

1 giving you a copy of the motion to reconsider
2 sentence, and he said, "If I hear it, will you call
3 the media?" And then I just -- "I'm just giving
4 you a copy of the motion, Judge. Thanks."

5 REPRESENTATIVE CLEMMONS: And your next
6 conversation with anybody concerning that
7 particular motion was when?

8 MS. FENT: Thursday when Paul Newell
9 called me asking me -- this past week asking me --
10 saying that the judge wanted to set this for a
11 hearing, that they actually wanted to do it on
12 Friday, the next day, and I said, you know, "I've
13 got to call the victims. You know, they may be out
14 of town," and that they said, "Well --" or he said,
15 excuse me, you know, "Then Monday is a holiday, so
16 could we do it Tuesday?" And I said, "As soon as I
17 get a hold of the victims I'll call you right back
18 and let you know."

19 REPRESENTATIVE CLEMMONS: Okay. Your
20 understanding of that phone call, was that to
21 schedule a motion to rehear the -- the matter of
22 sentencing or was it a motion to resent -- or was
23 it a hearing to resentence?

24 MS. FENT: My understanding, he was
25 granting me a motion -- a motion for

1 reconsideration. He was granting me a hearing so
2 that we could come back in front of him, you know,
3 with the victim, with whatever it is that we wanted
4 to present with him -- to him to reconsider the
5 sentence that he gave.

6 REPRESENTATIVE CLEMMONS: Thank you. I
7 think I need -- for my clarification, I need to ask
8 just a couple more questions concerning -- since
9 the testimony is at odds with testimony that's
10 previously been presented, I think it would be
11 helpful if we were to understand if there is any
12 outside motivation for you to be here today to
13 testify. Did you volunteer to be here? Would you
14 help us understand what motivations you may have
15 had other than the subpoena that you're under to be
16 here.

17 MS. FENT: Just the -- the truth.
18 There have been editorials written. There have
19 been comments made in the media that perhaps there
20 was some type of, you know, back room deal when
21 you're reading all these articles in the paper. I
22 just wanted to be here present in the courtroom so
23 that if the ethics rules provided me and allowed me
24 to respond, you know, to anything -- to any
25 misstatements, anything that came up, that I would

1 be available to do that. I'm just here to tell you
2 the truth.

3 REPRESENTATIVE CLEMMONS: Thank you
4 very much, Ms. Fent.

5 CHAIRMAN McCONNELL: Any further
6 questions?

7 The senator from Charleston.

8 SENATOR FORD: Attorney, the judge was
9 on the bench when you approached him with the
10 order?

11 MS. FENT: Yes, sir.

12 SENATOR FORD: He was on the bench?

13 MS. FENT: Yes, sir.

14 SENATOR FORD: With more cases?

15 MS. FENT: It was -- basically plea
16 court was being run, so there could have been bond
17 reduction motions, pleas --

18 SENATOR FORD: More cases? More cases,
19 right?

20 MS. FENT: Right.

21 SENATOR FORD: Okay. But the only case
22 you was concentrating on at the time was this
23 particular case?

24 MS. FENT: Correct. The only reason I
25 was in there was to approach him and hand him a

1 copy of the motion to reconsider.

2 SENATOR FORD: Okay. The judge is on
3 the benches with other cases, and you didn't have
4 no other cases except that one. And I take it that
5 human nature -- I mean, human nature, like we have
6 to deal with it. Our elected officials here have
7 to deal with it. The State news came -- The State
8 newspaper came out the night -- the next morning
9 with a blistering story about they micromanaged the
10 case, and so human nature would say to me -- to me,
11 now maybe not you, but human nature would say to
12 me -- and I've been -- I've been down in court a
13 lot of times trying to clear my name. A lot. And
14 I know what judge -- I know what lawyers do. They
15 ask for a trial -- they ask for a retrial right
16 then and there. You waited two days, right?

17 MS. FENT: I filed it two days later.

18 SENATOR FORD: And you say that you
19 taught lawyers how to practice in court, right?

20 MS. FENT: Yes.

21 SENATOR FORD: Okay. Now human nature.
22 The State newspaper came out the next morning,
23 blastering (sic) you and the judge and everybody
24 else for -- for what y'all did to this family. And
25 so you're going to protect yourself. So the next

1 day your solicitor said, "What -- what are you
2 going to do?" So human nature would tell me I
3 better get to that judge and ask for a retrial.
4 Didn't it happen like that?

5 MS. FENT: No, sir.

6 SENATOR FORD: Why didn't you do it
7 then and there?

8 MS. FENT: We filed it in a timely
9 manner.

10 SENATOR FORD: I understand that. You
11 had seven days. That's not what I'm asking. Why
12 didn't you do -- listen. This case is on the
13 news -- all over the news. I mean, this is a
14 serious -- this is a serious case. You was upset
15 with the judge for this kind of ruling. Y'all say
16 you didn't cop a plea -- I mean, you didn't meet
17 with other -- the lawyer and y'all didn't agree on
18 nothing. So you upset with the judge.

19 It seemed to me to show the family a
20 lot of concern where they wouldn't have to go to
21 bed that night with all this stuff on their mind --
22 I mean, that's what my lawyers did for me the times
23 I was arrested. He didn't want me to go to bed not
24 thinking that he had done his best, so he asked for
25 a retrial right then and there. Why didn't you?

1 MS. FENT: We gave it thoughtful
2 consideration the next day.

3 SENATOR FORD: Sure. When The State
4 newspaper came out, right?

5 MS. FENT: And decided after thoughtful
6 consideration that this was the right thing for us
7 to do.

8 SENATOR FORD: Because The State
9 newspaper going to be blastering the -- not only
10 this judge -- this incompetent judge but these
11 incompetent solicitors in Richland County. I read
12 The State newspaper all the time. They do it to
13 y'all a lot. I mean, they do it to y'all -- y'all
14 a lot. Y'all can't do no work -- y'all can't --
15 everything y'all do is wrong according to them, and
16 y'all say -- you say, "No, I'm not going to be a
17 part of this," so you hurried up and went and
18 brought it to the judge while he's sitting on the
19 bench. You didn't even send a -- your assistant to
20 do it. You did it yourself, right?

21 MS. FENT: I don't have an assistant.

22 SENATOR FORD: But you did it yourself.

23 MS. FENT: I did it myself.

24 SENATOR FORD: You said, "Judge,
25 listen, I'd like -- I'd like a retrial." I mean,

1 that's human nature. I would have done the same
2 thing.

3 MS. FENT: I filed it based on the
4 facts of the case.

5 SENATOR FORD: Yes, ma'am.

6 CHAIRMAN McCONNELL: Let me ask you
7 very quickly, what was the condition of -- of
8 your -- I guess your victims after this person had
9 not received any time in jail? Can you describe
10 her condition that you were confronted with.

11 MS. FENT: Well, she was immediately,
12 you know, very loud, just repeating, "Why -- what
13 just happened?" I mean, a very loud -- a very loud
14 voice. We immediately, you know, escorted her out
15 of the courtroom out into the hallway. We were
16 standing in the hallway. I remember the deputies
17 starting to come out, and she basically was unable
18 to even standstill. She was, you know -- couldn't
19 figure out if she wanted to walk down the stairs
20 and just leave or come back and talk to me.

21 I couldn't even discuss anything with
22 her at that point at all. And she just kept
23 repeating to herself, "What just what happened?
24 What just happened? What just happened?" over and
25 over and over again. So there was very little

1 discussion that night, very little ability to even
2 have an intelligent, thoughtful conversation with
3 her about what our next move was.

4 CHAIRMAN McCONNELL: And do you recall
5 about what time of the day this was?

6 MS. FENT: It was the end of the day.
7 I mean, it was 4:00 or five o'clock. It was the
8 end of the day.

9 CHAIRMAN McCONNELL: And so -- and it
10 was the next day that -- that you made a decision,
11 and was your -- was the victim in any way
12 prejudiced by the actions that you took?

13 MS. FENT: Absolutely not.

14 CHAIRMAN McCONNELL: Thank you.

15 SENATOR KNOTTS: Mr. Chairman.

16 CHAIRMAN McCONNELL: Yes, sir, the
17 senator from Lexington.

18 SENATOR KNOTTS: I was pretty well
19 clear until you asked that last question -- or the
20 question before the last one. Did you do it the
21 next day or did you do it two days later?

22 MS. FENT: Two days later. I said we
23 decided to --

24 SENATOR KNOTTS: So it was the next
25 day.

1 MS. FENT: The next day the decision
2 was made that we would file one after discussion
3 and thoughtful consideration as to what our options
4 were. I actually physically typed it up and filed
5 it the following day.

6 SENATOR KNOTTS: And that was after it
7 got on the news?

8 MS. FENT: It was clearly on the news
9 the night the plea happened.

10 SENATOR KNOTTS: Okay.

11 CHAIRMAN McCONNELL: Are there any
12 other questions?

13 Thank you, ma'am.

14 Judge Goode, I'm going to ask you to
15 come up and -- and respond.

16 JUDGE GOODE: Yes, sir.

17 CHAIRMAN McCONNELL: You have that
18 opportunity.

19 JUDGE GOODE: Absolutely. First very
20 briefly, there might be some questions about what
21 took place when they requested a hearing on whether
22 I would resentence. Mr. -- or, Representative
23 Clemmons, I think that is where some of the
24 confusion has come. It was a motion asking me if I
25 will hear arguments on whether or not there should

1 be a resentence. And there was a lot of discussion
2 about that, and in that I may have misspoken, and
3 if I did, I hope her comment and mine together lets
4 you know what type of instrument -- document we're
5 talking about.

6 But at my desk never have I -- it is
7 simply not in my demeanor to respond to an attorney
8 in the manner in which she represented. I can't
9 account for her recollection, but I just -- that's
10 not how I go. I treat people with courtesy, and
11 certainly an officer of the court and I take issue
12 with that completely.

13 CHAIRMAN McCONNELL: Anything else,
14 sir?

15 JUDGE GOODE: No, sir.

16 CHAIRMAN McCONNELL: Are there any
17 questions?

18 All right. Thank you, sir.

19 JUDGE GOODE: Thank you.

20 CHAIRMAN McCONNELL: All right. Then
21 we will revert back to the -- the Gavin matter.

22 All right. Do you want to tell us who
23 your next witness is.

24 MS. SHULER: I have one more witness
25 who has filed a complaint, Tonya Graves. Is she

1 present? Did she decide -- no, this is a different
2 case. We're now dealing with Mr. Zail Gavin.

3 CHAIRMAN McCONNELL: We're back on the
4 Gavin matter.

5 MS. SHULER: The Gavin matter. I would
6 like to call Heath Taylor then.

7 CHAIRMAN McCONNELL: Mr. Taylor, if
8 you'd raise your right hand, please, sir. Do you
9 swear to tell the truth, the whole truth, and
10 nothing but the truth, so help you God?

11 MR. TAYLOR: I do.

12 CHAIRMAN McCONNELL: Thank you, sir.
13 Please answer any questions Ms. Shuler has got for
14 you.

15 MR. TAYLOR: Yes, sir.

16 MS. SHULER: Mr. Taylor, you have filed
17 an affidavit, and you are also the attorney who
18 represented Mr. Gavin in 2005 charges that were
19 pending in Lexington County; is that correct?

20 MR. TAYLOR: Yes, ma'am.

21 MS. SHULER: I'm going to have your
22 affidavit provided to you, and if you will, review
23 that.

24 MR. TAYLOR: Yes, that appears to be my
25 affidavit.

1 MS. SHULER: I'd like to have that
2 marked as an exhibit and then returned to
3 Mr. Taylor.

4 (EXH. 15, Affidavit of Heath P. Taylor,
5 marked for identification.)

6 MS. SHULER: I would like to start by
7 going through the sequence of events involving the
8 charges you represented him on, and then follow up
9 with allowing you to respond to the allegation that
10 you worked out some sort of deal because you were
11 friends with the judge.

12 MR. TAYLOR: Oh, I'd very much like to
13 do that. But would you just like me to go in
14 chronological order --

15 MS. SHULER: Yes, sir.

16 MR. TAYLOR: -- from the beginning of
17 the case?

18 As is noted in my affidavit, I was
19 retained in July of 2005 to represent Mr. Gavin.
20 Mr. Gavin came to me with a quite significant
21 record from his past. He was on probation
22 following a plea in Greenwood County before Judge
23 Hughston where he had pled to Peeping Tom,
24 possession of crack second and burglary third. He
25 received a concurrent two year active sentence on

1 each charge with five years probation upon his
2 release. His probationary sentence commenced on
3 February 20th of 2002. He -- and was scheduled to
4 end on February 19th, 2007. As a result of the
5 Peeping Tom charge, he was required to register as
6 a sex offender.

7 I am not prepared to tell you here
8 today the specifics of the Greenwood charges
9 because I didn't get in great detail with -- with
10 my client on those. I know and as my affidavit
11 indicates a significant portion of all of
12 Mr. Gavin's problems -- and I'm putting stuff that
13 was put on the record -- was related to drugs. His
14 story on the Greenwood charges, he was -- he was
15 cutting through yards on a drug deal when he was
16 seen out somebody's window apparently by a young
17 girl. And, you know, that was his story. I don't
18 know if it's true. Apparently Judge -- Judge
19 Hughston bought some of it because he didn't put
20 him in jail for more than two years on all three of
21 those pretty serious charges.

22 But in any event, we were faced in this
23 case with a charge for Peeping Tom and two charges
24 of failure to register as a sex offender. What had
25 happened was Mr. Gavin had moved into the Quail

1 Hollow neighborhood in Lexington County. During
2 that period he was renovating the home -- and when
3 I say moved, he had purchased a home, but he was
4 renovating the home at night. It was next door to
5 some folks, and Mr. Gavin claimed that he was out
6 looking for his dog. They actually presented to me
7 records later on from where the dog had been
8 recovered and there was some veterinary bills.

9 But in any event, this Peeping Tom
10 charge in the Quail Hollow neighborhood, he was
11 allegedly standing in the yard. Now, not -- mind
12 you, not -- not up against the window behind the
13 shrubbery or climbing in a tree to peek in the
14 window. He was standing in the front yard of a
15 home with -- I would guesstimate -- I mean, I drove
16 to the scene myself, but a six-by-six bay window on
17 the front of the home with no curtains or no
18 blinds.

19 So we weren't looking at the
20 traditional Peeping Tom type charge. It was -- he
21 was seen standing in the front yard he contends
22 looking for a dog. When he was confronted, he
23 contended that he fled because of his past. He --
24 and I presented it that way to Judge Goode. This
25 man wasn't going to get the benefit of the doubt

1 being on the sex offender registry and with his
2 past criminal history because it was quite
3 significant.

4 However -- and as far as the failure to
5 register, he was charged with failure to register
6 because he had been sleeping at that home some
7 while he was doing the renovations. His fiancée
8 and son had not moved in with him, but he had been
9 sleeping there some, so they -- they treated that
10 as a technical violation or failure to notify the
11 sheriff's department within ten days of a move.

12 So that's what we were looking at. We
13 weren't looking at where he moved across town into
14 a shady apartment in -- in the ghetto to hide. We
15 weren't looking at anything at least on its face
16 that seemed very serious to the solicitor's office
17 in my opinion. As I said in my affidavit, but for
18 his past criminal history, I probably -- we
19 probably would have gone to trial on the Peeping
20 Tom case. I believe it was that bad of a case for
21 the state.

22 So with that being said, the case was
23 called before Judge Goode on February -- I believe
24 it was February 14th, Valentine's Day, 2006. We --
25 the case was called at the -- or by the solicitor.

1 That's when we were notified to be there, and we
2 presented the plea to Judge Goode. There was also
3 a probation violation as well that I did not
4 mention because he had the other charges pending.

5 What was important in this case and --
6 well, let me back up. After viewing everything,
7 Mr. Gavin did agree to plea, but we're pleading to
8 the Peeping Tom under the North Carolina versus the
9 Alford doctrine, and for those of you that are not
10 lawyers or criminal lawyers, that is a plea whereby
11 a defendant admits that the state can produce
12 sufficient evidence to convict, but you do not
13 actually admit guilt.

14 And Judge Goode allowed him to plead
15 under that doctrine. Some -- some judges don't,
16 some do, because they want a full admission of
17 guilt. Well, he pled to the Peeping Tom under
18 North Carolina versus Alford and pled straight up
19 on the one failure -- one count of failure to
20 register. The other was -- was dismissed because
21 it was actually issued in error.

22 At the -- during the sentencing, Judge
23 Goode sentenced Mr. Gavin to 90 days, which he was
24 required to do. That was a minimum mandatory on
25 the failure to register. Allowed him to serve that

1 on the weekends. Gave him three years suspended on
2 the service of 90 days, an additional four years of
3 probation on the Peeping Tom charge.

4 With everything you've heard about this
5 man, at least from the folks that testified
6 earlier, at this juncture in his life I submit to
7 you that it would have been -- it was more
8 appropriate to keep this man out of jail than to
9 put him in jail. There were -- and it would have
10 probably been easier -- easier at that time to
11 find -- find a judge to keep him out of jail -- not
12 talking about Judge Goode, any other judge.

13 What had happened during -- again --
14 and all this was presented in open court, but the
15 Peeping Tom case was not a -- a strong case. So
16 that -- that's one issue to give the man a break
17 on. Second, and very importantly, Mr. Gavin's
18 problems were always associated with drugs and
19 alcohol. Always.

20 Mr. Gavin had at that point been on
21 probation for four years. Four years is a long
22 time to be on probation. He had absolutely no
23 violations. None. No -- no failed alcohol tests.
24 No failed drug tests. Nothing. So he had
25 basically -- and he was -- had been on intense

1 supervision and had been discharged from the sex
2 offender counseling unit by the counselor and his
3 probation agent. So by all accounts when he
4 appeared before Judge Goode and -- on February
5 14th, 2006, he had turned his life around from a
6 criminal standpoint, and he was -- he was getting
7 it all right.

8 I mean, it's -- I know for those of you
9 that don't kick around, so to speak, in the General
10 Sessions Court, it is hard to find somebody that's
11 been on probation for four years with no violation
12 at all. I mean, this guy didn't have a failure --
13 failure to report violation, not a change of
14 address violation. I mean, if you got a probation
15 officer and you're a sex offender, they watch you
16 hard, I mean, really hard. And this guy had not
17 stumped his toe. The only thing he was -- by the
18 time we got to court he was \$120 in arrears on his
19 fees that he owed. But, otherwise, he had done
20 nothing at all wrong.

21 During that period he had worked for
22 about a year as a paint -- for a painting
23 contractor, saved his earnings, opened his own
24 company which by all accounts appeared very
25 successful, and he had -- at the time of this plea

1 had ten employees working for him. Had two
2 children he was actually paying support for at the
3 time.

4 I also brought in to -- up to Judge
5 Goode I think the lady that testified here earlier
6 about -- that she -- she has -- has a child with
7 Mr. Gavin. There was a family court proceeding
8 between the two of them where she and her lawyer
9 ultimately consented to visitation with the child.
10 He was paying support during that court case --
11 family court case. Mr. Gavin was reviewed by two
12 doctors and had his conduct reviewed by a guardian
13 ad litem and who all -- who concurred to the fact
14 that he was -- could appropriately be around
15 children. I presented those two doctors' reports
16 to Judge Goode at the hearing as well at the plea.

17 We also presented Dr. Tom Martin.
18 Actually -- I brought in my doctor, my expert at
19 this hearing. Dr. Martin has an excellent
20 reputation in the judiciary for dealing with sex
21 offenders and -- and their risks, if you will, to
22 re-offend. Dr. Martin testified at the hearing
23 that Mr. Gavin was at a very low risk to re-offend.
24 He had made remarkable progress. He also noted
25 that most of his troubles had been related to drugs

1 and alcohol and concurred in the other two
2 assessments that he -- he was not a danger to
3 society.

4 Finally -- well, not finally, but the
5 probation agent in this case was only recommending
6 a revocation of 90 days to be run concurrent with
7 whatever else he got. His probation agent was the
8 one person that knew at that time Zail Gavin better
9 than anybody. She had been living with him for
10 four years. Putting up with him once, twice a week
11 sometimes because he was on intensive supervision,
12 and she was only requesting 90 days revocation
13 instead of a full revocation.

14 An important thing to understand when
15 we are at a plea, this judge -- and I think some
16 folks hit on it. This is a snapshot of this man's
17 life that the judge gets in about an hour, at most,
18 at the very most if they're moving quick. He -- he
19 has to rely on people like the probation agent,
20 people like the solicitor, people like my doctor to
21 give him the information in a big hurry. And,
22 again, this was a -- this was his probation agent
23 who was only recommending a 90 day revocation, and
24 basically that's what he gave.

25 He gave him 90 days to be served on

1 weekends so he could in fact continue what by all
2 accounts was a profitable business at the time and
3 to continue to keep his employees working and to
4 continue to take care of his children because at
5 that time -- again, I don't know what happened
6 after that. But at that time the system was
7 working for Zail Gavin. Again, I think you would
8 have been hard-pressed to find a judge in South
9 Carolina at that time that would have put him in
10 jail under these -- these facts. It was -- it was
11 just not a bad case. Again, but for his history,
12 we probably would have gone to trial on -- on the
13 Peeping Tom charge.

14 I know -- I also mentioned in my
15 affidavit that there's a sentencing sheet -- and
16 you have a copy of the sentencing sheet. And
17 you'll note in my case -- or on this sentencing
18 sheet, it says without negotiations or
19 recommendations. There's another box on there
20 where a solicitor can check recommendation, and
21 they could have put three years 90 days under that,
22 but she didn't.

23 And that's sort of -- you know, she
24 could have written it on that sentencing sheet what
25 she was recommending, and she basically left it up

1 to the judge. So there was no abuse of discretion
2 here. There was nothing out of line here. It was
3 an entirely appropriate decision that many of the
4 members of our bench would have made in this case.
5 It's just a unique case, at least from my
6 perspective, to have that many good things going
7 for somebody that's been labelled a sex offender
8 and be able to defend him in that manner.

9 I'll answer any other questions you may
10 have.

11 MS. SHULER: Mr. Taylor, I -- I would
12 like you to have the opportunity to respond to the
13 allegation made that you hunted and fished with the
14 judge, that you are social friends, and that's the
15 reason he received -- Mr. Gavin received this 90
16 day sentence.

17 MR. TAYLOR: That is an absolute
18 fabrication by this lady or either the gentleman
19 that gave her that information.

20 I probably -- what I probably would
21 have told Mr. Gavin is that "If you got -- you
22 know, this is as good -- the solicitors called your
23 case this week. This is as good a chance as you
24 have for getting a good sentence." I mean, there's
25 no secret that Judge Goode is not the harshest

1 sentencer on our bench. So if a solicitor will
2 call a case in front of him, certainly we want to
3 get the case done.

4 Now -- and I may have mentioned
5 something to the effect that, you know, I have -- I
6 know him, you know, from -- actually my mother's
7 family is from Winnsboro and, you know, Judge Goode
8 is from Winnsboro, but at that time socially
9 nothing like that. To my knowledge Judge Goode
10 does not even hunt and fish. If he does, he
11 doesn't do it with me.

12 The only time I can definitively say
13 that I have been to lunch with Judge Goode was this
14 past August down at the trial lawyers conviction
15 when the whole judiciary was there and we just
16 happened to go to lunch. But I can't tell you any
17 other time for sure that we've ever even been to
18 lunch.

19 That's just absolute -- there's no way
20 I would have an ex parte communication with Judge
21 Goode over lunch about this case or any other case
22 for that matter. I don't -- I don't have a
23 criminal case or a civil case or any other -- other
24 type of case that is worth me losing my law license
25 over. I can assure you of that.

1 MS. SHULER: Thank you.

2 MR. TAYLOR: And that's -- you know, I
3 want to also while we're, I guess for lack of a
4 better term, Monday morning quarterbacking what
5 Judge Goode has been doing in these cases, in this
6 case Mr. Gavin had one year probation left and he
7 could have gotten a three year 90 day sentence.
8 Judge Goode extended his probation and -- and
9 kept -- and retained jurisdiction to keep him on
10 supervision.

11 Had he given him three years and 90
12 days and revoked his probation and -- and run it
13 concurrent, Mr. Gavin would have been out probably
14 in about a year to 18 months with absolutely no
15 supervision. No electronic monitoring. He -- he
16 would have basically maxed out his sentence. If
17 he'd given that, it would have been around 18
18 months, and he would have been out with no
19 supervision at all.

20 So, you know, while we're looking back
21 at it, it's probably -- in retrospect for this man
22 to have some supervision, but that's where we are.
23 I know there are a number of things that happened
24 after that that I -- I was not involved in, but
25 I'll certainly answer any questions that the

1 Commission may have.

2 MS. SHULER: I have one more question.

3 MR. TAYLOR: Yes, ma'am.

4 MS. SHULER: Is it unusual for a judge
5 to retain jurisdiction over a criminal case?

6 MR. TAYLOR: I don't know that it is
7 per se unusual. I -- that's probably the first
8 time it has ever happened to me in a case I was
9 handling, but I guess that would be up to the
10 individual judge.

11 I mean, some -- some judges -- you got
12 to understand Judge Goode. I mean, he -- he is
13 probably one of the most compassionate judges on
14 our bench, and he saw -- I'm sure he saw in my
15 client somebody he was going to help continue
16 rehabilitating themselves. You know, it -- it was
17 clear from the facts presented to him that my
18 client was trying to rehabilitate himself. Again,
19 I don't know what happened after that, but he had
20 come down the right road, and I'm sure Judge Goode
21 saw that -- saw him that way, you know.

22 And I know I'm here to answer your
23 questions, but I would like to, you know, after the
24 questions are over just say a little something
25 about Judge Goode.

1 CHAIRMAN McCONNELL: The senator from
2 Charleston.

3 SENATOR FORD: Attorney, you used some
4 words that I have no -- have no idea what you were
5 saying. Something about communication. What was
6 that about?

7 MR. TAYLOR: Ex parte communication,
8 that --

9 SENATOR FORD: What is that?

10 MR. TAYLOR: That would be me having
11 a -- some sort of communication with a judge
12 outside the presence of opposing counsel.

13 SENATOR FORD: So you couldn't say
14 that? You had to use them legal words on me?

15 MR. TAYLOR: I'm sorry, Senator.

16 CHAIRMAN McCONNELL: Any other
17 questions?

18 Representative Mack.

19 REPRESENTATIVE MACK: Thank you. Thank
20 you, Mr. Chairman.

21 I was curious. With -- all the data
22 that -- that I've seen basically says that sex
23 offenders a lot of times cannot be rehabilitated.
24 There's a lot of data on that. There's been a lot
25 of programs, and you were able to get someone to

1 come in that said basically, as you touched on,
2 besides from the drugs and alcohol, he got himself
3 clean, supposedly that he was okay.

4 MR. TAYLOR: Yes, sir.

5 REPRESENTATIVE MACK: Can -- can you
6 comment some more about that? Have you had other
7 cases like that where a sex offender you've been
8 able to sort of through the judicial system kind of
9 get them off?

10 MR. TAYLOR: I have had other cases
11 where we've had doctors come testify as to what
12 their risk may be. I've had -- in working up a
13 case for trial, I've had doctors -- I've actually
14 had a client that was basically run through a
15 battery of tests to see if he was a pedophile at
16 all. We were using that to ultimately obtain a --
17 you know, a dismissal.

18 But, yeah, I mean, I think the science
19 is good on these doctors and how they assess them.
20 They put them through a battery of tests.

21 REPRESENTATIVE MACK: Now, Mr. Gavin,
22 for example, has a long history of a variety of
23 different things, and -- and, you know, you were
24 saying he was around the house, but he wasn't
25 peeping in the house, and he's off the drugs and

1 alcohol, and he just happened to be in the wrong
2 place at the wrong time. Can you kind of elaborate
3 on that because it's kind of hard to connect the
4 dots as it relates to that.

5 MR. TAYLOR: Well, I don't -- I don't
6 know if I'm sure exactly what you're looking for
7 here, but, I mean, again, back to Mr. Gavin,
8 specifically it was all drugs and alcohol. When he
9 was doing things that were bad, I mean, it was
10 related to drugs and alcohol. He never -- even
11 though he was a sex offender, he never touched
12 anybody. He had had -- ask you, sir, to just
13 please be quiet while I'm trying to speak.

14 But he never had -- the only -- the
15 only -- there was actually some testimony here
16 about something in Illinois, but that was almost
17 like a -- a -- an older -- a consensual sexual
18 relationship with someone under 16, you know,
19 basically our statutory rape that we had the great
20 debate over a couple years ago with the Romeo
21 clause and all that good stuff. But he had never
22 physically touched anybody in any of his sex
23 offenses in a nonconsensual manner. So that's what
24 made him a little different as well.

25 REPRESENTATIVE MACK: Okay. Well --

1 MR. TAYLOR: And -- and I don't know
2 where he is now. He --

3 REPRESENTATIVE MACK: Okay. From what
4 you've seen, how long has -- as in your words, he's
5 been okay since he's been off the drugs and
6 alcohol?

7 MR. TAYLOR: The case I handled which
8 was pled, again, February of 2006, he had been drug
9 and alcohol free for four years.

10 REPRESENTATIVE MACK: Okay.

11 MR. TAYLOR: Now, again, I think
12 Mr. Swerling is here for sure, and Mr. Swerling
13 knows where he is today and -- and what's going on
14 today, but at that time based upon everything Judge
15 Goode had before him that day, his -- I don't think
16 his sentence can be questioned. It was absolutely
17 appropriate under those circumstances.

18 CHAIRMAN McCONNELL: Are there any
19 other questions?

20 Thank you, sir.

21 MR. TAYLOR: Mr. Chairman, can I
22 have --

23 CHAIRMAN McCONNELL: No, sir. Let me
24 tell you why. If I let you start testifying in
25 favor of him, then I have to start letting folks

1 who want to testify --

2 MR. TAYLOR: I understand.

3 CHAIRMAN McCONNELL: -- opposite. So
4 we had decided as a commission to hold very
5 strictly in a very narrow course, and that is to do
6 exactly what the General Assembly told us to do and
7 nothing more.

8 MR. TAYLOR: I understand. Thank you,
9 Mr. Chairman.

10 CHAIRMAN McCONNELL: And I can tell you
11 you're a very eloquent speaker.

12 MR. TAYLOR: Thank you, sir.

13 SENATOR FORD: Sounds like one of them
14 Broad Street lawyers.

15 MR. TAYLOR: Don't call me one of
16 those, Senator.

17 MS. SHULER: Mr. Swerling.

18 CHAIRMAN McCONNELL: Yes, sir, if you'd
19 be so kind as to raise your right hand. Do you
20 swear to tell the truth, the whole truth, and
21 nothing but the truth, so help you God?

22 MR. SWERLING: I do.

23 CHAIRMAN McCONNELL: Thank you, sir.
24 Please answer questions.

25 MS. SHULER: Mr. Swerling, you

1 currently represent Mr. Gavin; is that correct?

2 MR. SWERLING: Yes. There's nothing
3 pending right now, but I -- we represented him
4 through the February 9th hearing.

5 MS. SHULER: And when were you first
6 retained by Mr. Gavin?

7 MR. SWERLING: Back in July or August
8 Greg Harris was contacted by Mr. Gavin concerning
9 an arrest that arose July 23rd from a July 4th
10 incident where he was in his house naked, and he
11 was arrested for indecent exposure. Mr. Harris got
12 me involved in the case sometime I believe in
13 September. I think it's in my affidavit.
14 September 14th or 19th. We had a preliminary
15 hearing in Richland County and charges were
16 dismissed for lack of probable cause. The elements
17 of the offense were not met because he was inside
18 his house.

19 I went ahead in October and immediately
20 filed -- I believe it was October -- for an
21 expungement of those records, and those records
22 were expunged by court order I believe it was
23 October 15th. Notwithstanding that, the probation
24 office still wrote him up for a violation on that,
25 on an expunged record.

1 MS. SHULER: In fact, it was that
2 violation that made -- was one of the reasons that
3 his probation revocation hearing was brought in
4 February 2nd.

5 MR. SWERLING: That's one of them.

6 MS. SHULER: One of the violations.

7 MR. SWERLING: There were -- and I can
8 address that if you'd like.

9 MS. SHULER: Yes, I would.

10 MR. SWERLING: Just kind of give you a
11 little bit of the history here after Mr. Taylor.
12 Back on May 28th there was a hearing -- and I was
13 not the lawyer on, but I have the transcript.

14 MS. SHULER: Okay.

15 MR. SWERLING: And certainly you can
16 have this. And I'm sorry, I keep hitting this.
17 I'm too big up here.

18 SENATOR FORD: You mean big, like --

19 MR. SWERLING: Big this way.

20 SENATOR FORD: -- big time lawyer.

21 MR. SWERLING: Yeah, this way.

22 But, anyway, he was represented at that
23 time by Jake Moore, Jr., on some probation
24 violations, and Judge Goode was the one that -- of
25 course he had continuing jurisdiction on the

1 case -- was the one that heard that probation
2 violation. Ms. Vandyke from the Richland County
3 sheriff's department -- Richland County probation
4 office was there at the hearing.

5 Basically -- and I think I reflected
6 that in my affidavit, and certainly you can have
7 this transcript. They were GPS monitoring the
8 violations. Now, let me -- and one of them was a
9 disorderly conduct. That disorderly conduct I
10 believe eventually ended in a not guilty verdict
11 that Mr. Moore tried.

12 But the GPS violations, as you know,
13 people will wear an ankle bracelet. I have no
14 problem with that, and I think we have to have
15 those kinds of things for sexual offenders. And I
16 understand the principle behind GPS monitoring.
17 What I don't understand and what I've always had an
18 issue about is that the probation office as
19 understaffed as they are and as good a job as they
20 do and as underpaid as they are, they feel
21 compelled to bring these cases in front of a
22 circuit judge for probation revocations on simple
23 GPS violations.

24 And I -- when I mean simple, I'm not
25 talking about going to near a victim. I'm not

1 talking about going out and committing a criminal
2 offense. What I'm talking about is going
3 downstairs from your residence, having the GPS
4 monitor upstairs and forgetting it's not
5 connecting, leaving and going to the dentist and
6 you forget your GPS monitor at the house, going
7 from one place to another and forgetting -- and
8 being off monitor from 15, 20, 25 minutes.

9 In none of these cases was Mr. Gavin in
10 addition to any GPS monitoring violations which
11 were brief duration -- I don't think any of them
12 was over 30 minutes, and there was an explanation
13 for each one of them. And none of those did
14 Mr. Gavin commit any kind of other offense. So I
15 have a real problem with that. It's a -- to me
16 it's a waste of resources and it is trying to tie
17 these people and redistrict them too much
18 because -- everybody forgets things.

19 The older I get, the more I forget when
20 I go out of the house in the morning. I mean, I
21 may have to go back two, three times to get my
22 glasses, get my phone, whatever it may be. It's
23 just as easy for these folks to go ahead and forget
24 it as well. But that was the essence of the
25 hearing on May 27th, and Judge Goode, rightfully so

1 in my opinion -- my humble opinion, did not feel
2 those GPS monitoring violations warranted a
3 probation revocation, and as a result of that, he
4 did not revoke his probation.

5 Now, a lot has been said about, you
6 know, what he's done and how he's treated people.
7 The reason -- and you want to read this transcript.
8 The reason there was a -- any kind of comment
9 between him and Ms. Vandyke is because what he was
10 telling Ms. Vandyke is that "I -- your restrictions
11 are not what I intended to impose on Mr. Gavin."
12 And there was a little bit of a discussion there as
13 to who had the right to control the restrictions.

14 And Judge Goode simply said, "I gave
15 you the authority to go ahead and put -- he's on
16 probation, but I control the restrictions." And
17 you can see that. And what he told him is he
18 wanted them -- before anyone tightened those
19 restrictions any further than they were in
20 existence at that time, that they should come back
21 in front of him and go ahead and go over those with
22 him.

23 But he also told -- I'd like to read to
24 you what he told Mr. Gavin that day. "I find your
25 history and your offenses to be extraordinarily

1 offensive."

2 PROFESSOR FREEMAN: What -- what page
3 are we on?

4 MR. SWERLING: This is on -- Professor
5 Freeman, it's page 21 of the May 27 hearing.

6 MS. SHULER: We'll get a copy of it.

7 MR. SWERLING: I can leave it with you.
8 But essentially what he says -- this is a quote.
9 "I find --" this is directed to Mr. Gavin. "I find
10 your history and your offenses to be
11 extraordinarily offensive. I don't want you to
12 think that the fact that I'm allowing you to stay
13 on probation diminishes my feelings. I can't use
14 the words that I would normally use. But
15 disappointment in any human that would do the
16 things that you have done. You've got to do what
17 they say." That's the probation office.

18 And then the last part of that hearing
19 he told the probation officer, "I don't want you to
20 tighten them any more," referring to the
21 restrictions. "If you feel like there's a reason
22 for there to be additional restrictions placed on
23 the man, I direct you as the supervisor of -- who's
24 over him to run them past me and explain to me
25 why." That's the way that hearing ended on May 27.

1 Now, I'm -- again he was arrested
2 January -- July 23rd on the indecent exposure
3 charges that I eventually had dismissed at the
4 preliminary hearing. Judge Goode wasn't involved
5 in that at all. It was really an elements issue,
6 and so the record was expunged.

7 We originally were supposed to have
8 this hearing on -- in December, but the matter was
9 postponed. And what I'd like to explain to members
10 of the Commission, in the situation we had with the
11 first case, Judge Goode had jurisdiction in
12 Richland County, and because that motion was filed,
13 he retained jurisdiction by virtue of the filing of
14 that motion.

15 The case was not over at that point.
16 The time would not start running from appeal
17 because that motion stayed and held in abeyance any
18 further action in that case. Richland County is
19 the proper venue to come back in. And in our case
20 because it did not go forward in December, I
21 consented along with the probation officer to go to
22 Winnsboro and have it heard. Had the probation
23 officer objected or had we objected, it could not
24 have been heard in Winnsboro where Judge Goode
25 sits. It would had to have been heard in Richland

1 County. But probation wanted it over with, and we
2 wanted it over with.

3 There were four violations that were
4 going on at that time. There was a -- and I'd like
5 to just briefly cover those just so you understand
6 the scope of this. Three of them were GPS
7 monitoring violations, again, all of short
8 duration, and when -- again, I say short.
9 Somewhere between 15 to 25 minutes, all of which
10 were explained.

11 One of the violations was that he
12 was -- prior to I think the October 23rd, he
13 thought he was going into a rehab center the
14 following week, and his common law -- what I
15 understand to be his common law wife, McCravy
16 came down from North Carolina with their
17 four-year-old son -- three-and-a-half to
18 four-year-old son, stopped by his house
19 and -- to see him to say goodbye. She ran out to
20 the store, as I understand it, and was only out of
21 the house for a very short duration, at which time
22 all of the sudden lo and behold the probation
23 officer shows up and arrests him because he's in
24 the presence of his son.

25 Now, let me just tell you about that

1 for one sec. He has a child with Ms. Lee. He has
2 a child with Ms. McCravy. The child with Ms. Lee I
3 believe is five or six years old. It is a
4 daughter. And is -- was born about, like I
5 said, three to four years ago. For some
6 unexplained reason when he was on probation
7 supervision in Lexington County, he was allowed to
8 live with McCravy and his child When
9 the probation was transferred to Richland County,
10 he was no longer allowed to live with his child
11 because the probation office took the position that
12 under their rules he could not be in the presence
13 of any child, his own son.

14 Now, there has never been an allegation
15 at any time in this history that Mr. Gavin was a
16 danger or a threat to his children. The same
17 applies to the child (sic) that Ms. Lee got
18 up here and talked to you about. There's never
19 been any allegation that he is in any way molested
20 or touched or in any way is a threat of harm to

21 As a matter of fact, as Mr. Taylor pointed
22 out to you, in 2005 there was a consent order for
23 visitation signed by Ms. Lee and approved by the
24 Court and Mr. Gavin.

25 In fact, when he was arrested on one of

1 the subject charges, the bond order was modified so
2 as to allow him to be with his children -- to see
3 his children. But Richland County probation for
4 one reason or another, which I still do not
5 understand, has not let him see his son or his
6 daughter in over two and a half years. He is not
7 allowed to have any contact with them, despite the
8 fact that there's nothing in the family court that
9 says that he cannot, and there's nothing obviously
10 by because Mr. -- Mrs. McCravy and Zail
11 would certainly like to live together and did in
12 Lexington County, but all of the sudden they
13 decided he could not do that.

14 The other thing that was going in this
15 case, which I find very disturbing, is he had this
16 1999 arrest in Greenwood County, and obviously
17 these people are very upset, as they should be, and
18 they have a right to be upset about what happened
19 back in 1999. But I can frankly tell you it is my
20 understanding that they are not victims in this
21 case anymore. It is my understanding that
22 probation was terminated back in 2007. Now, I can
23 be wrong, but it's not my understanding he's on
24 supervision for that offense any longer. I believe
25 that that was terminated.

1 That matter was never brought up at all
2 about him being -- well, what was brought up was
3 the fact that he was no longer allowed to go to
4 Greenwood County, but Ms. Sirmon from the probation
5 office never mentioned the fact about these folks.
6 They were not at the hearing. I don't know that
7 they were ever asked to come to the hearing.

8 I have the probation violation report
9 which lists three offenses that he's on -- on
10 supervision for, under three indecent exposures
11 that were handled by Mr. Moore. Not -- not the
12 ones that I have.

13 So what you had from the May 27th
14 hearing is that his -- he was restricted further in
15 his hours that he was out of the house. Prior to
16 that I believe he had been out -- allowed out 12
17 hours a day, six days a week to do his paint
18 contracting business, which at one time was a very
19 lucrative business. As a result of changes in the
20 order of his supervision from May 27th, he was only
21 allowed out of the house from 8:00 to 3:00, and he
22 had to be in the home on Saturday and Sunday. That
23 was changed.

24 It was also changed about his going
25 back to Greenwood County. His parents live in

1 Greenwood County. His father I believe is 88 years
2 old. His mother is in her eighties. They are
3 elderly and they are infirm. That's his support
4 mechanism to go back there and see them. I don't
5 know of anything that would prohibit him from going
6 back there because that supervision is over as far
7 as I understand it.

8 So after the May 27th hearing, what the
9 probation office did is they continued to not let
10 him see his son, continued not to let him see his
11 daughter, continued to reduce the amount of hours
12 he was allowed out of the house from 8:00 to
13 3:00 -- to 8:00 to 3:00 and have to be in on
14 Saturday and Sunday, and other restrictions as well
15 that are laid out in my affidavit.

16 So when we were coming into court on
17 February 2nd, I came in there with the idea of
18 asking the judge to modify his probation because
19 what they had done is they had completely isolated
20 this individual from his support mechanism. He
21 couldn't see his parents. He couldn't be with his
22 wife. He couldn't be -- see his son even under
23 supervised condition, and he couldn't see his
24 daughter even under supervised conditions. I
25 didn't think that was fair.

1 I also thought that what they were
2 doing -- and, again, with these violations of GPS
3 monitoring, one was on July -- July 23rd was the
4 incident that I just referred to. There was a GPS
5 monitoring violation on October 16th from 9:56 to
6 10:26, a 30 minute period. On November 4th there
7 was a violation he was off monitor from 8:21 to
8 8:48, and then on -- and that evening I believe he
9 was off monitor for 19 minutes. Those are the
10 serious violations that were before Judge Goode on
11 February 2nd.

12 So what I'd like to also inform you is
13 that Ms. Lee, who is here, has a very acrimonious
14 relationship with my client. They originally
15 agreed to have the visitation. That was a court
16 order, which you may have. There has since been
17 acrimony develop between the two. She has appeared
18 at the probation hearings. Ladies and gentlemen,
19 she's not a victim in this case. She has no
20 standing in this case. She comes to the hearings
21 and she also has incited some of the other people
22 to come to the hearings, but she has no position
23 here. She has no position in the court. And when
24 she -- her lawyer got up to try and talk to the
25 judge, I objected, rightfully so I believe, because

1 they're just injecting themselves in the process
2 when she is not -- has nothing to do with the
3 probation situation whatsoever.

4 Now -- so on February 2nd we had
5 this -- we had a hearing in front of Judge Goode,
6 and I made a very strong argument, number one, that
7 you will read from the record that I was extremely
8 annoyed with Ms. Sirmon. I had a murder case
9 starting on Monday morning. On Friday afternoon I
10 had worked out a plea and my client was going to
11 get a reduced sentence and he was going to testify
12 against another defendant that was going to go to
13 trial. That plea had to be taken first thing
14 Monday morning before jury selection.

15 I knew that was going to happen, so on
16 Wednesday evening or Thursday morning -- I can't be
17 quite sure -- I called Ms. Sirmon, left a message
18 on her voice mail, called her again and left a
19 message on her voice mail, and did not hear back
20 from her because I wanted to tell her that I could
21 not be in Fairfield County at nine o'clock in the
22 morning. Couldn't be in both places, and obviously
23 the murder case, picking the jury and taking a plea
24 obviously prevailed over that.

25 On Friday afternoon I faxed her a

1 letter to tell her the same thing. On Monday
2 morning as I was getting up to go to court, I got a
3 call from Mr. Gavin who was told that he better be
4 in Winnsboro at nine o'clock, and if he wasn't,
5 they may revoke his probation. It didn't make any
6 difference where I was. Well, when I found out
7 about that, I called the probation office and
8 finally got in touch with the supervisor who told
9 me there's no way to know whether or not Ms. Sirmon
10 got my messages. There's no way to know whether
11 Ms. Sirmon got my letter, and I told her I didn't
12 believe that.

13 The first thing that I asked when we
14 got on the record on Monday morning when I finally
15 did get up there is "Did you get my messages?"

16 "Yes."

17 "Did you call back?"

18 "No."

19 "Did you get the letter?"

20 "Yes, I picked it up Sunday."

21 So Ms. Sirmon knew that I was not going
22 to be there Monday morning, that I had called, I
23 was trying to reschedule the matter for sometime
24 later in the week or even later in the day, but
25 instead she was up there. She had some folks here,

1 Ms. Lee was up there, some other people that they
2 had brought together there. They sat there from
3 9:00 to 1:00 until I got there, and I was hot when
4 I walked in that courtroom, I can tell you.

5 I apologized to the judge and I
6 apologized to all the people who were on the
7 victim's side, tell them that I tried to get in
8 touch. So you could see there was a little bit of
9 anger on my part in that transcript. I think it
10 comes out very well.

11 The other thing that I was angry about
12 was that we had -- there was an expunged order.
13 Everybody here knows what expunged means. There's
14 no record of it. You can't bring it up. She
15 brought it up at the probation hearing. It was
16 still in the report. You can have this report. As
17 a matter of fact, I wrote over that issue. I wrote
18 down expunged.

19 She has on the probation report, which
20 was done on December 11th -- so she can't claim she
21 didn't have knowledge of the case was over with.
22 She has on this probation violation report on the
23 third page with respect to the three charges that I
24 had "Indecent exposure times three 7/23/08, not
25 guilty."

1 So that was the issue, and Judge Goode,
2 when he asked her about that -- and he was upset
3 about it too. "You know that you're not supposed
4 to bring up an expunged record. It's in your --
5 it's in the statutes that y'all have passed."

6 So that's what started off the hearing.
7 And I made my presentation. I argued that the GPS
8 monitoring I thought were again minor violations
9 when there's no other evidence that someone has
10 violated the law, that people do forget their
11 monitoring, and you have to make allowances for
12 that.

13 And I also believe -- and I told them
14 in that hearing that day -- that you can't set
15 someone up to fail. You can't take away the
16 ability to live with their wife, the ability to see
17 their son, the ability to see their daughter, the
18 ability to see their parents, the ability to make a
19 living and expect them to survive.

20 Now, Judge Goode kept jurisdiction of
21 this case because I believe that what he was trying
22 to do was get this guy in the right path. I have
23 seen cases before where judges have retained
24 jurisdiction in cases. I won't say it's the rule,
25 but I will say that there are solicitors who have

1 asked for it and there are defense lawyers who have
2 asked for it for a judge to retain jurisdiction.

3 And that man cares more about many of
4 the people that come before him than a lot of other
5 people. And I'm not talking about judges, but this
6 man takes a personal interest in many cases in the
7 rehabilitation efforts of people.

8 We have a great judiciary. One of the
9 reasons we have a great judiciary is because of the
10 method I believe of the way you take -- you elect
11 judges. I've been out of this state. I've gone to
12 other courts. I've seen judges. We have the best.
13 We also when I have lawyers come in from other
14 jurisdictions tell me that we have the best.
15 They've never seen the judges in the type of
16 procedures we have. That's to your benefit because
17 that's the way we're elected.

18 SENATOR FORD: You know you're picking
19 on me.

20 MR. SWERLING: No, I'm not picking at
21 you, Senator. I don't know what your position is
22 on that, but I can tell you what, I believe the
23 method that we use in South Carolina is one of the
24 finest methods in the country because we get the
25 best of the best, and he's one of the best.