

1 JUDGE GOODE: Yes, sir.

2 REPRESENTATIVE CLEMMONS: Okay. And
3 the purpose of this letter was to send you a copy
4 of the transcript of the Smith hearing for your
5 review. Does -- does that help you recall this
6 particular e-mail, Judge?

7 JUDGE GOODE: It -- it does in that I
8 certainly remember that she sent me one recently.

9 REPRESENTATIVE CLEMMONS: Okay. Do you
10 recall receiving that -- or opening that e-mail on
11 the same date that it was sent?

12 JUDGE GOODE: Now, what -- what day of
13 the week --

14 REPRESENTATIVE CLEMMONS: That was a
15 Thursday, February the 12th, 2009.

16 JUDGE GOODE: I would have opened it
17 that day.

18 REPRESENTATIVE CLEMMONS: Okay. And
19 did you in fact review the attached transcript of
20 the hearing that Ms. Shuler had attached to the
21 e-mail?

22 JUDGE GOODE: Yes, sir. If my
23 recollection serves me correctly, I actually placed
24 a call later that day to Mrs. Shuler.

25 REPRESENTATIVE CLEMMONS: Was in fact

1 your first communication from Ms. Shuler from this
2 commission?

3 JUDGE GOODE: I don't think so. We --
4 with all due respect, things kind of -- and there
5 were certain changes in procedure and times and
6 scheduling that we discussed, and --

7 REPRESENTATIVE CLEMMONS: I'm sorry, I
8 poorly phrased that. I meant with regard to the
9 matter before us today, was that your first
10 communication with Ms. Shuler concerning the --
11 the -- the Smith hearing?

12 JUDGE GOODE: And I'd have to give the
13 same answer.

14 REPRESENTATIVE CLEMMONS: Okay.

15 JUDGE GOODE: I just don't recall.

16 REPRESENTATIVE CLEMMONS: You don't
17 recall.

18 JUDGE GOODE: We were talking very
19 regularly at that time.

20 REPRESENTATIVE CLEMMONS: Okay.
21 February the 12th, 2009, that Thursday, is the same
22 date that's been testified that -- by your law
23 clerk and Ms. Fent that they received -- that your
24 law clerk was instructed by you to make the phone
25 calls giving notice that the motion had been

1 granted and that a hearing needed to be scheduled.

2 Is your testimony still that there was
3 no event that occurred that day that resulted in
4 your instructions to your law clerk in that regard,
5 or could this e-mail have had something to do with
6 that?

7 JUDGE GOODE: Well, I -- I certainly
8 don't wish to take issue with a member of the
9 Commission, but I don't recall and -- that I said
10 there was no particular event, and -- and I still
11 say that there wasn't. There was just a confluence
12 of many things going on, and during that, ill
13 advisedly, I scheduled a hearing.

14 Actually, I think that call was made
15 initially to Judge Michelle Childs who is the
16 administrative judge in Richland County at that
17 time and asked if they had courtroom space or a
18 court reporter and that type thing, and -- and,
19 again, Mr. Newell was making these calls, and I
20 don't think that -- that he was able to get through
21 to her. We spoke with her clerk.

22 REPRESENTATIVE CLEMMONS: Thank you,
23 Judge Goode.

24 Those are all the questions I have,
25 Mr. Chairman, but I would move that the -- the

1 e-mail reference be included in the exhibits for
2 today.

3 CHAIRMAN McCONNELL: Is there an
4 objection? There being none, so ordered.

5 (EXH. 7, 2/12/2009 E-Mail From Jane
6 Shuler to Judge Goode, marked for identification.)

7 CHAIRMAN McCONNELL: Questions from the
8 senator from Charleston and then Professor Freeman.

9 SENATOR FORD: The first article I seen
10 on this was February 10th. I don't know what --
11 what -- what's being implied, but it seems to me
12 February 10th was kind of more damaging to you as a
13 judge than February 12th because on February 10th
14 you was attacked by The State newspaper, and it
15 seems to me, if -- if anything would have jogged
16 your memory about having a hearing, you should have
17 done it then, at least to me. I don't know. But
18 apparently it's different with the representative.

19 But let me ask you a question. The
20 first time you was aware of this case it was -- it
21 was at the hearing?

22 JUDGE GOODE: The -- are you speaking
23 of the joint hearing?

24 SENATOR FORD: No, the hearing with --
25 in this case, the plea hearing.

1 JUDGE GOODE: The first time I was
2 aware of this case?

3 SENATOR FORD: Yeah.

4 JUDGE GOODE: Yes, sir, that was the
5 first time I knew -- was made aware.

6 SENATOR FORD: So all this -- all of
7 this stuff, you wasn't aware of none of it, all of
8 these packages and everything?

9 JUDGE GOODE: No, sir.

10 SENATOR FORD: So how long it took you
11 to rule?

12 JUDGE GOODE: I ruled the day I heard
13 it.

14 SENATOR FORD: Okay. So in my -- okay.
15 In my mind I'm thinking that somebody had
16 prepared -- maybe your law clerks or someone that
17 prepared you with all -- I don't know how judges
18 work, but I thought what would happen is that
19 somebody would prepare you on every case which
20 would be kind of strange anyways because y'all --
21 y'all take so many.

22 So you've got a lot of cases that
23 particular day on pleas, and here comes a case
24 before you that have a whole lot of interest to a
25 whole lot of people, but you as a judge the first

1 time you seen it was at, let's say, two o'clock
2 that day, May 10 -- not May 10 -- what, December
3 10th?

4 JUDGE GOODE: Yes, sir, I think that's
5 correct.

6 SENATOR FORD: So that's the first time
7 you'd seen all of this stuff, and so as a judge you
8 would want to -- you would want all the information
9 possible for you to make up your -- for you to make
10 a decision, right?

11 JUDGE GOODE: Yes, sir.

12 SENATOR FORD: Okay. Now, that's what
13 strange about this whole thing. The people inside
14 the judiciary know that this is the first time --
15 not you, but any judges is hearing this particular
16 case. Let's say a case about me. I thought I
17 would want -- I thought I would want my lawyer
18 to -- my guess would be it isn't legal, but at
19 least make them aware -- make you aware what --
20 what type case is coming before you that day.

21 So you cold turkey have to rule because
22 you got other cases and because you got a major
23 shortage.

24 JUDGE GOODE: Yes, sir. Sometimes they
25 will actually give a list of the defendants that

1 are coming before me, and sometimes there will be a
2 list of the charge.

3 SENATOR FORD: So back to what Senator
4 Knotts was saying, his contention is that, okay, he
5 in court. You as a judge should have all the
6 information before you before you make a decision
7 which means it somebody job to -- the lawyer and
8 the prosecutor's job is to paint a picture for you,
9 right? I mean, a mother and a father painted a
10 beautiful picture. But their job was to paint a
11 picture and they did not.

12 JUDGE GOODE: There was no medical
13 evidence presented to -- no subsequent --

14 SENATOR FORD: Now, here we are in this
15 late date five minutes to 5:00, 200 miles -- I
16 mean, two hours from here, driving normal, of
17 course, to Charleston, and we got you, you know,
18 going through all of this when basically the way I
19 see it is that, you know, just not you dropping --
20 I mean, just not the solicitor, but, man, the
21 General Assembly -- we've been trying to get the
22 House to help us hire some judges for a long, long
23 time.

24 We got a major shortage in South
25 Carolina, and those people who are just visiting

1 here they would -- you know, I'm sure they're
2 surprised and they think justice is not rendered.
3 But this is some difficult stuff that you all got
4 to do. I mean, you know, we want you to do this
5 wonderful job on the bench and yet we're not giving
6 you all the tools -- all the tools you need.

7 I felt sure that some kind of way that
8 this plea hearing that you would be advised by
9 somebody that "Here is what's going to happen.
10 Here is what you're going to see today," blah,
11 blah, blah, and that didn't happen. They cold
12 turkey you, and we expect you to make all these
13 great decisions as an individual. I mean, that's
14 too much for anybody.

15 CHAIRMAN McCONNELL: Professor.

16 JUDGE GOODE: Well, sometimes they
17 will -- this was, although it didn't happen, would
18 be an example. They would provide me with a little
19 more information ahead, maybe the medical records
20 to become familiar with before I went into the
21 courtroom and --

22 SENATOR FORD: But that didn't happen
23 in this case.

24 JUDGE GOODE: No, sir. For reasons
25 unknown to me, that did not happen.

1 CHAIRMAN McCONNELL: Professor Freeman.

2 PROFESSOR FREEMAN: Just quickly, Your
3 Honor, motions to reconsider, just help me
4 understand this -- and specifically motions to
5 reconsider criminal sentencing. As I understand
6 it, there -- you can only call to mind one written
7 motion to reconsider sentencing ruling by Your
8 Honor, and that is this one?

9 JUDGE GOODE: Professor Freeman, on
10 this date at this time, that is correct. There
11 have been -- there have been questions, but I've
12 sentenced several thousands of folks.

13 PROFESSOR FREEMAN: I understand that.
14 I'm just trying to understand.

15 And then there's another way you can
16 have a motion -- reconsideration, and that is sua
17 sponte. Your Honor can do that.

18 JUDGE GOODE: Yes.

19 PROFESSOR FREEMAN: How many times have
20 you done that?

21 JUDGE GOODE: Probably a dozen times.

22 PROFESSOR FREEMAN: Including this case
23 we'll be talking about in a little bit?

24 JUDGE GOODE: Yes, sir.

25 PROFESSOR FREEMAN: But there are other

1 cases. And then the third way is for, I guess, the
2 parties to just approach Your Honor and want --
3 want to talk to you together in chambers or
4 something like that about -- and how often would
5 you say that's happened?

6 JUDGE GOODE: I'd say many times. In
7 excess of 25.

8 PROFESSOR FREEMAN: Thank you.

9 SENATOR KNOTTS: Mr. Chairman.

10 CHAIRMAN McCONNELL: Any other
11 questions?

12 The senator from Lexington.

13 SENATOR KNOTTS: Thank you, Judge. In
14 the sentencing phase -- it was the last thing you
15 did in this case, and you passed a sentence of ten
16 years suspended on five years probation and
17 counseling -- any counseling that they saw fit
18 through the probation office, the Department of
19 Corrections or whatever. I think you said the
20 Department of Corrections, but I think you meant --
21 it might be a typographical error -- the probation
22 department --

23 JUDGE GOODE: Yes.

24 SENATOR KNOTTS: -- that they seemed --
25 that they deemed necessary. And at that point in

1 time after the sentencing, you advised the
2 defendant to go to counseling and -- and the
3 defendant said, "Yes, sir," and then the Court
4 said, "Thank you," as -- as you always do -- or
5 judges always do. Mr. Finney said, "Thank you,
6 Your Honor." At that point Ms. Fent, "There is
7 also a finding, Your Honor, that she be put on the
8 Child Abuse and Neglect Registry, the DSS
9 registry," and you said yes. So that was at the
10 request of Ms. Fent.

11 JUDGE GOODE: Yes, sir.

12 SENATOR KNOTTS: Did she at that time
13 indicate to you that she was dissatisfied with the
14 sentence that you had passed?

15 JUDGE GOODE: No, sir.

16 SENATOR KNOTTS: Okay. The only thing
17 she wanted to do in addition to the sentence that
18 you had passed was to place the defendant on the
19 DSS registry for child abuse and neglect?

20 JUDGE GOODE: Yes, sir.

21 SENATOR KNOTTS: You had no problem
22 doing that?

23 JUDGE GOODE: No, sir.

24 SENATOR KNOTTS: Did she at any time
25 that day indicate that she was asking for a

1 reconsideration, as do in many cases when a
2 prosecutor or a defense lawyer is dissatisfied with
3 the sentence of the Court that they will make on
4 the record then "I intend to offer a motion for
5 reconsideration, Judge"? Is that not true?

6 JUDGE GOODE: That -- she did not so
7 indicate.

8 SENATOR KNOTTS: She did not. And two
9 days later she came up and asked for a
10 reconsideration?

11 JUDGE GOODE: Yes, sir.

12 SENATOR KNOTTS: Thank you.

13 JUDGE GOODE: Thank you.

14 CHAIRMAN McCONNELL: I think staff
15 counsel had some further questions.

16 MS. SHULER: I do. I would like to
17 have this exhibit marked as an exhibit and then
18 hand it back to Judge Goode. I would like to offer
19 a letter from the Richland County Clerk of Court
20 dated February 19th, 2009, and basically it says,
21 "To Whom It May Concern. This office has made a
22 diligent search of all records in our custody and
23 control regarding the above-captioned matter,"
24 which is the State of South Carolina versus Talisha
25 Lavette Smith. "This office is not in possession

1 of any documents reflecting that the Motion to
2 Reconsider," which is attached and which we've
3 already offered as an exhibit, "which was filed on
4 December 10th, 2008, has been heard and/or ruled
5 upon. Sincerely, James D. Truitt, Clerk of Court
6 Administrator."

7 I'd like to have that offered as an
8 exhibit.

9 CHAIRMAN McCONNELL: Is there
10 objection? Being none, so ordered.

11 (EXH. 8, February 19, 2009, Letter From
12 Richland County Clerk of Court, marked for
13 identification.)

14 MS. SHULER: Judge Goode, you've
15 testified that you ruled on December 10th on the
16 motion to reconsider. Do you commit your ruling to
17 any form of order or notify in any fashion the
18 Richland County Clerk of Court?

19 JUDGE GOODE: No, ma'am. It was
20 presented to me by the assistant solicitor. She
21 approached, indicated what she had, and asked if I
22 would rehear it. I indicated that I would in some
23 affirmative manner. And as I indicated, my
24 recollection was I had -- that it was an order and
25 I had signed it, but in reflection I'm not certain

1 about that.

2 But I am certain -- and I'm under
3 oath -- in today's hearing and my position that it
4 was presented to me. I was asked if I would rehear
5 it, and I indicated that I would. And Ms. Stent --
6 Fent left with the order which was not at all
7 unusual for them to have taken it and filed it with
8 the clerk, and when I was there, they were
9 notifying me of -- of a hearing -- or typically
10 when it's one that I feel would take some time, I
11 put them on notice that I have something that's
12 going to take more time than a plea so that it
13 won't mess their schedule up.

14 MS. SHULER: I guess so that I'm clear,
15 Judge Goode, what you thought was this motion to
16 reconsider sentence, you thought you had signed
17 this order and then gave it back to her to file?

18 JUDGE GOODE: I was signing at the time
19 that she handed it up. It may have been probation
20 orders. It may have been some other orders. Like
21 I say, there was a break in the action, so to
22 speak, and she came up. And I -- I remember one
23 hand put it down, told me what it was and would I
24 do it, and I said I would.

25 And I was signing, but apparently after

1 looking at Mr. Finney's copy, it was not the motion
2 to reconsider, which would normally not have my
3 signature. But no -- no ifs, ands or maybe sos, as
4 we say in my way, that it was definitely presented
5 to me, and -- and I informed her that I would
6 reconsider the sentence. And I'm prepared to do
7 that.

8 MS. SHULER: Thank you, Judge Goode.

9 CHAIRMAN McCONNELL: Anything further?

10 Mr. Sellers.

11 MR. SELLERS: Judge, it may -- excuse
12 me. Maybe it's just me, but I am totally confused.
13 We got two -- two different documents. One is a
14 motion to reconsider, which I understand you to say
15 that the solicitor presented to you on the bench.
16 And we got a copy of it that's been marked as an
17 exhibit, and it is a motion that's marked -- been
18 filed with the clerk. Now, did you sign an
19 order -- as opposed to a motion, did you sign an
20 order granting this motion?

21 JUDGE GOODE: I can't say with absolute
22 and complete confidence whether I signed it or I
23 didn't sign it. I can say without hesitation -- or
24 equivocation that she was informed that day that I
25 would reconsider the sentence.

1 MR. SELLERS: But -- but in order for
2 everybody who is involved to be aware of your
3 decision, there has to be another step, doesn't
4 there, Judge? There has to be an order signed and
5 filed either by you or you need to direct someone
6 to prepare an order for you to sign; isn't that
7 fair?

8 JUDGE GOODE: The prevailing party
9 typically, Mr. Sellers, prepares the order and --

10 MR. SELLERS: And in this case no order
11 was prepared or signed?

12 JUDGE GOODE: I can't say that. I -- I
13 don't have an independent -- an independent
14 recollection of that.

15 MR. SELLERS: You don't have it. The
16 clerk doesn't have it. Ms. Fent doesn't have it.
17 Your clerk doesn't have it, and we don't have it,
18 right?

19 JUDGE GOODE: And I would virtually
20 never have it because they go back -- typically if
21 I were given an order to sign by the solicitor of
22 any nature, they would then file it with the clerk.
23 I would --

24 MR. SELLERS: And you've got a
25 defendant who you have sentenced to probation who

1 has gone off thinking that she's not going to be
2 going to jail, and you made a decision to
3 reconsider that and may ultimately send her to
4 jail, correct?

5 JUDGE GOODE: Yes, sir.

6 MR. SELLERS: And there was no effort
7 made to notify her attorney or her that you may be
8 resentencing her and may be incarcerating her; is
9 that correct?

10 JUDGE GOODE: I don't know what steps
11 were taken in that direction. However, I do know
12 that I agreed that I would rehear the case -- I
13 would resentence in the case, not rehear it. I
14 would resentence, and I've got to determine what
15 extraordinary circumstances need to be in place
16 before -- at the resentencing that I can receive
17 evidence, and -- and in this case that would be the
18 medical records. And if I find that there are
19 sufficient -- appropriate reasons, then I'll allow
20 the medical records in.

21 And I'd like -- and this -- I'm kind of
22 turning toward Senator Ford because he -- he asked
23 this question. I'd likely take it under -- with
24 this amount of a cure, I'd take it under advisement
25 so I could have a quiet night and -- and study them

1 as they should be studied.

2 MR. SELLERS: Judge Goode, while we're
3 on that, let me be sure I understand. And I'm a
4 civil trial lawyer, so I haven't done a lot of
5 criminal work, haven't done any in a long time.
6 But as I understood, this is a guilty plea, and
7 everything that everybody in that courtroom said
8 the defendant admitted as true; isn't that correct?

9 JUDGE GOODE: Yes, sir.

10 MR. SELLERS: And there was no question
11 that the solicitor -- solicitor informed you that
12 the defendant had given two different stories, one
13 of which was true and one was false? You knew
14 that?

15 JUDGE GOODE: Yes.

16 MR. SELLERS: And there was a summary
17 of the medical condition presented to you by the
18 solicitor and by the parent, and everything that
19 they said was admitted as true; isn't that true?

20 JUDGE GOODE: Yes, sir.

21 MR. SELLERS: And so if you saw the
22 medical records, all you'd be doing is
23 corroborating what they had told you that -- that
24 the defendant admit -- admitted as being true,
25 correct?

1 JUDGE GOODE: That's correct.

2 MR. SELLERS: That's all I've got.

3 CHAIRMAN McCONNELL: Representative
4 Clemmons.

5 REPRESENTATIVE CLEMMONS: Thank you.

6 Your Honor, I thought I was clear and
7 now I'm confused on another area. You just told
8 Mr. Sellers that -- that not only had you decided
9 when you saw Ms. Fant -- Ms. Fent, excuse me, when
10 she presented her motion to rehear the matter, but
11 you decided at that time that you were going to
12 resentence in the matter. Did -- was that
13 correctly spoken?

14 JUDGE GOODE: Well, maybe I did not
15 speak correctly, which is entirely possible. I
16 told her and anyone involved with this that I would
17 reconsider the sentence.

18 REPRESENTATIVE CLEMMONS: That you
19 would reconsider the sentence?

20 JUDGE GOODE: That's correct.

21 REPRESENTATIVE CLEMMONS: Does that
22 mean the same thing as "I am going to resentence,"
23 as you just testified a moment ago?

24 JUDGE GOODE: Well, a resentence can be
25 the same sentence, but it's after additional

1 review.

2 REPRESENTATIVE CLEMMONS: I mean --
3 and, I'm sorry, I'm not a criminal lawyer either,
4 haven't done that kind of work in a long time.

5 JUDGE GOODE: I'm saying that I will
6 review the case and my sentence. I will listen to
7 argument from counsel for both sides. If I find it
8 appropriate, I will receive evidence as to the
9 sentence from both sides, and then I will -- I will
10 resentence, and that sentence can be anywhere from
11 20 years to -- actually to zero.

12 REPRESENTATIVE CLEMMONS: Okay, Judge.
13 But you -- you made a distinction to Mr. Sellers
14 just a moment ago that not only had you agreed to
15 rehear the matter -- to grant the motion to rehear
16 the matter, but you said, "Not only did I agree to
17 do that, I agreed to resentence the defendant."

18 You made a distinction there, and I'm
19 trying to understand what the distinction is,
20 because my -- my understanding is -- my due process
21 understanding is that it would be inappropriate to
22 agree ex parte with the solicitor to resentence
23 the -- the defendant without affording the
24 defendant an opportunity to be involved in that
25 hearing. Is -- is that not correct?

1 JUDGE GOODE: Oh, that's absolutely
2 correct, and if that's what you heard me say -- and
3 I'm not saying that it was not -- that was not what
4 I meant.

5 REPRESENTATIVE CLEMMONS: Okay. What
6 exactly did you mean then, Judge?

7 JUDGE GOODE: Yes.

8 REPRESENTATIVE CLEMMONS: I want the
9 record to be clear for us.

10 JUDGE GOODE: The record is clear in
11 that I have agreed to resentence in this case.

12 REPRESENTATIVE CLEMMONS: Okay. I --
13 I'm still confused, but thank you very much, Judge.

14 CHAIRMAN McCONNELL: Yes, the senator
15 from Lexington.

16 SENATOR KNOTTS: Judge, is it out of
17 the ordinary for a solicitor whenever they bring
18 you an order like this that -- whenever you agree
19 to the request for a reconsideration of the
20 sentence who prepares the order -- the actual
21 order?

22 JUDGE GOODE: I'm sorry?

23 SENATOR KNOTTS: Who -- who is -- who
24 is the person that -- in the court process that we
25 have, an attorney brings you a motion and you

1 tell -- is it not -- is it out of the ordinary for
2 you to say, "Yes, I will -- I will reconsider, and
3 prepare me an order," or is it understood that the
4 order will be prepared and brought back to you to
5 be signed? Is that out of the ordinary?

6 JUDGE GOODE: It's -- according to the
7 rules, it would be extraordinary, but according to
8 practice in the state, especially the larger
9 counties, it's not unusual for that not to be the
10 case, speaking of the orders in general of -- of
11 a -- of a housekeeping nature.

12 SENATOR KNOTTS: And at that point in
13 time after the order is prepared and you sign it,
14 when is it served on the defense lawyer, or is it
15 served on the defense lawyer prior to you getting
16 the motion?

17 JUDGE GOODE: In this case, I don't
18 recall, but it -- typically there would be a
19 discussion and I would state whether I would or I
20 wouldn't, and then the prevailing party would
21 present me with a motion and an order. And
22 Mr. Finney was mailed a copy of the order, so --

23 SENATOR KNOTTS: You mean a copy of the
24 motion?

25 JUDGE GOODE: Or of the motion, excuse

1 me. Thank you. And so this -- and as I indicated,
2 my recollection of that is -- is 100 percent firm.

3 SENATOR KNOTTS: And even in civil
4 cases or family court cases, once a judge rules,
5 they ask the two -- two attorneys to get together
6 and draw up an order that they both consent to and
7 they -- they bring it back to you to be signed --
8 to be reviewed and be signed. Is that the
9 procedure in this state?

10 JUDGE GOODE: That is often the
11 procedure.

12 SENATOR KNOTTS: So judges do not
13 actually write the orders that they sign. They --
14 they have them prepared by the two attorneys or
15 agreed upon by the two attorneys, and then they
16 bring them in for you to sign. I believe that's
17 the practice in this state.

18 JUDGE GOODE: That -- that is one of
19 the practices.

20 SENATOR KNOTTS: And been the practice
21 for how many years?

22 JUDGE GOODE: As long as I've been
23 practicing, but there are some cases that the two
24 sides is not always a hundred percent winner over
25 here and a hundred percent winner over here or a

1 loser over here, but there's a -- a middle ground,
2 and in those situations I draft my own orders.

3 SENATOR KNOTTS: You make the
4 correction and draft your own orders if they can't
5 agree to everything in the order, right?

6 JUDGE GOODE: That's right. And
7 sometimes you get both sides to draw an order and
8 you choose the one that most closely --

9 SENATOR KNOTTS: One last question. In
10 this particular motion that was presented to you by
11 Ms. Fent, would it have been out of -- would it
12 have been out of the ordinary for a line to be put
13 on there "Be it so ordered" and signed by the judge
14 at the bottom?

15 JUDGE GOODE: Yes, sir. That -- that
16 would have been unusual.

17 SENATOR KNOTTS: It would?

18 JUDGE GOODE: Unless it had been
19 consented to by Mr. Finney.

20 SENATOR KNOTTS: If both of them had
21 consented to it, it would be at the bottom. They'd
22 both have their signature on it, and it would say
23 "Be it so ordered" and then you would have your
24 name on it also?

25 JUDGE GOODE: Yes, sir.

1 SENATOR KNOTTS: But since it hadn't
2 been served on Mr. Finney, that couldn't have
3 happened, could it?

4 JUDGE GOODE: No, sir.

5 SENATOR KNOTTS: Because you would have
6 had to schedule a hearing to be heard by both of
7 them.

8 JUDGE GOODE: That's correct.

9 SENATOR KNOTTS: And you were granting
10 a motion from the solicitor's office for a
11 rehearing, verbally.

12 JUDGE GOODE: That's correct.

13 SENATOR KNOTTS: Thank you.

14 SENATOR FORD: Let me --

15 CHAIRMAN McCONNELL: The senator from
16 Charleston.

17 SENATOR FORD: Judge, just one quick
18 question. I wanted to be clear on this. If you
19 reopen a case -- a sentence, right?

20 JUDGE GOODE: I did not reopen the
21 case.

22 SENATOR FORD: But that's not what
23 I'm -- once you reopen a case -- a sentence, is it
24 my understanding that once you reopen a sentence
25 case, no matter what sentence you give -- whether

1 it's the same sentence or something harsher or a
2 whole different sentence, but once you reopen it,
3 that's a sentence?

4 JUDGE GOODE: That -- that's correct.
5 If I --

6 SENATOR FORD: Resentence. And you --
7 you're under -- they was questioning you about
8 resentencing. Once you open it, that's a
9 resentencing, right?

10 JUDGE GOODE: After we have a hearing
11 and I issue an order as a result of rehearing it --

12 SENATOR FORD: Even if it -- even if
13 it's the same sentence, that's a resentence?

14 JUDGE GOODE: Yes, sir.

15 SENATOR FORD: Okay.

16 JUDGE GOODE: After hearing testimony
17 on the motion.

18 CHAIRMAN McCONNELL: Mr. Sellers.

19 MR. SELLERS: Judge, this was a motion
20 filed by the solicitor to -- asking you to
21 reconsider your sentencing decision, correctly --
22 correct?

23 JUDGE GOODE: That's correct.

24 MR. SELLERS: And Mr. Finney didn't
25 have an opportunity to oppose the motion?

1 JUDGE GOODE: This was a -- I don't
2 have a recollection of whether or not there was a
3 representation of a discussion with Mr. Finney.

4 MR. SELLERS: It would be unusual for
5 Mr. Finney under the circumstances to agree to a
6 resentencing or a rehearing on the sentence,
7 wouldn't it?

8 JUDGE GOODE: I -- I don't think so,
9 because chances are so good -- and we may have
10 rehashed this ground in chambers, and I -- I don't
11 remember. And I'm sorry to be so vague, but I
12 don't typically sign what's called an ex parte
13 order, as you know, and I feel that I had some
14 input from Jerry Finney prior to my verbal order
15 that I would review the sentence.

16 MR. SELLERS: So you think prior to the
17 solicitor walking in your courtroom and handing you
18 this motion that you indicated to us that you
19 granted on the spot, you had some conversation with
20 Mr. Finney where he agreed that he -- he was going
21 to let you resentence or rehear the sentencing on
22 his client?

23 JUDGE GOODE: That or a representation
24 from someone or -- including the solicitor.
25 They -- they work closely together there. I've

1 never had one to misrepresent anything to the
2 Court, and it would not be unusual -- and I'm
3 certainly not saying this was the case -- for her
4 to say what it is and "I've already spoken to
5 Mr. Finney, and he's in agreement."

6 But I just -- I don't have a
7 recollection of all of the minutia of those -- the
8 surroundings of the issuance of the order to rehear
9 it.

10 CHAIRMAN McCONNELL: Yes, sir.
11 Professor Freeman.

12 PROFESSOR FREEMAN: Judge, can you
13 testify as a fact that Jerry Finney had any idea
14 that the solicitor was seeking reconsideration when
15 she walked and put that motion in front of you?

16 JUDGE GOODE: No, sir.

17 CHAIRMAN McCONNELL: Any -- any other
18 questions?

19 This concludes this -- all right.

20 Staff counsel -- you can have a seat,
21 Judge. She's going to call back two witnesses for
22 some clarification on something.

23 Which one would you like to call back
24 first?

25 MS. SHULER: Margaret Fent, please.

1 CHAIRMAN McCONNELL: Ms. Fent, are you
2 still here?

3 UNIDENTIFIED SPEAKER: She left.

4 MS. SHULER: Mr. Finney.

5 CHAIRMAN McCONNELL: Mr. Finney, are
6 you still here?

7 MR. FINNEY: I am.

8 CHAIRMAN McCONNELL: Back behind the
9 column there.

10 MR. FINNEY: I am.

11 CHAIRMAN McCONNELL: If you'd come
12 forward, please, sir.

13 All right, sir. If you'd please answer
14 any questions. You're still under oath, sir.

15 MS. SHULER: Mr. Finney, turning to the
16 motion for reconsideration, did the solicitor
17 contact you prior to filing the motion to inform
18 you that she was going to ask Judge Goode to
19 reconsider the sentence?

20 MR. FINNEY: She did not contact me to
21 verbally inform me that she was going to ask Judge
22 Goode to reconsider the sentence, but on the day
23 that that document is now into evidence --

24 MS. SHULER: Right.

25 MR. FINNEY: -- I believe that's

1 December the 10th --

2 MS. SHULER: Yes, sir.

3 MR. FINNEY: -- she communicated to me
4 in writing by faxing it to my office. In fact, if
5 you look at that document on the top, it's the fax
6 number -- it's either -- it's either my fax number
7 or the solicitor's office fax number. I've got it.
8 You've got it. It is one of the two, but it was
9 faxed to me on that day, so that's how it was
10 communicated to me.

11 MS. SHULER: So she faxed you the
12 motion for reconsideration prior to visiting Judge
13 Goode to ask for it?

14 MR. FINNEY: I don't know. You'd have
15 to ask Ms. Fent that. It's not my motion. It's
16 hers.

17 MS. SHULER: Right. At any time did
18 the Court try to contact you while Ms. Fent was in
19 his presence with the motion for reconsideration to
20 maybe get you on the phone for your input on it?

21 MR. FINNEY: No. All I can say is that
22 I did receive the motion. I knew that she was
23 going to ask the judge for it, and certainly if --
24 as an experienced trial lawyer I know that, not
25 only Judge Goode, but any judge might handle that

1 in a number of ways. He might want to have a
2 chambers conference. He might want to discuss it
3 on the phone. He might want to do it out in open
4 court on the record.

5 Ms. Fent did not call me to indicate
6 anything that Judge Goode may or may not have said,
7 but I do know as an experienced lawyer a judge can
8 handle that in many ways. And certainly if he has
9 indicated that he verbally agreed to at least hear
10 the matter, then last Thursday I was contacted, as
11 I testified earlier, with respect to the
12 scheduling, and I can also testify that in the time
13 from December the 10th to -- what date was last
14 Thursday?

15 MS. SHULER: The 12th.

16 MR. FINNEY: The 12th of February.
17 That's a pretty short window of time with regard to
18 scheduling any motion in any case, particularly in
19 Columbia.

20 MS. SHULER: So you received the motion
21 for reconsideration. Did you ever receive an order
22 or were -- or were you informed that the judge had
23 granted that motion for rehearing on December 10th?

24 MR. FINNEY: I was -- I was informed --
25 the way I read the motion, I read the motion to ask

1 for a reconsideration of sentencing. That's how I
2 read the motion. When I was informed that the
3 motion hearing was scheduled, it was my
4 understanding that the motion that the state was
5 making was indeed granted and that we were going
6 back to court to discuss resentencing.

7 She filed a motion to ask for the Court
8 to consider sentencing. I was in receipt of that
9 motion, and then it got scheduled. So I was
10 preparing to reply to the state's motion for
11 reconsideration of sentencing from Thursday
12 until -- I guess we were informed it was cancelled
13 on -- the hearing was scheduled for Tuesday, so I
14 guess I was informed on Monday that it was
15 cancelled. So between Thursday and Monday I was
16 preparing to reply to the state's motion.

17 MS. SHULER: Thank you, Mr. Finney.

18 CHAIRMAN McCONNELL: All right.

19 Representative Clemmons.

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

22 Mr. Finney, are you surprised to hear
23 the judge say that he had agreed two days after the
24 trial to resentence your client?

25 MR. FINNEY: Well, you know, again, I'm

1 not here as Ms. Fent -- one thing I will agree with
2 her on is that the rules of ethics prescribe that I
3 ethically cannot comment on the case. The case
4 that's still pending right now at this very moment
5 is a motion for reconsideration of the sentence.

6 I still represent the defendant, and
7 that motion is still pending. So any comment that
8 the judge makes either here or in court, there's an
9 appropriate process to deal with that with respect
10 to however he may rule or whatever he may say.

11 But, you know, as of right now I think it would be
12 inappropriate for me as a lawyer involved in the
13 case to give commentary with respect to the pending
14 motion, specifically that motion for
15 reconsideration.

16 REPRESENTATIVE CLEMMONS: Is that --

17 MR. FINNEY: That's the only motion
18 that's pending.

19 REPRESENTATIVE CLEMMONS: Even though
20 the judge says he has already ruled that he will
21 resentence in this matter?

22 MR. FINNEY: (Gestures.)

23 REPRESENTATIVE CLEMMONS: Okay. Thank
24 you.

25 And so that I'm absolutely clear then,

1 with regard to that motion, you have not been heard
2 by the judge on the matter of that motion at any
3 point in time even prior to the motion having been
4 filed; is that correct?

5 MR. FINNEY: With -- with the exception
6 of scheduling the hearing.

7 REPRESENTATIVE CLEMMONS: Correct.

8 MR. FINNEY: It was scheduled for
9 Tuesday.

10 REPRESENTATIVE CLEMMONS: Other than
11 that --

12 MR. FINNEY: Other than that.

13 REPRESENTATIVE CLEMMONS: -- you have
14 not been heard on this matter in any way?

15 MR. FINNEY: No, sir.

16 REPRESENTATIVE CLEMMONS: Thank you
17 very much.

18 CHAIRMAN McCONNELL: We've got
19 Mr. Harrell, then --

20 MR. HARRELL: Yes, sir.

21 CHAIRMAN McCONNELL: -- then the
22 senator from Lexington.

23 Representative Harrell.

24 MR. HARRELL: Thank you, Mr. Chairman.

25 Mr. Finney, I'm unclear. Are -- are

1 you under the impression -- or were you under the
2 impression that the hearing that was going to take
3 place on Tuesday was to decide whether or not --
4 was to decide whether or not to grant the
5 solicitor's motion for reconsideration; is that
6 right?

7 MR. FINNEY: When I was notified of the
8 hearing that was scheduled for Tuesday by Judge
9 Goode's law clerk, there were a number of things
10 that I began to do as the defendant's lawyer to
11 protect her rights with respect to that upcoming
12 motion hearing. There are a number of issues that
13 I researched and prepared from Thursday until
14 Monday to protect her rights -- constitutional
15 rights, her -- all of the issues that we were
16 prepared to put on the record on Tuesday.

17 I can't get into my -- my strategy. I
18 can't get into the research and the issues that I
19 was prepared to put on the record on Tuesday
20 because on Monday I was informed that the hearing
21 was cancelled until further notice of the Court.

22 MR. HARRELL: Right.

23 MR. FINNEY: So I cannot -- I think
24 it's improper for me to get into my preparation and
25 strategy with respect to that -- what we were

1 prepared to do at that hearing. When and if that
2 date comes, I will be prepared to show up at the
3 courthouse and put all of that on the record.

4 MR. HARRELL: Right. And, Mr. Finney,
5 I -- I'm -- I'm not asking what you were going to
6 put on at the hearing. What I'm confused about is
7 whether or not you were under the impression that
8 the hearing was on the motion as to whether or not
9 to reconsider the sentencing or whether or not it
10 was a hearing on resentencing.

11 MR. FINNEY: And that may have been --
12 and I stress the word may, because the matter is
13 still pending -- may have been one of the issues
14 that we would have raised.

15 MR. HARRELL: I see. Okay. So you
16 weren't a hundred percent clear on which way the
17 hearing was going to go?

18 MR. FINNEY: I was notified that there
19 was going to be a hearing on the motion that I was
20 in receipt of.

21 MR. HARRELL: Okay. Okay.

22 MR. FINNEY: And we had developed a
23 strategy to put on the record several items that
24 we -- I say we -- that me and my office had
25 researched over the weekend --

1 MR. HARRELL: Right.

2 MR. FINNEY: -- to get prepared for
3 that -- that hearing on Thursday.

4 MR. HARRELL: And -- and if you had had
5 the knowledge that Ms. Fent says -- or the judge
6 says that he communicated to Ms. Fent that he had
7 granted the motion for reconsideration, then you
8 might have been under a different impression as to
9 what Tuesday's hearing was about?

10 MR. FINNEY: I can't -- I really can't
11 say that definitively. All I can say is that I was
12 notified of the hearing. I -- I read the motion,
13 and as I read the motion, it's a motion for
14 resentencing. And my understanding was that by
15 scheduling the hearing and not being in receipt of
16 a written order that that meant to me he had
17 granted at least a -- the motion to rehear it.
18 Does that make sense?

19 MR. HARRELL: Yeah. Okay. Thank you,
20 Mr. Finney.

21 CHAIRMAN McCONNELL: The senator from
22 Lexington.

23 SENATOR KNOTTS: Mr. Finney, not
24 particularly this, but let's do a hypothetical
25 situation.

1 MR. FINNEY: I feel like I'm in law
2 school again.

3 SENATOR KNOTTS: Well, I wish -- I'm
4 glad you're not because I think you're a very well
5 experienced attorney.

6 And -- but the truth of the matter is
7 the motion to reconsider the sentence of the Court
8 means that a lawyer is prepared -- goes back and
9 prepares whenever you get a motion like that to do
10 one of three things. As a defense attorney, you're
11 going to defend the reason why the sentence should
12 not be increased and defend the reason it should
13 stay the same or possibly go lower.

14 So it's one of three things that can
15 happen to a sentence. It can either go up or it
16 can stay the same or it can be lowered, and that's
17 what a defense attorney does in order to protect
18 the client; is that right?

19 MR. FINNEY: I would not disagree with
20 that.

21 SENATOR KNOTTS: And it could have been
22 either one of the three, right?

23 MR. FINNEY: I would not disagree with
24 that.

25 SENATOR KNOTTS: So that is a

1 resentencing; is that not right?

2 MR. FINNEY: I --

3 SENATOR KNOTTS: Either way you do it,
4 either stay the same -- you're agreeing -- the
5 judge is agreeing to leave it like it is -- lower,
6 or increase it. So it's a resentencing either way
7 you go?

8 MR. FINNEY: Yes, sir.

9 SENATOR KNOTTS: And it happens all the
10 time, don't it?

11 MR. FINNEY: Yes, sir, I certainly see
12 the logic in that.

13 SENATOR KNOTTS: Yes, sir. Thank you.

14 CHAIRMAN McCONNELL: Are there any
15 other questions?

16 We are reaching a technical point.
17 We're going to have to take a break.

18 SENATOR FORD: Break or go home?

19 CHAIRMAN McCONNELL: We need to take a
20 break and allow some technical adjustments.

21 With that, we'll stand in recess until
22 called.

23 (A recess transpired.)

24 CHAIRMAN McCONNELL: All right. We'll
25 go back on the record at this time.

1 Ms. Shuler, where are we headed next?

2 MS. SHULER: Senator McConnell, we are
3 heading to the Gavin -- Zail Gavin matter. And
4 we'll go back to the Smith matter because Ms. Fent
5 does plan on returning, but it may take her
6 approximately 45 minutes to return.

7 Judge Goode, do you mind returning to
8 the podium just briefly.

9 JUDGE GOODE: Yes, ma'am.

10 MS. SHULER: I want to have --

11 JUDGE GOODE: May I please.

12 MS. SHULER: No, Ms. -- I'm sorry.

13 Ms. Traywick is going to hand you a document. The
14 first document she's handing you is the transcript
15 of record in the Zail Gavin February 2nd probation
16 revocation hearing. Does that look familiar to
17 you?

18 JUDGE GOODE: Yes, ma'am.

19 MS. SHULER: All right. I'd like to
20 offer that as an exhibit into the record.

21 CHAIRMAN McCONNELL: All right. Is
22 there any objection? Being none, so ordered.

23 MS. SHULER: And --

24 (EXH. 9, Transcript of zail
25 gavin_1.txt, marked for identification.)

1 MS. SHULER: Judge Goode, the first
2 hearing on February 2nd was a probation revocation
3 matter. You had originally sentenced Mr. Gavin and
4 retained jurisdiction over his offenses; is that
5 correct?

6 JUDGE GOODE: Yes, ma'am. Over his
7 probation.

8 MS. SHULER: Right. And this was a
9 probation revocation hearing. Do you recall who
10 made that request for a probation revocation
11 hearing?

12 JUDGE GOODE: It was -- we have
13 Richland County and we have Lexington, and I do not
14 recall which one that was.

15 MS. SHULER: I think these were the
16 Richland County offenses. I can give you back the
17 record.

18 The next document that I would like to
19 provide you with, Jordan, is the February 9th,
20 2009, transcript of record and ask if you are
21 familiar with that document.

22 JUDGE GOODE: Yes, ma'am.

23 MS. SHULER: That was -- a week later
24 you had requested sua sponte on your own motion to
25 reconsider the probation revocation of Mr. Gavin;

1 is that correct?

2 JUDGE GOODE: That is correct.

3 MS. SHULER: All right. I'd like to
4 offer that, Mr. Chairman, as an exhibit.

5 CHAIRMAN McCONNELL: Is there any
6 objection? Being none, so ordered.

7 (EXH. 10, Transcript of Record for
8 State of South Carolina vs. Zail Gavin Dated
9 February 9, 2009, marked for identification.)

10 MS. SHULER: Jordan, if you will, hand
11 Judge Goode the next set of documents.

12 JUDGE GOODE: Thank you, sir.

13 MS. SHULER: I'm handing to you four
14 sentence sheets and two reorders in the Zail Ray
15 Gavin matter. The first is a 2005 sentence in
16 Lexington County where he pled to Peeping Tom, and
17 you were the sentencing judge in that matter. The
18 second matter is the sentence sheet in Richland
19 County for Mr. Gavin where he pled to indecent
20 exposure, and you were the sentencing judge on
21 November the 8th, 2007, for that matter.

22 JUDGE GOODE: Yes, ma'am.

23 MS. SHULER: The next three documents
24 are orders that you signed, one May 21st, 2008, in
25 the Richland County indictment for indecent