday, February 19, 2009

1:05 p.m.

The Gressette Building, Room 105

Columbia, South Carolina

 ORIGINAL

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1 MEMBERS IN ATTENDANCE:

2

REPRESENTATIVE ALAN D. CLEMMONS

3

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

4

SENATOR ROBERT FORD

5

PROFESSOR JOHN P. FREEMAN

6

JOHN DAVIS HARRELL, ESQUIRE

7

REPRESENTATIVE DAVID J. MACK, III

8

SENATOR GLENN F. McCONNELL, CHAIRMAN

9

MS. AMY JOHNSON McLESTER

10

SENATOR JOHN M. "JAKE" KNOTTS, JR.

11

H. DONALD SELLERS, ESQUIRE

12

JANE O. SHULER, CHIEF COUNSEL

13

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1 CHAIRMAN McCONNELL: All right. Good
2 afternoon.

3 The Judicial Merit Selection Commission
4 is convened today for the purpose of hearing facts
5 related to Judge Kenneth Goode's candidacy for
6 reelection as judge of the circuit court.
7 Specifically on February the 11th, 2009, the
8 General Assembly met in Joint Assembly in
9 accordance with the terms of the concurrent
10 resolution adopted by both houses to elect certain
11 judges, including a judge of the circuit court at
12 large seat eight, Judge Kenneth G. Goode. At the
13 Joint Assembly and upon my motion, I published the
14 following letter received from Judge Goode to the
15 members as follows.

16 "The State of South Carolina, Circuit
17 Court of the Sixth Judicial Circuit, Kenneth G.
18 Goode, Judge, February 11th. Re: Candidacy for
19 Reelection to Judgeship.

20 "Dear, Senator McConnell, I have read
21 with concern the article in today's State newspaper
22 concerning my candidacy for reelection. I
23 understand the nature of the allegations which have
24 been made. I further understand the allegations
25 against me have arisen since the time of my

1 judicial screening. While I believe my decisions
2 have been sound and appropriate in the cases
3 reported on by the newspaper, I am also convinced
4 it is totally unfair to the legislature for me to
5 ask to be voted upon with the allegations pending
6 and with the allegations not having been fully
7 reviewed by the Screening Committee.

8 "As you're aware, judicial ethics
9 prevent me from publicly responding to the
10 allegations reported in the newspaper. I find
11 myself in a situation where I cannot do anything to
12 refute the allegations and where the legislature is
13 being asked to vote upon my candidacy in the face
14 of allegations which have not been considered by
15 the screening panel. It is important to me that
16 all of the facts be known before I am voted upon.
17 I am convinced that when the facts are reviewed, my
18 conduct will be found to have been appropriate in
19 all the cases reported upon in the newspaper.

20 "The integrity of the judicial system
21 demands that I not be voted upon at this time. The
22 issues raised in my opinion go to the integrity of
23 the process and are much greater than the issue of
24 my personal candidacy. In order that this matter
25 be resolved in fairness to all concerned and in

1 fairness to the legislature, I ask that my
2 candidacy be carried over and be resubmitted to the
3 Judicial Screening Committee for full review. I
4 look forward for this process to prove to the
5 citizens of this great state that my judicial
6 qualifications are beyond reproach.

7 "I thank you and the members of the
8 General Assembly for considering this request. I
9 am available at the State House today should anyone
10 have any questions for me or if I can provide any
11 assistance whatsoever. Yours very truly, Kenneth
12 G. Goode."

13 Senator Fair then made a motion to the
14 members of the Joint Assembly that the election to
15 fill the position of judge of the Circuit Court at
16 large seat eight be carried over and that the
17 candidacy of Judge Goode be referred to the
18 Judicial Merit Selection Commission. His motion
19 was subsequently adopted by the members of the
20 General Assembly. Therefore the Judicial Merit
21 Selection Commission is convened today to hear
22 facts regarding matters in response to the motion
23 passed by the General Assembly.

24 Specifically that motion directs the
25 Commission to hear matters solely on the cases

1 reported in The State newspaper on February 10th
2 through 11th, 2008; that is, the State versus
3 Talisha Lavette Smith and State versus Zail Ray
4 Gavin. The purpose of this hearing today is to
5 gather facts related to Judge Goode's handling of
6 these matters and submit a fact finding report to
7 the members of the General Assembly for
8 consideration. It is not convened for the purpose
9 of finding Judge Goode qualified or unqualified.

10 The Commission has received and
11 considered numerous complaints filed against Judge
12 Goode and has considered numerous affidavits of
13 support, 49, filed in favor of Judge Goode's
14 reelection to the bench. Staff has obtained
15 transcripts of sentencing hearings related to the
16 Smith and Gavin matters. All documents obtained by
17 staff in their investigation and affidavits are
18 before the Commission members in the notebooks that
19 each of you have today.

20 I would like to remind the members of
21 the public hear today to turn off your cell phones.
22 If you have them, turn them off.

23 Before we start -- Judge, you can stay
24 right where you are and remain comfortable for the
25 moment.

1 And so as to not disrupt this room, I'm
2 going to ask that we need our staff attorneys to
3 give us a quick briefing on the legal parameters
4 and procedure in executive session to receive that
5 legal advice, and then we will come out and
6 formally deal with the hearing. And I would also
7 ask that whoever makes this motion make it that we
8 just meet over in my office so that all these folks
9 can stay right where they are --

10 PROFESSOR FREEMAN: So --

11 CHAIRMAN McCONNELL: -- and we'll go do
12 the moving.

13 PROFESSOR FREEMAN: So moved.

14 SENATOR KNOTTS: Second.

15 CHAIRMAN McCONNELL: Professor Freeman
16 so moves. The senator from Lexington seconds.

17 Is there any discussion? There being
18 no discussion, we'll proceed to a vote. All in
19 favor please signify by saying aye. Opposed by
20 nay. Ayes have it.

21 Y'all just stay comfortable and we'll
22 be right back. It shouldn't take us but a few
23 minutes.

24 (A recess transpired.)

25 CHAIRMAN McCONNELL: We have just

1 completed with our attorneys going over the legal
2 advice, and let me now address the Commission as
3 to -- as to where we are and how we should proceed.

4 Pursuant to the statutes of South
5 Carolina, as I understand them, once this
6 commission has voted to qualify and that question
7 has been presented to the General Assembly, it is
8 not within the legal ambit of this commission to
9 reopen the question of qualified and unqualified.
10 That would only come back into play should a
11 candidate withdraw or not receive the endorsement
12 of the General Assembly.

13 The General Assembly by a resolution
14 has instructed this commission to review the
15 matters that have occurred since we voted and to
16 make a report back to the General Assembly. That
17 would be a report of the facts, complainants and
18 the proponents on these matters and these matters
19 only, and would not contain a set of findings from
20 this commission as to what we agree or disagree
21 with. It would be a report.

22 So therefore to the people who are
23 here, those who may be complainants and those who
24 may be proponents on other matters, you are not
25 shut out by today's hearing. Those matters should

1 be discussed. If you think there is a complaint
2 that a member needs to considerate at the time they
3 vote, that is your option to talk to members of the
4 General Assembly, and I do not want anybody to feel
5 that we are in any way limiting your right of free
6 speech to talk to the members of the General
7 Assembly.

8 That also goes for those of you who
9 have sent in affidavits who wanted to testify in
10 favor of the judge on this matter or other matters
11 or whatever. We will not be dealing with those.
12 We will be dealing with the -- the limited area
13 that is prescribed in the resolution, and therefore
14 the testimony we take today will be confined to
15 that, and the witnesses that will be called will be
16 those that are relevant to that.

17 On behalf of this commission -- and I
18 hope that all of you will agree with me that this
19 is where we should go based upon what we understand
20 our legal advice -- we would also thank all of the
21 participants who came here today who were willing
22 to step forward with this commission, that we
23 appreciate it, and that you will have that
24 opportunity to make your voices known in another
25 forum, but that would be the forum as expressed

1 here.

2 And I'm going to ask this commission if
3 that's the understanding of every single member.

4 Professor Freeman?

5 PROFESSOR FREEMAN: It's my
6 understanding, yes, it is, sir.

7 MR. SELLERS: It's my understanding.

8 CHAIRMAN McCONNELL: Mr. Sellers?

9 MS. McLESTER: Yes, it is my
10 understanding.

11 REPRESENTATIVE DELLENEY: Yes, sir,
12 it's my understanding.

13 SENATOR FORD: It's my understanding.

14 REPRESENTATIVE CLEMMONS: Mine as well.

15 MR. HARRELL: It's my understanding.

16 REPRESENTATIVE MACK: It is.

17 SENATOR KNOTTS: It is.

18 CHAIRMAN McCONNELL: For the record let
19 it be stated that this commission is in 100 percent
20 agreement that that is the legal limitations and
21 arrangements under which we will operate, and it is
22 unanimously agreed to by this commission in light
23 of the legal advice given to us.

24 SENATOR FORD: Mr. Chairman.

25 CHAIRMAN McCONNELL: Yes, sir.

1 SENATOR FORD: Could I change seats
2 with Mr. Delleney? This is too close for comfort.

3 CHAIRMAN McCONNELL: You -- you like
4 sitting here.

5 SENATOR FORD: That's too close for
6 comfort.

7 CHAIRMAN McCONNELL: Is there any other
8 matter that any other member knows of before I ask
9 the staff -- are members comfortable with their
10 present seating arrangements?

11 SENATOR FORD: Yes, sir.

12 CHAIRMAN McCONNELL: All right. With
13 that, I will ask Judge Goode if he would come
14 forward, please, sir.

15 JUDGE GOODE: Yes, sir.

16 CHAIRMAN McCONNELL: Is that light --
17 is that on, Judge? Can you look there and see if
18 the -- I'll get one of the sergeants to check for
19 you and make sure everything is activated.

20 JUDGE GOODE: I think everything is
21 certainly adequate, yes, sir.

22 CHAIRMAN McCONNELL: All right, sir.
23 If -- I need to swear you in, so if you would be
24 kind enough to raise your right hand. Do you swear
25 to tell the truth, the whole truth, and nothing but

1 the truth, so help you God?

2 JUDGE GOODE: I do.

3 CHAIRMAN McCONNELL: Thank you, sir.

4 You're certainly welcome to make any opening
5 statement you wish to make. What I'm planning to
6 do -- just to kind of give you a road map, what
7 I'll do is see if you have any opening statement.
8 At that time I'll turn you over to our staff
9 counsel, Ms. Shuler, and then we'll proceed and try
10 to go through these matters and get done.

11 JUDGE GOODE: Thank you, Mr. Chairman.

12 Good afternoon. My name is Kenneth G.
13 Goode. I presently hold Circuit Court at large
14 seat number eight for the state of South Carolina.
15 And I thank the Screening Committee -- Commission
16 for allowing me to provide additional information
17 that it seems necessary and appropriate on the two
18 cases which were previously handled by me.

19 As a little background, I grew up in a
20 family of modest means in Fairfield County, South
21 Carolina, and I worked and paid my way through both
22 undergraduate school at Furman University and the
23 University of South Carolina School of Law. I came
24 back to my hometown of Winnsboro to practice law,
25 and after over 20 years of private practice, in

1 1999 I was honored to be elected to the circuit
2 court bench.

3 I am proud to be a public servant, and
4 I attempt to do my job with diligence. I work
5 hard, often staying after normal court hours in
6 order to clear every case that I can on the docket.
7 In the ten years I have been on the bench, I have
8 issued thousands of rulings in both civil and
9 criminal cases, and I have imposed thousands of
10 sentences upon criminal defendants. I'm aware of
11 the significant publicity given recently to my
12 rulings in two cases. On my own motion I
13 reconsidered and altered my ruling in one of those
14 cases. And I will be glad to address any questions
15 this committee has about that case.

16 In the case heard in December of 2008
17 in Richland County General Sessions Court, it has
18 always been my intention to reconsider the sentence
19 in that case, and this is evidenced by an order
20 that I signed just one two to days after the
21 sentence was issued. But I have not assigned --
22 been assigned to Richland County since that week
23 and have not heard it. I have read the transcript
24 in that case, and based on the transcript, I
25 believe the sentence needs to be reconsidered.

1 I had scheduled a hearing on the
2 reconsideration motion for this week, but I
3 continued that hearing to a later time. I will
4 hold the reconsideration hearing in the future. To
5 rule at this time would call into question the
6 ultimate disposition and would subject -- suggest,
7 excuse me, that disposition to a potential
8 challenge that it was improperly influenced by
9 political or personal considerations. The
10 integrity of the judicial process demands that the
11 final sentence I pronounce not be tainted by the
12 appearance that it was motivated by an
13 inappropriate consideration or considerations.

14 In all cases that are before me for
15 resolution I make every effort to exercise sound
16 judgment and do the right thing. I fully
17 understand that justice must be served. I
18 recognized -- I recognize the competing concepts at
19 work within our criminal justice system, the sword
20 of justice and the grace of mercy, and I attempt to
21 give due consideration to both these concepts and
22 to each sentence I impose. I am trying to impose
23 sentences of incarceration where such sentences are
24 appropriate, but I also attempt to give appropriate
25 consideration to the need to show mercy.

1 I try to treat everyone -- everyone who
2 appears before me in the same manner that I would
3 want myself or members of my family to be treated.
4 On the bench on the back of my name placard where
5 only I can see it is the inscription courtesy,
6 timeliness, and a kind heart. I try to treat
7 everyone who appears before me with courtesy,
8 respect, kindness and fairness. I try to weigh all
9 the facts and circumstances of every case from all
10 perspectives and impose a sentence both within the
11 bounds of the law and in furtherance of the ends of
12 justice.

13 And I will be happy to answer any
14 questions that the Commission may have for me.

15 CHAIRMAN McCONNELL: Thank you, sir.
16 Turn you over to our staff counsel, Ms. Jane
17 Shuler, so we can proceed.

18 Ms. Shuler.

19 MS. SHULER: Good afternoon, Judge
20 Goode. I want to begin with a few general
21 questions regarding your philosophy or procedure in
22 court. And, Judge Goode, I recognize you have
23 sentenced thousands of defendants, but when you are
24 sentencing a defendant who has pled guilty, please
25 explain what factors you consider when imposing a

1 defendant's sentence.

2 JUDGE GOODE: The same factors that I
3 consider when imposing sentence on a person who
4 has -- has stood trial, and -- and that is the
5 three elements that I think are appropriate:
6 rehabilitation, deterrence and punishment. And it
7 falls to me to formulate a combination of these
8 different factors in coming up with a just and
9 appropriate sentence for the facts of a particular
10 case.

11 MS. SHULER: As a follow-up, when you
12 are sentencing a defendant on a guilty plea who is
13 charged with a crime of bodily injury to a victim,
14 is it the usual procedure for the solicitor to
15 offer medical evidence of the extent of the
16 victim's injuries for you to consider?

17 JUDGE GOODE: That is -- that is far
18 and away the usual procedure, and I give weight to
19 the written medical records because those cases
20 are -- regardless of the age of the victim, they
21 are always of an emotional nature for everyone who
22 is listening and caring, and so that is -- that is
23 very helpful. It is not absolutely essential, but
24 it is something that I typically do and -- and of
25 course give weight to it because that's the

1 professional's opinion on the condition of the
2 victim after a crime.

3 MS. SHULER: Yes, sir. In those
4 circumstances where you don't have the medical
5 evidence offered to you, generally what is the
6 testimony and evidence generally offered to
7 establish the victim's injuries which you will
8 consider in imposing the defendant's sentence?

9 JUDGE GOODE: As with many things that
10 are within my judicial discretion, that is one of
11 them, and it's something that I must listen to what
12 the solicitors have to say, what the victims have
13 to offer, what the defendant has to offer, and come
14 with a conclusion when there's no -- or very little
15 written information for me to rely on. Of course
16 it's much easier for me to assess the amount of
17 damage when I have professional opinions about the
18 injuries, and so when they are available, I give
19 them great weight.

20 MS. SHULER: Thank you.

21 Turning to the specific cases before us
22 today, I would like to begin with the case of State
23 of South Carolina versus Talisha Smith in which you
24 were the judge and heard her guilty plea and
25 sentenced her on December 8, 2008. Judge Goode,

1 I'm going to have a document handed to you and ask
2 you if you recognize that document.

3 JUDGE GOODE: Yes, ma'am, I do.

4 MS. SHULER: Is that the transcript of
5 record from the guilty plea and sentencing hearing
6 in the Smith matter on December 8th, 2008?

7 JUDGE GOODE: Without completely
8 reading the document, that is -- that is exactly
9 what it appears to be.

10 MS. SHULER: Mr. Chairman, I would like
11 to offer that transcript of record as an exhibit to
12 the record today.

13 CHAIRMAN McCONNELL: Any objection by
14 any committee members? Being none, so ordered.

15 (EXH. 1, Transcript of Record for State
16 vs. Talisha Lavette Smith Dated December 8, 2008,
17 marked for identification.)

18 JUDGE GOODE: I stated earlier I have
19 read that transcript, and within one to two days
20 after the sentence, I signed an order that I would
21 reconsider. And that reconsideration has not taken
22 place yet, but I think it's an appropriate case for
23 a reconsideration.

24 MS. SHULER: Thank you, Judge Goode.

25 I have another document to hand to you

1 and ask if you would recognize that document.

2 JUDGE GOODE: Yes, ma'am, I do. This
3 is the sentencing sheet that involves the case that
4 we are presently discussing.

5 MS. SHULER: Senator McConnell, I'd
6 like to offer that as an exhibit for the record.

7 CHAIRMAN McCONNELL: Any committee
8 member, any objection? None. So ordered.

9 (EXH. 2, Sentence Sheet for State vs.
10 Talisha Lavette Smith, marked for identification.)

11 MS. SHULER: Judge Goode, what was your
12 sentence for Ms. Smith on December 8th?

13 JUDGE GOODE: My sentence was ten years
14 suspended on five years probation, special
15 condition of probation where she received child
16 abuse counseling and such other counseling as the
17 Department of Probation and Parole deemed
18 appropriate.

19 MS. SHULER: Judge Goode, are there any
20 general comments that you would like to offer to
21 the Commission regarding your philosophy with
22 respect to the Smith case?

23 JUDGE GOODE: Well, I'm a little, as we
24 would say in Fairfield County, ham strung, because
25 this opinion case, and I'm extraordinarily limited

1 in comments that I can make, but as I indicated
2 earlier, I have read the transcript. I think it
3 is -- and I have signed an order that I will
4 resentence in that case, and I feel that it is an
5 appropriate case for resentencing.

6 MS. SHULER: Thank you.

7 CHAIRMAN McCONNELL: Let me ask the
8 members of the Commission, counsel has just asked
9 me and I have asked the vice chairman, so we can
10 kind of keep these things organized, what we do is
11 we'll stop with this -- at this point, Judge Goode,
12 with the Smith matter, take the complainants -- the
13 witnesses in this matter and then come back to the
14 judge for the other matter. Is that acceptable
15 with members of the Commission?

16 PROFESSOR FREEMAN: So moved.

17 SENATOR FORD: Second.

18 CHAIRMAN McCONNELL: Moved and
19 seconded. Open for discussion.

20 SENATOR KNOTTS: Chairman.

21 CHAIRMAN McCONNELL: The senator from
22 Lexington.

23 SENATOR KNOTTS: At what point will we
24 be able to ask Judge Goode some questions?

25 CHAIRMAN McCONNELL: You're going to be

1 able to ask him -- what I would propose is that if
2 you want to, we'll ask him on this matter so we
3 keep the two separate so that all of us don't start
4 getting things crossed up between the two things,
5 and as soon as I finished getting this straight, I
6 was going to see if any of y'all had any questions.

7 Any further discussion on Professor
8 Freeman's motion? There being none, we'll go
9 immediately to a vote.

10 All in favor please raise your right
11 hand. Thank you. Opposed by a like sign or
12 extensions. There being none, let the record show
13 that it was unanimous by the Commission to proceed
14 in that direction.

15 Now I'll ask, do any members of the
16 Commission at this point have any questions?

17 Senator from Lexington.

18 SENATOR KNOTTS: Thank you,
19 Mr. Chairman.

20 Judge Goode, in this matter there was
21 some -- a question asked to you by counsel a little
22 bit ago about medical records, and having been
23 involved in the court system, I understand the
24 plea -- the way pleadings are taken and all. In
25 this particular case, was there any written legal

1 document stating to you the condition of -- of the
2 injury?

3 JUDGE GOODE: Senator Knotts, my
4 recollection is that there was the admission notes
5 from a emergency care facility, sometimes referred
6 to as a doc in the box, and there was some
7 photographs that were put forward, but --

8 SENATOR KNOTTS: But no formal written
9 report?

10 JUDGE GOODE: No, sir. The admission
11 notes were a paragraph of about three inches single
12 spaced. I do not remember the name of the medical
13 professional who signed it. But that was either on
14 the night of their discovery of the injury or the
15 next day.

16 SENATOR KNOTTS: And usually where
17 there's serious injury, there's usually a full
18 report given to back up that injury in most cases,
19 would you say?

20 JUDGE GOODE: Yes, sir. That is --
21 that is typically the case, but in all fairness to
22 the solicitor's office, it is my understanding that
23 the solicitor who normally handles this case was on
24 maternity leave and there was someone in her stead.

25 SENATOR KNOTTS: Do you know -- were

1 you involved -- informed how long that case had
2 been in the hands of the solicitor's office prior
3 to bringing it to trial when the -- it actually
4 occurred?

5 JUDGE GOODE: I definitely would have
6 had the date that it actually occurred. How long
7 it had been in the solicitor's office, if I had
8 that information, I do not recall it.

9 SENATOR KNOTTS: And how long did that
10 plea proceeding last in your -- in your courtroom?

11 JUDGE GOODE: I would -- I did a very
12 thorough examination of the defendant because it
13 was a very serious charge, and my -- my guess would
14 be along the lines of 30 minutes.

15 SENATOR KNOTTS: And when did the
16 offense occur?

17 JUDGE GOODE: The offense occurred --
18 the case came before me in December of '08, if
19 memory serves me correctly, and I believe that the
20 offense occurred approximately between six months
21 and a year prior to that.

22 SENATOR KNOTTS: Okay. Thank you.

23 CHAIRMAN McCONNELL: Any other
24 questions?

25 Professor.

1 PROFESSOR FREEMAN: Yeah. Judge, at
2 the sentencing hearing or prior to that time, had
3 the state ever offered any evidence -- admissible
4 evidence concerning the permanency of any injuries
5 suffered by the victim?

6 JUDGE GOODE: No, sir.

7 PROFESSOR FREEMAN: Thank you.

8 CHAIRMAN McCONNELL: The senator from
9 Charleston.

10 SENATOR FORD: Judge, the -- did the
11 state present -- in your earlier comments -- in
12 your letter you put a lot of weight on expert
13 witnesses. Did the state offer any expert
14 witnesses?

15 JUDGE GOODE: No, sir.

16 SENATOR FORD: Not one?

17 JUDGE GOODE: No, sir.

18 SENATOR FORD: So all you had to go on
19 was the information that you shared with Senator
20 Knotts?

21 JUDGE GOODE: That's correct. My
22 recollection is that the father who was dressed in
23 full Army attire -- and I complimented him for
24 serving our country. That seemed to have gotten
25 twisted somehow. I don't know, but it was meant

1 strictly as a compliment. I compliment all
2 servicemen when they're in my courtroom. And
3 the -- the mother, who was only quite naturally
4 upset, spoke and the --

5 SENATOR FORD: She was upset about the
6 uniform or upset about what?

7 JUDGE GOODE: She was upset about the
8 child.

9 SENATOR FORD: Okay.

10 JUDGE GOODE: And -- and the -- and
11 then the solicitor spoke. The defense attorney
12 spoke, and the solicitor -- there was a little back
13 and forth in -- in that sentence.

14 SENATOR FORD: Okay, Judge, the
15 solicitor -- now, this solicitor -- how much time
16 had this particular solicitor had with the case
17 prior to coming to court, do you know?

18 JUDGE GOODE: No, sir.

19 SENATOR FORD: Did you say there was
20 another solicitor who had the case and she was on
21 maternity leave?

22 JUDGE GOODE: I do not have that
23 information, sir.

24 SENATOR FORD: Were you -- was it
25 strange that they didn't have any expert witnesses?

1 JUDGE GOODE: It is not unusual with a
2 serious injury for there to be expert medical
3 testimony and evidence.

4 SENATOR FORD: You said it's not what?

5 JUDGE GOODE: It's not unusual.

6 SENATOR FORD: For them not to?

7 JUDGE GOODE: For -- for them to
8 present when there's a serious injury, as this
9 one -- there was lay -- lay testimony that -- that
10 it was, to have medical evidence to support it.

11 SENATOR FORD: Okay. Judge, I'm -- I'm
12 not clear on your answer. Are you saying it's not
13 unusual for them in a serious case not to have an
14 expert witness?

15 JUDGE GOODE: No, sir. I apologize if
16 I was not clear. It is not unusual for them to
17 have an expert witness. It would be more unusual
18 for them not to have one, as was the case in this
19 situation.

20 SENATOR FORD: Okay. Let me ask you a
21 question on that. The system -- did -- the
22 solicitor presented to you a fair analysis of
23 injury based on the fact that they didn't have an
24 expert witness?

25 JUDGE GOODE: Senator, I have not

1 reviewed medical evidence to this point.

2 SENATOR FORD: Uh-huh.

3 JUDGE GOODE: And I've been reading the
4 rules on reconsideration about whether or not I can
5 receive additional evidence at a reconsideration.
6 And there's a conflict between the -- the sources
7 that I have to rely on, but I think under
8 extraordinary circumstances that they would be able
9 and allowed to present additional documentation as
10 to the extent of her injury.

11 SENATOR FORD: My last question is --

12 JUDGE GOODE: But it -- and, Senator
13 Ford, I certainly hate to interrupt you, but the
14 defendant admitted the injury.

15 SENATOR FORD: Okay. My last question.
16 Now, you were saying in your -- in your letter and
17 in your opening, you had on your plaque behind your
18 desk -- I mean, on your name tag you had three
19 slogans, and it was what?

20 JUDGE GOODE: Three words.

21 SENATOR FORD: Uh-huh.

22 JUDGE GOODE: Courtesy, timeliness, and
23 a kind heart. That's what I look at.

24 SENATOR FORD: Well, some of the three
25 times I went to jail, I hoped I had a judge like

1 that.

2 CHAIRMAN McCONNELL: Any other
3 questions?

4 The senator from Lexington.

5 SENATOR KNOTTS: Thank you,
6 Mr. Chairman.

7 In the event of a resentencing, are --
8 did I hear you say that the -- that you think that
9 the solicitor or the defendant's attorney can
10 present new evidence at that resentencing for your
11 consideration?

12 JUDGE GOODE: That is a decision that I
13 have not reached yet. I've read on that and some
14 sources say that I can and some say under
15 extraordinary circumstances -- or some say that I
16 can't, and some say that under extraordinary
17 circumstances I can, and I've got to find more of a
18 definition of what is considered to be
19 extraordinary circumstances.

20 SENATOR KNOTTS: And I believe that the
21 only resentencing -- according to the canons and
22 according to court orders, the only time a judge
23 can resentence is when that judge is back in that
24 circuit. Is that the way it still is?

25 JUDGE GOODE: That -- that is I think

1 in the canons and in the rules, but with an order
2 from court administration, then I can hear it in
3 another county.

4 SENATOR KNOTTS: And has the court
5 given any indication of allowing you to hear it
6 another county or are you going to be able to
7 reconsider it when you get back --

8 JUDGE GOODE: They --

9 SENATOR KNOTTS: -- in Richland County?

10 JUDGE GOODE: They did authorize that I
11 come to Richland, which is about 25 miles away, and
12 hear it this week, and after further consideration,
13 I felt that it might have the appearance of
14 impropriety to have that hearing with this hearing
15 pending, and so Fairfield -- or Winnsboro I don't
16 see as a logistical problem, and I will likely just
17 ask if I can have jurisdiction for a day in
18 Richland and have it sentenced there.

19 Everyone wants this resolved, including
20 me, but I felt that it would be inappropriate after
21 all of these -- media attention to have it prior to
22 this hearing.

23 SENATOR KNOTTS: Having worked in the
24 solicitor's office and prepared cases for trials
25 and pleas in Richland County in the solicitor's

1 office -- and I don't think it's changed that
2 much -- I know the importance of providing the
3 judge -- the presiding judge with as much
4 information as possible to -- to allow him the
5 ability to make a fair and just sentence,
6 regardless what it is, is very important in most
7 criminal case -- in all criminal cases because the
8 solicitor's office -- and law enforcement made the
9 case and turned it over and sit down with the
10 solicitor's office for -- for analysis and for
11 preparing it for trial, and sometimes cases are in
12 the solicitor's office for two, three months, six
13 months, sometimes a year to get it ready to go
14 before a judge.

15 And I believe you said earlier -- you
16 said it was approximately 30 minutes that you had
17 the privilege of understanding what went on in this
18 case?

19 JUDGE GOODE: Yes, sir. I advised the
20 defendant of -- of her rights and made sure that
21 she understood. I read specifically to her the
22 charges and any possible punishment and first asked
23 if the facts were correct. She answered in the
24 affirmative and -- and then as she plead guilty she
25 indicated that she did.

1 SENATOR KNOTTS: Were there any
2 recommendations by the solicitor's office made in
3 this case as to a plea negotiation?

4 JUDGE GOODE: No, sir.

5 SENATOR KNOTTS: Had this been a -- had
6 you been informed by the solicitor that this was a
7 case like it's been proposed in The State newspaper
8 and the seriousness of this, don't you rely -- feel
9 like that there would have been a strong
10 recommendation by the solicitor's office one way or
11 the other, for either jail time or -- or a stiffer
12 sentence?

13 JUDGE GOODE: Yes.

14 SENATOR KNOTTS: That's the way it
15 usually works, isn't it?

16 JUDGE GOODE: Yes, sir. And this case
17 was pre-tried in chambers.

18 SENATOR KNOTTS: Was any law
19 enforcement officers that investigated the case
20 standing before you at the time of sentencing?

21 JUDGE GOODE: No, sir.

22 SENATOR KNOTTS: In cases where the
23 state has --

24 JUDGE GOODE: Not -- not to my
25 recollection.

1 SENATOR KNOTTS: In cases where the
2 state has a real interest in putting someone in
3 jail or getting a stiff sentence for them, is it
4 not usually in the sentencing trial -- sentencing
5 phase that the state provide any and all witnesses
6 and victims that are interested in this case and
7 give them the ability to say something at the
8 sentencing as a plea?

9 JUDGE GOODE: It -- it varies from
10 locale to locale, but it is not at all unusual,
11 especially on -- in a serious case.

12 SENATOR KNOTTS: So you had a case
13 before you that there was no testimony of a person
14 standing there from the law enforcement arena to
15 testify as to the seriousness of the case. You had
16 no medical records written to present to you that
17 was legal documents. You had no solicitor standing
18 there and shouting to put this person in jail.

19 JUDGE GOODE: Well, in the courtroom,
20 she, she being the solicitor, at that time asked
21 for a substantial sentence.

22 SENATOR KNOTTS: For a substantial
23 sentence. Was that a substantial sentence in
24 probation or substantial jail time?

25 JUDGE GOODE: I don't -- in my mind's

1 eye, it was in jail time.

2 SENATOR KNOTTS: Okay. And you have a
3 solicitor that was handling the case because the
4 assistant -- the assistant solicitor that was
5 hand -- assigned the case was on maternity leave?

6 JUDGE GOODE: I am so informed.

7 SENATOR KNOTTS: And with that
8 information, that's what you based your sentence
9 on?

10 JUDGE GOODE: Yes, sir.

11 SENATOR KNOTTS: Thank you.

12 CHAIRMAN McCONNELL: Any other members?
13 Mr. Sellers.

14 MR. SELLERS: Judge Goode, I want to be
15 sure I understand the timing. After you imposed
16 sentence, the prosecutor filed a motion for you to
17 reconsider it?

18 JUDGE GOODE: Yes, sir. All -- almost
19 immediately. If -- if not that day, the next, and
20 if not the next, then the next. It was no more
21 than two days.

22 MR. SELLERS: And you granted that
23 motion right away?

24 JUDGE GOODE: Immediately, yes, sir.

25 SENATOR KNOTTS: Mr. Chairman.

1 CHAIRMAN McCONNELL: Any other
2 questions?

3 SENATOR KNOTTS: I want to make sure I
4 understood that.

5 Was it a motion asked for by the
6 solicitor to reconsider or was it a motion to -- on
7 your own motion?

8 JUDGE GOODE: It was -- it was the
9 state's motion to reconsider.

10 SENATOR KNOTTS: The state's motion,
11 okay.

12 CHAIRMAN McCONNELL: Representative.

13 REPRESENTATIVE DELLENEY: Judge Goode,
14 what were the conversations in pretrial in regard
15 to sentence, if you remember?

16 JUDGE GOODE: I don't have a
17 recollection except I do not recall there being any
18 recommendation of a particular range that the
19 solicitor felt was appropriate.

20 REPRESENTATIVE DELLENEY: And in
21 serious cases, those recommendations are ordinarily
22 made both in pretrial and out in public at the
23 sentencing?

24 JUDGE GOODE: Yes, sir.

25 CHAIRMAN McCONNELL: Any other

1 questions from the Commission?

2 I think Ms. Shuler had a clarifying --
3 she had one other question.

4 MS. SHULER: Yes, sir.

5 Judge Goode, did you set this matter
6 for hearing or plea, or was this matter set on your
7 schedule by the solicitor's office?

8 JUDGE GOODE: It was set by the
9 solicitor's office. You're speaking of the guilty
10 plea?

11 MS. SHULER: Yes, sir.

12 JUDGE GOODE: Yes, ma'am. The
13 solicitor controls the docket in Richland County as
14 far as I know. I know they've had some changes in
15 their method, but I think the solicitor still is in
16 control of the docket.

17 CHAIRMAN McCONNELL: All right. Thank
18 you, sir. If you want to take a seat, we'll
19 proceed forward, get the other witnesses in this
20 matter and then come to the next matter. And we'll
21 come back to you after we've heard from the
22 witnesses before we go to the next matter.

23 JUDGE GOODE: Yes, sir. If I could
24 make one very brief statement.

25 CHAIRMAN McCONNELL: Yes, sir.

1 JUDGE GOODE: And that would be to the
2 father of the child. And I don't recognize him not
3 having a uniform on.

4 Are you the sergeant.

5 MR. GADDIE: Correct.

6 JUDGE GOODE: If -- if I somehow in my
7 comments offended you, then I must have not spoken
8 clearly because I was complimenting you on
9 defending our country. I start every term of court
10 with the pledge of allegiance, and every time
11 there's an active duty military person in my
12 courtroom, I stop the proceedings and I thank them
13 for what they're sacrificing for the country. And
14 if I stumbled through that in some way that caused
15 you -- insulted your wife, embarrassment, then I
16 just hope you'll accept my apologies.

17 CHAIRMAN McCONNELL: All right. We'll
18 proceed now to the next witness.

19 Ms. Shuler, who you would call?

20 MS. SHULER: Patrick Gaddie, please.

21 CHAIRMAN McCONNELL: Mr. Gaddie, if
22 you'd come forward, please, sir. Make yourself
23 comfortable there, and if you'd be so kind as to
24 raise your right hand. Do you swear to tell the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 MR. GADDIE: I do.

3 CHAIRMAN McCONNELL: Thank you, sir.
4 Please answer any questions that Ms. Shuler might
5 have for you.

6 MS. SHULER: Mr. Gaddie, you have filed
7 an affidavit with the Commission, and I am going to
8 ask Ms. Traywick to hand you a copy and ask if you
9 could identify it.

10 MR. GADDIE: Yes.

11 MS. SHULER: I would like to have that
12 marked as an exhibit.

13 CHAIRMAN McCONNELL: Any objection by
14 any member of the Commission? Being none, so
15 ordered.

16 (EXH. 3, Witness Affidavit Form of
17 Patrick E. Gaddie, marked for identification.)

18 MS. SHULER: Mr. Gaddie, in summary,
19 your affidavit alleges that Judge Goode made some
20 statements during the sentencing hearing of
21 Ms. Smith that were offensive to your wife and you
22 as a spouse of a U.S. Army soldier, and you feel
23 that those comments showed bias and might have been
24 a factor in Smith -- his sentence of Ms. Smith.
25 You also felt that the sentence that he imposed was

1 not a very fair sentence and that he was concerned
2 more about hurting the defendant and hurting --
3 than punishing her.

4 Is there anything in addition that you
5 would like to add to your affidavit?

6 MR. GADDIE: Yes, ma'am. Senator
7 McConnell and members of the Commission, thank you
8 for hearing us today. Thank you from the family.
9 As a service member, being elected officials
10 there's only so much I can say. I come here
11 speaking for my daughter Kendra, proud father.

12 I just want to let the -- let everybody
13 know just how serious an injury this was and why we
14 feel this was a very lenient punishment for Talisha
15 Smith. Keep in mind this is one month short of
16 being a year after this happened to my daughter
17 Kendra. This is the Jill Eversmann, the speech
18 language pathologist that's working with my
19 daughter, this is her assessment as of two days
20 ago. Excuse me.

21 "Kendra completes this quarter having
22 met six out of 11 goals. She demonstrates age
23 appropriate attention skills, follows a few simple
24 one-step commands, localizes sounds, and plays
25 appropriately with toys. She produces nine signs

1 either by imitation or spontaneously. They include
2 apple, baby, book, ball, dog, eat, help, more and
3 shoes.

4 "Speech is progressing at a much slower
5 rate. Kendra is not yet imitating consonants,
6 vowels, syllables or words. Spontaneously she has
7 produced two words, dada and bubble. She often
8 communicates with gestures or actions. She might
9 take the other person's hand and put it on the toy
10 she needs help with.

11 "She continues to wear a bib now due to
12 drooling, and it continues to be a present problem
13 due to the traumatic brain injury that she received
14 in March."

15 So I just want to say thank you for
16 hearing my family and just to let everyone know
17 just how serious great bodily injury to a child is.
18 It's not something -- it's not a slap on the hand.
19 It is a life changing injury to children. And
20 subject to your questions, that's all I have.

21 CHAIRMAN McCONNELL: Any member of the
22 Commission have a question?

23 The senator from Lexington.

24 SENATOR KNOTTS: Mr. Gaddie, I really
25 feel for -- for what your family has been through,

1 but I'm trying to get to the bottom of where the
2 communications went lacking as to the seriousness
3 of this child's injury. Whenever it first happened
4 was it -- what agency investigated it?

5 MR. GADDIE: Initially, sir, we went to
6 the hospital, and they -- the hospital physician
7 did the MRI and found intercranial hemorrhages
8 and --

9 SENATOR KNOTTS: What law enforcement
10 agency made the report and investigated it?

11 MR. GADDIE: It's Richland County.

12 SENATOR KNOTTS: Sheriff's department?

13 MR. GADDIE: Sheriff's department, yes.
14 Investigator Richard Carter.

15 SENATOR KNOTTS: Did you -- after
16 Mr. Carter came to you and -- and found the
17 evidence of what had happened, you got a warrant
18 for this person's arrest?

19 MR. GADDIE: Yes, but it was a couple
20 days later. It was --

21 SENATOR KNOTTS: A couple days later?

22 MR. GADDIE: Uh-huh.

23 SENATOR KNOTTS: Okay. Do you know if
24 the investigator talked with the doctors or
25 hospital?

1 MR. GADDIE: Yes. As a matter of fact,
2 Senator, he -- he met us at the hospital.

3 SENATOR KNOTTS: Met you at the
4 hospital.

5 MR. GADDIE: He was there -- when I got
6 off the ambulance holding my daughter, he was there
7 talking with the doctors.

8 SENATOR KNOTTS: And once you went
9 through the procedures and got it as far as the
10 solicitor's office, I'm sure a crime -- a victim's
11 assist -- witness assistant contacted you?

12 MR. GADDIE: Yes, sir. Jan Knobles
13 from the solicitor's --

14 SENATOR KNOTTS: Jan Knobles?

15 MR. GADDIE: Uh-huh.

16 SENATOR KNOTTS: And she kept you
17 informed on the case of where it was at, who was
18 handling it?

19 MR. GADDIE: Right. Exactly.

20 SENATOR KNOTTS: Okay. Did you meet
21 with the solicitor -- or assistant solicitor?

22 MR. GADDIE: Yes. Yes, I did.

23 SENATOR KNOTTS: How many times did you
24 meet with them over what period of time?

25 MR. GADDIE: Pretty regularly

1 initially. Probably once a week we met with --
2 Anna Good was the initial solicitor that was
3 handling the case, and Jan Knobles was our victim's
4 advocate the whole time --

5 SENATOR KNOTTS: Okay. And -- and they
6 knew the seriousness of the -- the injuries to this
7 child?

8 MR. GADDIE: Yes, they did. They had a
9 very thick packet, as a matter of fact, of the
10 medical record. Very thick packet, pictures, all
11 the MRIs, very thick packet of medical --

12 SENATOR KNOTTS: So they had plenty of
13 medical evidence --

14 MR. GADDIE: Yes, they did.

15 SENATOR KNOTTS: -- that they could
16 have presented at this trial --

17 MR. GADDIE: Yes.

18 SENATOR KNOTTS: -- for the judge's
19 review if they so choose?

20 MR. GADDIE: Yes.

21 SENATOR KNOTTS: Okay. Did -- did you
22 ever have a discussion with them about a plea
23 negotiation?

24 MR. GADDIE: Just to be honest with
25 you, Senator, Michelle and I said we personally

1 would want no plea. We wanted no plea. We want --

2 SENATOR KNOTTS: You -- you --

3 MR. GADDIE: -- we wanted her to try to
4 go to jail. That's what we wanted.

5 SENATOR KNOTTS: You insisted there --

6 MR. GADDIE: Yes.

7 SENATOR KNOTTS: -- not be a plea?

8 MR. GADDIE: Yes.

9 SENATOR KNOTTS: You were -- you and
10 your wife was willing to go to a jury trial if
11 necessary?

12 MR. GADDIE: Yes.

13 SENATOR KNOTTS: Okay. Did they ever
14 indicate to you that there was any type of problem
15 with the case if they went to a jury trial?

16 MR. GADDIE: No. They -- very strong
17 case -- quote/unquote, very strong case, that it
18 wouldn't be a problem if we went to trial.

19 SENATOR KNOTTS: Did you know at the
20 time that they set the docket for which judge that
21 the case would go before?

22 MR. GADDIE: I wasn't exactly sure
23 which one it was.

24 SENATOR KNOTTS: Okay. Did -- did you
25 insist on a jury trial?

1 MR. GADDIE: No, we did not. No, we
2 did not. They -- we were told she'd probably plead
3 guilty, but the jury trial was a possibility.

4 SENATOR KNOTTS: Did they ensure --
5 assure you that after the guilty plea that they
6 would push as hard as they could to get that person
7 jail time?

8 MR. GADDIE: Yes.

9 SENATOR KNOTTS: That's what the
10 solicitor --

11 MR. GADDIE: Yes.

12 SENATOR KNOTTS: Would you agree that
13 at the trial that the medical records was not
14 presented to the judge for his consideration and be
15 able to be read? Did you see it passed up to him?

16 MR. GADDIE: To be honest with you,
17 there was things passed to him, and I thought it
18 was everything that we had seen --

19 SENATOR KNOTTS: Talking about that
20 pack that you said was that thick?

21 MR. GADDIE: That pack.

22 SENATOR KNOTTS: Did you see that
23 passed up to him?

24 MR. GADDIE: Yes.

25 SENATOR KNOTTS: At the trial -- in the

1 courtroom?

2 MR. GADDIE: In the courtroom there was
3 stuff passed to him. I'm not sure if it was the
4 exact same packet.

5 SENATOR KNOTTS: Okay. Well, the
6 judge -- you heard his testimony a few moments
7 ago -- said that there was -- there was papers
8 stating that the child had injuries, but it wasn't
9 a detailed written report that -- that stated the
10 full extent of that child's -- seriousness of his
11 injuries. Would you agree with that statement?

12 MR. GADDIE: That -- that's what he --
13 that's what the judge said. It was -- it was --
14 initially before everything even started, the
15 solicitor and the judge were back in chambers
16 talking, so what -- Michelle and I, having never
17 dealt with anything like this, thought they were
18 going over all the evidence and everything that was
19 there. So I'm not sure how it works.

20 SENATOR KNOTTS: Okay. At what point
21 in time did you -- did you get a chance to talk at
22 the plea hearing?

23 MR. GADDIE: I did -- I did get a
24 chance, sir.

25 SENATOR KNOTTS: Did you get a

1 chance -- do you feel you got a chance to say
2 anything you wanted to say?

3 MR. GADDIE: I could have spoken.

4 SENATOR KNOTTS: Did you?

5 MR. GADDIE: No, I did not.

6 SENATOR KNOTTS: You didn't speak?

7 MR. GADDIE: No, I did not.

8 SENATOR KNOTTS: Did your wife speak?

9 MR. GADDIE: My wife spoke. My wife
10 spoke very eloquently, as a matter of fact.

11 SENATOR KNOTTS: Anybody else -- did
12 the solicitor bring any other -- any doctors or --

13 MR. GADDIE: Nobody else was there.

14 The --

15 SENATOR KNOTTS: Nobody else was there.

16 MR. GADDIE: -- the victim's
17 advocate -- it was our understanding the fact that
18 she was pleading guilty that we didn't need all the
19 witnesses there, that the -- all the information
20 before the judge was enough, the fact that she was
21 pleading guilty.

22 SENATOR KNOTTS: But you do realize now
23 that in order for a judge to make a decision even
24 if the person is pleading guilty, he has to have
25 all the pertinent facts to that case in order to

1 make a good decision to make sure justice is
2 served?

3 MR. GADDIE: Yes.

4 SENATOR KNOTTS: Do you feel like if we
5 were -- if a doctor had been there to explain the
6 seriousness of those injuries and a police officer
7 that investigated the case had been there to at
8 least state what he had found in his investigation,
9 that the -- that would have been more information
10 that would have been considered for maybe a better
11 outcome?

12 MR. GADDIE: Yes.

13 SENATOR KNOTTS: Thank you.

14 CHAIRMAN McCONNELL: The senator from
15 Charleston.

16 SENATOR FORD: Mr. -- Anna Good did not
17 show up in court, right?

18 MR. GADDIE: Correct, sir, she did not.

19 SENATOR FORD: The solicitor that
20 showed up, how much time y'all had to work with
21 her?

22 MR. GADDIE: A few weeks, Senator.

23 SENATOR FORD: How many times y'all
24 visit -- I mean, met with her?

25 MR. GADDIE: Four or five times,

1 Senator.

2 SENATOR FORD: Okay. Was she -- was
3 she -- did she -- did Ms. Good make her aware of
4 all the things that had happened prior to -- when
5 did -- when did this case started with -- with
6 Ms. Good -- I mean, Ms. -- yeah, Good?

7 MR. GADDIE: It started immediately
8 following the -- the incident.

9 SENATOR FORD: And when was that?

10 MR. GADDIE: March -- March of '08.

11 SENATOR FORD: March?

12 MR. GADDIE: Yes.

13 SENATOR FORD: And y'all were with
14 Ms. Good for how long?

15 MR. GADDIE: The entire time for the
16 next --

17 SENATOR FORD: And then the new
18 solicitor came in?

19 MR. GADDIE: Yes.

20 SENATOR FORD: But that wouldn't be the
21 tail end. That would be -- how -- you said you had
22 sufficient time to work with her?

23 MR. GADDIE: Right, sir.

24 SENATOR FORD: Okay. So -- well, were
25 you surprised on the type of case she presented in

1 court, the fact that she didn't bring her expert
2 witness?

3 MR. GADDIE: No, no, no. We honestly
4 thought that the evidence that was presented was
5 enough, so she --

6 SENATOR FORD: Presented by the
7 solicitor?

8 MR. GADDIE: Right, Senator.

9 SENATOR FORD: Okay. So she presented
10 to the -- she described the injuries to the judge?

11 MR. GADDIE: Yes. Oh, yes.

12 SENATOR FORD: And you -- and it was
13 dramatic enough that you would think the judge
14 would understand without the expert witness?

15 MR. GADDIE: Yes.

16 SENATOR FORD: All right.

17 CHAIRMAN McCONNELL: Any other
18 questions?

19 Representative Clemmons.

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

22 Sergeant, thank you for being with us.
23 Thank you for helping us compile a record here to
24 present to the legislature when it comes to the
25 election of Judge Goode.

1 The question I have for you, Sergeant,
2 is with regard to your perception of Judge Goode's
3 temperament, particularly his respectfulness or
4 lack thereof towards you and your wife, could you
5 comment on that.

6 MR. GADDIE: He's -- he's a judge.

7 REPRESENTATIVE CLEMMONS: Was he
8 respectful to you, Sergeant?

9 MR. GADDIE: In my interpretation more
10 worried about the -- the guilty than the Gaddie
11 family as a whole.

12 REPRESENTATIVE CLEMMONS: Was there
13 anything objective that you could point us to in
14 his remarks or his actions towards you that leads
15 you to that -- that interpretation?

16 MR. GADDIE: Just the -- just my
17 interpretation, sir, is just he was more worried
18 about her than us. He was more worried about
19 anything he might do that might hurt her family,
20 anything he might say to break her family up. I
21 thought we were there for a different reason. I
22 thought we were there to punish her for what she
23 did to our family, to my daughter. That's just my
24 interpretation.

25 REPRESENTATIVE CLEMMONS: Okay.

1 Specifically with regard to remarks that she may
2 have made to you -- that the judge may have made to
3 you or your wife, were -- were the remarks that
4 were made appropriate?

5 MR. GADDIE: Again, interpretation.
6 "There's some wrongs that can't be made right."

7 REPRESENTATIVE CLEMMONS: Are -- are
8 you quoting --

9 MR. GADDIE: I'm quoting.

10 REPRESENTATIVE CLEMMONS: Okay.

11 MR. GADDIE: "There's some wrongs that
12 can't be made wrote," end quote. I disagree.
13 That's why we're here. There's some wrongs that
14 can be made right, so -- that was just something he
15 said, and it kind of threw my wife and I off.

16 REPRESENTATIVE CLEMMONS: Thank you
17 very much.

18 CHAIRMAN McCONNELL: Any other
19 questions?

20 Thank you so much, sir.

21 MR. GADDIE: Thank you, Senator.

22 CHAIRMAN McCONNELL: Your next witness
23 you need to hear from.

24 MS. SHULER: Michelle Gaddie.

25 CHAIRMAN McCONNELL: Ms. Gaddie, if

1 you'd be kind enough to raise your right hand. Do
2 you swear to tell the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 MRS. GADDIE: I certainly do.

5 CHAIRMAN McCONNELL: Thank you, ma'am.

6 MS. SHULER: If you will provide her
7 with the affidavit, please.

8 Ms. Gaddie, do you recognize that
9 document?

10 MRS. GADDIE: I do.

11 MS. SHULER: Is that your affidavit?

12 MRS. GADDIE: It is.

13 MS. SHULER: I would like to offer
14 Ms. Gaddie's affidavit of complaint into the
15 record.

16 CHAIRMAN McCONNELL: All right. Is
17 there objection? Being none, so ordered.

18 (EXH. 4, Witness Affidavit Form of
19 Michelle A. Gaddie, marked for identification.)

20 MS. SHULER: Ms. Gaddie, you
21 essentially make the same allegations that your
22 husband does in his affidavit. You're concerned
23 about comments made about the military, the
24 unfairness in the sentencing, and more concerned
25 about the defendant. Is there anything else that

1 you would like to make the Commission aware of with
2 regard to the sentencing of Ms. Smith?

3 MRS. GADDIE: Yes, I would. First I
4 want to take this opportunity to thank all of the
5 members of the committee present today in allowing
6 me the privilege of testifying before you. I take
7 this privilege very seriously. And it's my sincere
8 hope that my testimony today will help all citizens
9 of South Carolina.

10 I would like first to describe some of
11 the background of our case involving my daughter,
12 if I might take a few moments for those that aren't
13 aware.

14 On March 19th of 2008 my husband and I
15 arrived at the home of Talisha Smith to pick up our
16 children from day care that Ms. Smith ran from her
17 home. My then seven-month-old infant was presented
18 to me with a large raised red mark on the right
19 side of her head. Talisha Smith informed me that
20 it had occurred early that morning and was due to a
21 fall from a sitting position on to a rocker.

22 Upon pulling out of the driveway of
23 Talisha Smith's residence, my child began to utter
24 a sickening cry. It was a cry not unlike the cry
25 of a wounded animal. It made my stomach turn. We

1 would later discover in the hospital that the
2 medical professionals there told us that it was the
3 cry that was made by patients who suffered a
4 traumatic head injury.

5 We spent six days in the ICU and
6 children's hospital. My child required a plasma
7 transfusion to stop the hemorrhaging in her brain.
8 When our child was transferred to the children's
9 ward from the ICU, she was given an eye exam. She
10 was also found to be suffering from retinal
11 hemorrhages. These retinal hemorrhages are an
12 indication of shaken baby syndrome which carries an
13 almost 50 percent infant mortality rate. My child
14 was one of the lucky ones. Talisha Smith continued
15 to lie about the cause of these injuries to us and
16 investigators until being presented with the
17 medical evidence three days after her act.

18 In a brief summary, Talisha Smith on
19 the day of March 19th allowed my baby to suffer in
20 her care for eight hours after injuring her.
21 During that time she would have had to have heard
22 over and over again that same sickening cry that I
23 heard my child utter in the car in her driveway.
24 She sought no medical attention for her during that
25 period. Instead, she attempted to lie and cover up

1 her criminal act by creating a fictitious story
2 about the events of that day. Had she sought the
3 immediate medical attention my daughter required,
4 perhaps her current developmental delays that
5 currently exist would be nonexistent. My child
6 will now likely deal with the effects of her crime
7 for the rest of her life.

8 Talisha Smith pled guilty to the charge
9 great bodily injury upon a child on the day of
10 December 8th, 2008, in front of Judge Goode, the
11 solicitor, Talisha Smith's defense attorney,
12 members of the press and court, as well as my
13 husband and I. This is a felony child abuse charge
14 carrying with it a maximum sentence of 20 years.
15 This was not a misdemeanor. Talisha Smith at no
16 time uttered a single apology from her own lips.

17 At the very beginning of this court
18 procedure George Goode -- Judge Goode appeared to
19 me to repeat his questions to Talisha Smith several
20 times. He would also appear to me to lose his
21 train -- train of thought, at which times he would
22 bring his hand to his head. I turned to my
23 victim's advocate at this point and I asked her,
24 "What is wrong with him? Is he sick?" She replied
25 that she didn't know.

1 Once he finished asking his procedural
2 questions of Ms. Smith, I was then afforded the
3 opportunity to speak. I spoke at length about the
4 injuries my daughter received and the care and
5 treatment she had received thus far. I made it
6 very clear during my impact statement exactly the
7 nature of the severity of the injury to my child.

8 Judge Goode asked prior to me reading
9 my victim's impact statement that I move closer to
10 him so that he could make eye contact with me.
11 During the entire time of my victim's impact
12 statement, I can only recall twice where Judge
13 Goode actually looked me in the eye.

14 After reading my statement, Judge
15 Kenneth Goode noted that my husband sat beside me
16 in his military uniform. He made a comment about
17 the infan -- infantry blue cord my husband wore.
18 Prior to reading his sentence for Talisha Smith he
19 stated, "There is nothing I can do to right this
20 wrong. Just look at the war in Iraq and
21 Afghanistan." My husband is a decorated combat
22 veteran. He took immediate offense to the
23 statement whispering under his breath to me, "What
24 the hell?"

25 Judge Goode then repeated several times

1 how there was nothing he could do to right the
2 wrong that was done to our daughter. I watched him
3 flip through the pictures that were taken by
4 Officer Carter both at the hospital and during her
5 stay in the ICU. He made comment about the loss of
6 his -- of a child of his own. Talisha Smith in her
7 defense commented -- commented that she currently
8 suffered from anxiety. Judge Goode took what
9 appeared to me to be a great interest into the fact
10 that she suffered from this disorder, asking her if
11 she was receiving medication and counseling.

12 Judge Goode then made a statement to
13 the effect that if he was to sentence Talisha Smith
14 to jail time, it would only serve to hurt her
15 children. He then sentenced Talisha Smith to a ten
16 year suspended sentence to five years probation.

17 That's pretty much my statement. I
18 would like to make a couple points of
19 clarification, however. One, Richard Carter, the
20 arresting officer, was present December 8th in the
21 courtroom, but at the time the only people that
22 Judge Goode wanted to hear from were myself and my
23 husband. He was not asked any questions. He was
24 not asked to speak by any member of the courtroom
25 on that day. So he was present there during those

1 proceedings.

2 CHAIRMAN McCONNELL: Any questions from
3 the Commission?

4 The senator from Lexington.

5 SENATOR KNOTTS: Thank you.

6 You say that the officer was present in
7 the courtroom, but Judge Goode did not ask for him
8 to speak?

9 MRS. GADDIE: That's correct, Senator.

10 SENATOR KNOTTS: Okay. Did the
11 solicitor ask for the officer to be heard?

12 MRS. GADDIE: No. It was our
13 understanding -- we -- we sat down with the
14 solicitor prior to even entering the courtroom.
15 She sat down with us and, you know, what to expect,
16 the kind of procedural questions he would -- she
17 would ask. And we asked, you know, at that time,
18 "Are you going to be bringing any -- you know, is
19 there any medical testimony? Is Officer Carter
20 going to speak?"

21 And she felt, you know, unless the
22 judge asked for it, it wasn't necessary because of
23 the severity of the crime being great bodily injury
24 to a child and the fact that she was pleading
25 guilty to that charge, a felony -- 20 year felony

1 child abuse charge, that it wouldn't be necessary
2 and that it -- you know, I guess if the judge felt
3 it was necessary, he would ask.

4 I read a very lengthy victim's impact
5 statement on everything my child suffered, the sign
6 language, the fact that she wasn't speaking. I
7 read that at length prior to the sentencing, and I
8 recognize I'm not a doctor, but I am her mother.

9 SENATOR KNOTTS: And I understand that,
10 but you do realize it is the solicitor's case and
11 that the solicitor must provide to the judge who is
12 unbiased all the facts so that he can make a
13 decision? The judge cannot be a part of either
14 defense or the state because he's the judge, and
15 it's up to him to have the information, and it's
16 the solicitor's responsibility to provide whatever
17 their case is, and it's not up to the judge to call
18 witnesses. It's up to the solicitor to call
19 witnesses and the -- the defense attorney.

20 So, you know, you might not understand
21 the process, but -- and I feel for what's happened,
22 and I think that more people need to understand the
23 judicial system whenever they're going into court.
24 That's why we have implemented the crime victims
25 assistant in all -- in all courts that we can

1 possibly do.

2 But, you know, there are certain things
3 that a judge can and cannot do, but one thing is he
4 cannot call witnesses. If he don't like what a
5 witness says, he can't, you know, do anything about
6 that. So you may -- I hope that helps you
7 understand that. Certainly you should and your
8 husband and everybody and the officer should have
9 been in that courtroom. I know if it was my case
10 when I was coming up -- and I had a lot of them. I
11 was in court, and I was there. I was interested in
12 what happened to my case.

13 MRS. GADDIE: He was absolutely
14 present.

15 SENATOR KNOTTS: And I would have
16 insisted to inform the judge of what I had found,
17 especially about the lying part and the -- the
18 information about the person denying the fact and
19 everything and all. I mean, as an officer, the
20 officer would have been the appropriate person to
21 tell the judge that because it was his case.

22 MRS. GADDIE: Right. And it's my
23 understanding at the time the solicitor made
24 that -- those comments about the fact that she had
25 lied for three days prior and she didn't just, you

1 know, admit to what she had done to my daughter
2 right away, that it took her, you know, three days
3 before she actually admitted to what she did to
4 her.

5 SENATOR KNOTTS: Yes, ma'am. I just
6 wanted to let -- let you know that the -- the
7 judge's role in the courtroom is to receive the
8 evidence from both sides to be able to make a
9 decision, and he can only make the proper decision
10 if he has enough evidence and all the evidence
11 that's needed to make that decision on both sides,
12 and sometimes in the past that's why we put the
13 victim's advocate up because we want to make sure
14 that victims like you are afforded that right to be
15 able to say anything you want to say in court and
16 also to let you be kept update with what is going
17 on with your case from arrest to the courtroom.

18 CHAIRMAN McCONNELL: Professor Freeman.

19 PROFESSOR FREEMAN: Ms. Gaddie, we have
20 a transcript of the hearing that you spoke at and
21 others and so forth, and on page 15 of our
22 transcript, line 23, we have Judge Goode quoted as
23 saying, "Be happy to hear from the family or police
24 officers." Do you remember him saying that?

25 MRS. GADDIE: No, I'm sorry, I don't

1 recall that.

2 PROFESSOR FREEMAN: That was just
3 before you started speaking. You don't recall
4 that?

5 MRS. GADDIE: That's probably why I
6 didn't recall that.

7 PROFESSOR FREEMAN: Okay.

8 CHAIRMAN McCONNELL: The senator --
9 senator from Charleston.

10 SENATOR FORD: Ms. Gaddie, who made the
11 judge -- who made the judge aware of the fact that
12 the officer was in court?

13 MRS. GADDIE: The solicitor's office I
14 believe.

15 SENATOR FORD: You believe, what, he
16 told the judge that the officer was in court?

17 MRS. GADDIE: He was standing directly
18 behind the solicitor.

19 SENATOR FORD: No, but did he make the
20 judge aware of the fact that the officer was in
21 court?

22 MRS. GADDIE: My recollection is that
23 the solicitor made the judge aware that Officer
24 Carter was present in the courtroom on December
25 8th.

1 SENATOR FORD: Okay, but you heard --
2 did you hear the solicitor say that to the judge?

3 MRS. GADDIE: That's my recollection.

4 SENATOR FORD: The person who was --
5 this was a babysitter, right?

6 MRS. GADDIE: This was her day care
7 provider --

8 SENATOR FORD: Okay.

9 MRS. GADDIE: -- registered by DSS.

10 SENATOR FORD: Came highly recommend or
11 what?

12 MRS. GADDIE: She did come highly
13 recommended.

14 SENATOR FORD: How many kids she had,
15 do you know?

16 MRS. GADDIE: In addition to her own
17 son at the time, she watched one other child.

18 SENATOR FORD: How long she was
19 watching your child before this accident?

20 MRS. GADDIE: She started watching my
21 son -- my son is now three years old -- when he was
22 approximately two or -- he was a year and a half,
23 so she probably watched my son for about a year
24 prior. My daughter -- we started my daughter when
25 she turned six weeks of age. She was born August

1 27th, so she started in October.

2 SENATOR FORD: Did -- did somebody
3 paint an adequate picture to the judge of what
4 happened and everything?

5 MRS. GADDIE: I felt I painted a fairly
6 accurate picture of what happened.

7 SENATOR FORD: You -- did -- what I'm
8 concerned about is -- okay, if the injury was
9 severe, why not have the doctors there to let the
10 judge know?

11 MRS. GADDIE: It was my understanding
12 that he had the medical file. I didn't
13 specifically see the medical file being passed. I
14 did however see him flip through the pictures that
15 were taken of my child in the ICU. Given the
16 pictures alone and the fact of the charge great
17 bodily injury to a child, for myself and -- and I'm
18 not speaking now just as a mother of the child that
19 was actually injured. For me, that would be
20 sufficient. That would be sufficient.

21 You have the pictures of the handprint
22 on the right side of my child's face in the ICU, as
23 well as the fact that she pled guilty to the charge
24 great bodily injury to a child. That to me should
25 be sufficient. How much more evidence do you need?

1 Then you have the -- me as the mother explaining to
2 you that my child doesn't speak. She drools. She
3 screams. I don't know how much more evidence Judge
4 Goode needed to make a determination on what a just
5 sentence should have been.

6 SENATOR FORD: And, Ms. Gaddie, I feel
7 for you and I understand. All the time I was
8 arrested and tried, you know, we didn't take no
9 chances. If I had expert witnesses, we brought
10 them. I mean, we can't take a chance I'm
11 assuming -- I mean, judges assuming anything. And
12 what I'm saying is if this was so severe and
13 important to you and your husband, why didn't y'all
14 in -- I mean, insisted that some expert witness
15 come? I mean, the solicitor could have easily done
16 that.

17 Were you satisfied with the performance
18 of the solicitor?

19 MRS. GADDIE: I was satisfied with the
20 performance of the solicitor, yes, again, because
21 the nature of the charge. It's not a misdemeanor
22 charge. It's a 20 year felony child abuse charge.
23 The fact that she pled guilty, he had the pictures
24 to look at, as well as my statement on what my
25 child suffered through that day, the following

1 days, the coming months, up to today should be
2 sufficient.

3 I don't see how bringing a police
4 officer -- officer coming out there or a doctor
5 would have made -- should have made any bit of
6 difference. This was a six-month-old infant,
7 infant six months old. Just the age of the child
8 alone, the age of the child alone should have been
9 enough. I don't see how that should have made any
10 bit of difference in the sentencing.

11 Okay. They didn't bring up a doctor.
12 They didn't bring up the police officer, although
13 he was there. I'm sure that the solicitor felt
14 that the evidence that she presented was
15 sufficient, and I agree with her.

16 CHAIRMAN McCONNELL: The senator from
17 Lexington.

18 SENATOR KNOTTS: Thank you,
19 Mr. Chairman.

20 What else was she charged with?

21 MRS. GADDIE: In the beginning she was
22 actually charged with two charges. There was this
23 great bodily injury to a child, and then because it
24 happened -- I'm not quite sure of the radius --
25 within a day care center, there was an additional

1 ten years charge as well. In talking with the
2 solicitor's office, in exchange for her guilty plea
3 on December 8th, the solicitor's office, along with
4 my husband and I's agreement, agreed to drop the
5 additional ten year charge.

6 SENATOR KNOTTS: There was a plea
7 negotiation by the solicitor's office I believe in
8 here on page three of the transcript to nolle
9 pros -- I believe it states that she's charged with
10 enhancement of the commission of an offense within
11 a hundred yards of a day care and "We will be nolle
12 prosing that count."

13 MRS. GADDIE: But that's the charge
14 that I believe --

15 SENATOR KNOTTS: And y'all -- y'all
16 agreed to that?

17 MRS. GADDIE: We did. Yes. We
18 actually -- we would --

19 SENATOR KNOTTS: Why would you --

20 MRS. GADDIE: Because what was
21 explained to us by the solicitor's office at the
22 time, that this would ensure that we have a guilty
23 plea, that we wouldn't have to go to trial, and at
24 the time it was a very emotional time for my
25 husband and I because my daughter was, you know,

1 really suffering at this point and she felt that,
2 you know, she would be able to get the guilty plea,
3 she would get sentenced, and we'd move past this
4 and put it behind us, rather than drag us through a
5 length -- lengthy court procedure and trial.

6 So that was our understanding, and we
7 agreed because up to that point we really had been
8 through quite a bit. And we were in agreement
9 that, "Okay, she's going to plead guilty. You
10 know, we drop the extra ten years." I mean, even
11 if we had had the extra ten years, it doesn't
12 appear that it would have made any difference. She
13 got probation.

14 SENATOR KNOTTS: You don't think that
15 the judge would have been looking at it in a light
16 the solicitor is not -- the person is charged with
17 two offenses and that the solicitor's office was
18 not willing to -- to nolle pros either, they want
19 to go forward with all of them, and that would not
20 have given the judge some type of indication
21 that -- that was real seriousness of wanting to put
22 this person in jail?

23 MRS. GADDIE: No, I don't. I honestly
24 don't. I honestly believe on December 8th Judge
25 Goode seemed to be more concerned with Talisha

1 Smith's state of mind and her family than she (sic)
2 did about my child and my family. I don't think it
3 would have made any bit of difference.

4 SENATOR KNOTTS: Well, was the
5 solicitor more concerned about getting a guilty
6 plea than --

7 MRS. GADDIE: The --

8 SENATOR KNOTTS: -- be concerned for
9 your child?

10 MRS. GADDIE: No. I mean, honestly I
11 thought the solicitor was looking out in our best
12 interest. I mean, we had been talking with the
13 solicitor's office, like my husband said, in
14 constant contact. So she was very aware of the
15 struggles we were having with my daughter, with the
16 speech therapy, with the screaming episodes, and
17 she knew that we were -- we were very emotional,
18 very tired, and that she wanted to find a quick
19 resolution for us so that we would be able to move
20 on from this incident because up until December
21 8th, that was all it was about in our house was,
22 you know, this charge and this case, what had been
23 done to Kendra, and we were really looking forward
24 to December 8th being able to put it behind us.
25 That didn't happen. That didn't happen. In fact,

1 we still get to deal with it because of the lenient
2 sentence that was given by Judge Goode.

3 I don't know how any person who could
4 stand there and listen to my victim's impact
5 statement, seen the charge, understood exactly what
6 the charge meant would give a sentence of
7 probation. I don't have -- I can't even comprehend
8 it. I've tried to go over it in my mind a million
9 times trying to think of why would anybody do that.
10 Just with the evidence that was submitted at court
11 that day should have been sufficient for a
12 justice -- for justice for my daughter, and justice
13 wasn't given. Probation is not a just sentence.

14 SENATOR KNOTTS: And I appreciate your
15 position on that, and you understand that our
16 position here is to ensure that enough evidence and
17 enough information was given to the judge that was
18 presented in court to be able to make the same
19 decision. But I'm looking here at what -- did the
20 solicitor give you any indication that they had a
21 problem with -- with convicting that person with it
22 happening within a day care?

23 MRS. GADDIE: She -- no, she did not.
24 She told us very -- time and time again we were
25 told, "It's a very strong case, very strong case,

1 not to worry," but she was concerned about our
2 mental state and our family being able to move on
3 from this incident which is why she suggested that
4 we drop the additional charge in exchange for the
5 guilty plea so that we could get a just sentence
6 for our daughter and move on from it. That was the
7 general understanding between my husband and myself
8 and the solicitor's office and we agreed.

9 SENATOR KNOTTS: Was there any
10 indication that they had worked out a plea
11 negotiation to drop that charge for a plea
12 negotiation to the one charge? Is that what they
13 told you or was it for the guilty plea or was it
14 for your mental state because you was --

15 MRS. GADDIE: It was --

16 SENATOR KNOTTS: -- going to have to go
17 through the guilty plea regardless whether it
18 was --

19 MRS. GADDIE: Right.

20 SENATOR KNOTTS: -- one charge or two
21 charges?

22 MRS. GADDIE: In exchange for her
23 guilty plea, we would drop the additional charge.
24 If we perhaps didn't offer to drop the additional
25 charge, then we -- that we ran the possibility of

1 possibly going to trial, and she wanted to avoid
2 that for our benefit. Not that we wouldn't have
3 gone through it, because we would have gone through
4 it, but I think she was looking as a way to find
5 some closure for us because we had already been
6 through so much.

7 SENATOR KNOTTS: Did she indicate that
8 she was going to recommend jail time to the judge
9 at -- at the time of plea? And I believe your
10 husband stated earlier that y'all never wanted a
11 plea negotiation. Y'all wanted a -- a trial.

12 MRS. GADDIE: Well, what had happened
13 was exactly we had discussed, you know, what was
14 going to go on within the courtroom, and we
15 expressed -- and I actually showed the solicitor a
16 copy of my im -- victim's impact statement where
17 very clearly in that statement I was looking for
18 the maximum sentence allowed by law to send a clear
19 message that these types of crimes weren't going to
20 be tolerated in our society by our day care
21 providers.

22 She understood that we were looking for
23 significant jail time. She told us that it was
24 going to be a straight-up plea and that with the
25 evidence provided and the seriousness of the charge

1 and the age of my child at the time of this crime
2 that that should be sufficient, that she -- you
3 know, she couldn't say -- she couldn't make any
4 promises.

5 And I remember explicitly saying,
6 "Well, if she gets probation, this is going to be a
7 problem." I knew I would not be happy with
8 probation.

9 SENATOR KNOTTS: Did she indicate that
10 to the judge --

11 MRS. GADDIE: Yes, she did.

12 SENATOR KNOTTS: -- the solicitor?

13 MRS. GADDIE: Yes, she did.

14 SENATOR KNOTTS: That you were not
15 going to be happy with probation?

16 MRS. GADDIE: She didn't say those
17 express words, but she said that she would -- I
18 believe --

19 SENATOR KNOTTS: Because I don't see it
20 in here.

21 MRS. GADDIE: Yeah, my recollection is
22 that, you know, she talked about the severity of
23 the injury, the age of my child.

24 SENATOR KNOTTS: But did she tell the
25 judge that -- that y'all specifically was not going

1 to be happy with the probationary sentence, that
2 they were insisting on jail time as a -- as a
3 solicitor -- as a prosecutor?

4 MRS. GADDIE: Those words were not used
5 to my recollection.

6 SENATOR KNOTTS: Thank you.

7 CHAIRMAN McCONNELL: Let me ask you a
8 couple of questions very quickly. I'm reading from
9 the transcript, and tell me if it's accurate. You
10 made the following statement -- I hate to go over
11 this with you, but I want to make sure that these
12 statements are accurate.

13 Where you said, "It was like --" said,
14 "I listened to our daughter make a sound. It was
15 like a cry --"

16 SENATOR KNOTTS: What page are you on?

17 CHAIRMAN McCONNELL: I am on page 19.

18 "It was like a cry you would hear from
19 a wounded animal. Immediately I felt panic, as
20 this was not a sound I had heard her utter before.
21 That sound haunts me to this day."

22 Was that your statement?

23 MRS. GADDIE: That's correct.

24 CHAIRMAN McCONNELL: Did anybody
25 challenge that in court?