

1 CHAIRMAN McCONNELL: Any questions?

2 The senator from Lexington.

3 SENATOR KNOTTS: Thank you.

4 CHAIRMAN McCONNELL: Senator, before
5 I -- I need to stop. We need to get some paperwork
6 real quick done.

7 MS. SHULER: Mr. Swerling, I'd like to
8 have a copy made of that transcript --

9 MR. SWERLING: Yes.

10 MS. SHULER: -- and offered as an
11 exhibit in the record, and then while we're doing
12 that we might take a five minute break and then
13 I --

14 MR. SWERLING: I have several documents
15 I can give you. This is -- would you like the
16 probation report as well?

17 MS. SHULER: I have the probation
18 report. I was going to offer that, only it's
19 redacted with the expunged.

20 MR. SWERLING: They did --

21 MS. SHULER: They did. They gave it to
22 me expunged.

23 MR. SWERLING: Well, I'm glad that
24 finally got done.

25 CHAIRMAN McCONNELL: We need a

1 technical adjustment again, so we'll --

2 MS. SHULER: And then I want to mark
3 your affidavit.

4 CHAIRMAN McCONNELL: -- stand in recess
5 for about five minutes before the next call.

6 (A recess transpired.)

7 CHAIRMAN McCONNELL: All right. We'll
8 go back on the record at this point.

9 And, Ms. Shuler.

10 MS. SHULER: Yes, sir. Mr. Swerling, I
11 have several documents that I would like for you to
12 review and I'd like to offer as exhibits to the
13 record. The first item is the transcript of record
14 in State versus Zail Gavin, May 27, 2008, which you
15 brought to the hearing today. I'd like to have a
16 copy, once you've identified it, offered.

17 MR. SWERLING: It is -- I can't --
18 frankly I can't tell you how I got it or where I
19 got it from, but it is a certified transcript.

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

23 CHAIRMAN McCONNELL: All right. Is
24 there objection? There being none, so ordered.

25 (EXH. 16, Transcript of Record for

1 State vs. Zail Gavin Dated May 27, 2008, marked for
2 identification.)

3 MS. SHULER: Mr. Swerling, you also
4 referred to the fact that you had obtained an
5 expungement on a sex/indecent exposure two charges
6 on 9/19/2008 --

7 MR. SWERLING: That's correct.

8 MS. SHULER: -- and provided us with an
9 order.

10 MR. SWERLING: I think it's -- is it
11 three? I think it's three.

12 MS. SHULER: I see two, sex/indecent
13 exposures.

14 MR. SWERLING: It's -- it's my -- my
15 paralegal's handwriting. It's warrants number 1993
16 through 1995.

17 MS. SHULER: Okay.

18 MR. SWERLING: So it's -- it would be
19 four warrants -- or three warrants, 93, 94 and 95.

20 MS. SHULER: Oh. I see.

21 MR. SWERLING: She just -- the way she
22 has it written I can see where you only think it's
23 two.

24 MS. SHULER: I'd like to offer that as
25 an exhibit.

1 MR. SWERLING: This is correct.

2 CHAIRMAN McCONNELL: All right. Is
3 there objection? There being none, then so at this
4 point in the transcript.

5 (EXH. 17, Expungement for State Vs.
6 Zail Gavin, marked for identification.)

7 MR. SWERLING: That bears the stamp of
8 the clerk of court as well.

9 MS. SHULER: Thank you. True copy.

10 You also provided us with the probation
11 report on Zail Gavin. And I am using your copy
12 that you provided rather than the one I received
13 from probation because you have marked through the
14 expunged -- you have added the words dismissed,
15 slash, expunged?

16 MR. SWERLING: Yes. If I can just
17 explain. On December 11th when this case was first
18 scheduled, this was given to me in court. The one
19 that I have is dated December 11th, and I remember
20 writing through it and saying expunged on it so
21 that we would know that that was -- just should not
22 be an issue.

23 MS. SHULER: So that was the report
24 that you received in December?

25 MR. SWERLING: This was the one I got

1 in December --

2 MS. SHULER: Right.

3 MR. SWERLING: -- where -- and it was
4 continued.

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

7 CHAIRMAN McCONNELL: Is there any
8 objection? There being none, so ordered.

9 (EXH. 18, Violation Report for State
10 vs. Zail Gavin, marked for identification.)

11 MS. SHULER: Finally, you offered an
12 affidavit --

13 MR. SWERLING: Yes.

14 MS. SHULER: -- and -- regarding the
15 Zail Gavin matter. Is that your affidavit that you
16 have provided to the Commission?

17 MR. SWERLING: Yes.

18 CHAIRMAN McCONNELL: Staff made those
19 available to you.

20 MS. SHULER: I'd like to offer your
21 affidavit as part of the record.

22 CHAIRMAN McCONNELL: All right. Is
23 there objection to his affidavit being placed into
24 the record? There being none, it will be done.

25 (EXH. 19, Affidavit of Jack B.

1 Swerling, marked for identification.)

2 MS. SHULER: Mr. Swerling --

3 MR. SWERLING: Yes.

4 MS. SHULER: -- before we stopped for
5 the break, you were discussing the February 2nd
6 probation revocation --

7 MR. SWERLING: Correct.

8 MS. SHULER: -- hearing. Had you
9 covered everything you wanted to be made aware?

10 MR. SWERLING: There were just a couple
11 more observations I wanted to make.

12 One of the -- one of the reasons that
13 Judge Goode I think -- and it was obviously what I
14 had raised, was that probation officer really
15 violated his order of May 27, 2008, when he told
16 them "I'm retaining jurisdiction. You bring any
17 other further modifications before me." You'll
18 find in the transcript that you have -- I don't --
19 you probably have the same one I have from the
20 February 2nd. And it's not -- it's an unedited
21 version.

22 MS. SHULER: Right.

23 MR. SWERLING: On page 16, I raised
24 this issue with the Court, and the judge said to
25 Ms. -- and this is -- this is the acrimonious

1 exchange they're talking about.

2 "Do you feel that you have the
3 authority, Ms. Sirmon, that you could modify what I
4 ordered?" And the probation agent says, "No, Your
5 Honor. At this time I was not there back in May,
6 and this is the first time I have seen word for
7 word what you had said that day in court. So Your
8 Honor -- Your Honor, I do not feel that I can
9 overturn that."

10 So Judge Goode's order of May 27th was
11 ignored by the probation office, and the probation
12 office said they -- she wasn't aware of it, yet it
13 was her office.

14 The other thing that I wanted to bring
15 up -- and we raised this in the hearing, and you'll
16 see it in the hearing transcript. Another thing
17 that I thought the Court needed to hear is you've
18 heard testimony from Mr. Taylor that one of the
19 things that the psychiatrist had said was that
20 Mr. Gavin's activities are spurred by substance
21 abuse or alcohol abuse.

22 In early October, I received a call
23 from Mr. Gavin who was crying out, saying, "I'm
24 just -- I'm losing it. I think I'm failing. I
25 really feel like I want to go out and get some

1 drugs." Well, that obviously sent an alarm, and
2 the next morning -- I just told him to hold on.
3 The next morning -- I believe it was the next
4 morning -- I prepared an order, along with Greg
5 Harris, to -- let me give you -- I think it was the
6 next day because what he had done at some point is
7 got into the Fellowship Hall.

8 I have a letter from Fellowship Hall
9 saying that he was allow -- going to be allowed to
10 report -- well, I don't want to stop this, but like
11 I said, it could be a day or two, but he got --
12 Fellowship Hall is in North Carolina. It's a
13 substance abuse center. He was going to go into
14 Fellowship Hall at his own expense.

15 And we had an order that we were going
16 to present to Judge Goode to see if we could
17 suspend the electronic monitoring for a period of
18 60 days because they estimated the treatment would
19 take four weeks, I believe. And just -- I would
20 like you to have this letter. I just don't want to
21 have to look for it right now.

22 I called Ms. Sirmon and I said, "Look,
23 we've got a guy that's crying out. Can we go ahead
24 and get him some sub -- at his own expense go to
25 North Carolina and suspend his monitoring period

1 for 60 days?" She said -- and I understand. She
2 said, "We cannot do that because he's on GPS
3 monitoring. He'll have to do it here in South
4 Carolina." She said, "I will go ahead and -- and
5 get it started in getting it arranged."

6 It is now February 19th, 2009. He has
7 still not gone into a rehab center. Now, again, I
8 cannot explain that. I don't know why. It's just
9 like the situation of not being able to see -- have
10 supervised visitation with his children. I hear
11 different things, either about the sex abuse
12 counseling or one thing or another. The bottom
13 line is he's not been allowed to do these things.

14 And that's what Judge Goode had before
15 him that day. And I believe that Judge Goode did
16 the right thing that day. It may be a -- it may
17 not be a popular thing. It may not be what
18 everybody agrees, but he has to make the tough
19 decisions. And one of the reasons why I never have
20 offered myself for election as a circuit judge is I
21 don't want to have to make those decisions. I
22 think it's tough.

23 And my personality is such that I would
24 probably worry about every case I ever decided
25 whether it was too strong or too lenient a

1 decision, and it's just something I just don't --
2 can't do, but I respect the people that have to
3 make that decision in 30 minutes when the lawyers
4 have worked on them for hundreds of hours and
5 made -- prepared their cases and the judge gets 30
6 minutes to decide what the sentence should be. So
7 it's a very difficult -- very difficult position.

8 I don't agree when Judge Goode went
9 ahead and changed it back on February 9th. I'll
10 state to the Commission that I didn't agree with
11 that. I don't agree with everything Judge Goode
12 does. I've had clients -- not every one of my
13 clients has got a good past or gotten probation.
14 He has put some of my clients in prison, but that's
15 the decisions he has to make, and that's what we
16 have before us today.

17 MS. SHULER: I'd like to offer the
18 Fellowship later -- letter as a supplement to the
19 record when he's able to find it and make a copy.

20 MR. SWERLING: That -- Ms. Shuler, I
21 can also provide you with a copy of the prepared
22 order that we did in the beginning of October if
23 you'd like as well.

24 CHAIRMAN McCONNELL: Is there any
25 objection to that? There being none, then it will

1 be so ordered.

2 MR. SWERLING: The letter is dated
3 October 3rd, and he was going to -- allowed to go
4 in October 7th.

5 SENATOR FORD: This is in North
6 Carolina?

7 MR. SWERLING: Yes, it was in North
8 Carolina, and, again, it was going to be at his
9 expense. Fortunately he's held on.

10 Here is a copy of the order too. Now,
11 this was never executed, so -- and I do understand
12 why she would not let him go to North Carolina
13 because of the GPS monitoring. I'm not criticizing
14 that decision. What I think should have happened
15 is get him into a South Carolina facility right
16 away.

17 MS. SHULER: Mr. Swerling, I'd like to
18 turn to one other matter. In your 36 years -- am I
19 correct on the number of years?

20 MR. SWERLING: Yes, unfortunately.

21 MS. SHULER: -- of practicing criminal
22 law you've had significant experience in that area;
23 is that correct?

24 MR. SWERLING: Yeah. My practice has
25 been primarily devoted to criminal cases, state and

1 federal court, probably the last 25 years.

2 MS. SHULER: Could you just in your
3 experience in dealing with criminal cases in trying
4 those cases and plea sentences explain to the
5 jurisdiction (sic) any -- what the standard
6 procedure is when the -- when you file a motion to
7 reconsider sentence.

8 MR. SWERLING: Okay. Well, motion
9 practice is a little unusual, especially in
10 criminal court. There is a rule that after a
11 verdict you have ten days in which to file your
12 motions -- posttrial motions. When you file those
13 motions, that stops everything. Nothing is
14 running. The clock is not running at that point
15 until your motions are filed and then they're
16 heard.

17 So I've had situations -- I'm not going
18 to say a lot, but I've had situations where the
19 time to appeal has not started running for a few
20 months until that hearing is heard on the motions
21 for a new trial. So -- but the important factor
22 there is -- and for the civil lawyers, in criminal
23 cases the notice of intent to file must be filed in
24 ten days, not 30 days which I believe it is in
25 civil court, so we're under a much stricter time

1 frame and so that ten days is critical to get those
2 motions in.

3 Sometimes if it's a very complicated
4 case, I will file -- I'll ask the Court to allow me
5 to file the motion and I'll file it within the ten
6 day period, but I immediately make the motion for
7 new trial. If it's -- if it's something simple,
8 I'll make the motion for new trial right then and
9 there and just get -- the ten days starts running
10 at that point.

11 With motions to reconsider, I have
12 filed them myself. It is not -- I would say it is
13 not extraordinary -- out of the ordinary for a
14 motion to reconsider to be filed either by the
15 prosecution or the defense. It is not the general
16 rule -- I mean, we don't see these often, but every
17 once in a while the prosecution or the defense
18 feels there's a reason for the judge to revisit the
19 ruling that he made in the sentencing. So it is --
20 it is a perfectly legitimate matter.

21 And in this particular case -- and it's
22 a little confusing -- and actually I'm on the rules
23 committee right now. But this motion has to be
24 filed under the -- under the old -- it is my
25 understanding under the old circuit court rules, it

1 has to be filed by the end of the term of court
2 when the court adjourns sine die on Friday of that
3 week. So a motion to reconsider is not under that
4 ten day rule, if I recall correctly, but it has to
5 be filed by the end of the term of court.

6 As I understand in that particular
7 case, that motion was filed within a couple of days
8 after the sentencing. Again, what that effectively
9 does is stop it. It stops all proceedings.
10 There's no clock ticking on that. There's no
11 motion -- there's no appeal to be filed at that
12 point until the judge rules on that -- that motion
13 for reconsideration.

14 Now, I've heard interchangeably the
15 words motion for reconsideration, motion for
16 sentencing, or resentencing. The fact of the
17 matter, I think we're all talking about the same
18 thing; we're just talking about it in different
19 terms. I mean, that's what it really comes down
20 to, and I think they're terms of art. I think you
21 could probably have people disagree about it. But
22 when I was sitting here listening to it, I
23 perfect -- I understood perfectly what everybody
24 was saying.

25 The fact of the matter is that it is a

1 motion to reconsider a sentence. So you can see
2 how that can be confused whether it's a motion to
3 reconsider or it's a sentencing procedure. But the
4 fact of the matter is, as Senator Knotts has
5 pointed out, once that's heard, there is a decision
6 made on the motion. It's either denied or it's
7 reduced or increased in some way.

8 It is my understanding -- and, again,
9 I'm not -- I'm not in the clerk of court's office,
10 but I believe that there has to be something
11 entered on the sentencing sheet to indicate that
12 that matter was heard and what the date was because
13 the time doesn't start running until that day. So
14 there has to be a record of it somewhere. But it's
15 not something that there is an order issued
16 granting a motion to rehear. It -- it is
17 automatic. When you file it, the judge will rehear
18 it. I've never seen a judge deny the hearing on a
19 motion to reconsider. He may deny the relief, but
20 he doesn't deny the hearing on the motion.

21 Now, as I pointed out in this
22 particular case, this was Richland County in
23 December. I don't know when Judge Goode is going
24 to be back in Columbia, but it's not un -- it's not
25 unusual for a judge to wait till he comes back to

1 the circuit to go ahead and hear those motions. In
2 our particular case, as I pointed out before, the
3 reason we went to Winnsboro is because both parties
4 consented and because we wanted the probation
5 hearing dealt with because I think the probation
6 office said the reason he couldn't get into a rehab
7 center in South Carolina is because the probation
8 violations were outstanding. So we wanted to go
9 ahead and expedite that and we consented to a venue
10 change.

11 So it's filed. It's called a motion to
12 reconsider. I can see where somebody could say its
13 a motion to reconsider sentencing or a sentencing
14 issue, but the fact -- the bottom line is I think
15 it's all the same and I think it's just a question
16 of semantics and what people different call it.

17 You know, it was a long day. People
18 are asking a lot of questions. I think people get
19 fatigued. Ms. Fent is an honorable person. Jerry
20 Finney is an honorable person. I trained them. He
21 was one of my law clerks. Judge Goode is an
22 honorable person. The fact that there may be some
23 dispute as to what they're saying doesn't mean that
24 anybody is doing anything wrong or saying anything
25 wrong. It could be as a matter of semantics in

1 what people recall from a particular occasion.

2 And I think that's just the -- one of
3 the things that I'd like to point out is that I
4 think at the end of the day it looked like Judge
5 Goode was getting a little fatigued, and so I think
6 if we're getting into those kinds of semantics, I'd
7 just like to explain that those things are all
8 called different things, but you can -- I can
9 easily see how someone can say when you're filing a
10 motion to reconsider that it's a motion to
11 reconsider sentencing or it's a sentencing issue.

12 I don't think that Judge Goode, from
13 what I heard, ever committed or -- or intended to
14 say that he committed to resentencing the
15 individual, that he was going to go ahead and
16 increase the sentencing. I think it's like Senator
17 Knotts pointed out, he was going to consider
18 whether or not he was going to leave it to the same
19 or increase it, and the next time -- the
20 appropriate time to do it, unless parties agreed
21 otherwise, is when he came back into Richland
22 County.

23 MS. SHULER: Just to clarify, when a
24 motion -- when you file a motion to reconsider, you
25 don't -- you would not accompany it with an order?

1 MR. SWERLING: No, I wouldn't -- now,
2 again -- again, we're dealing again with words and
3 semantics what's going on in court. Some of you
4 have been in plea court when there's pleas going
5 on. It's mass confusion. You know, there's dozens
6 of people sitting there wait -- waiting to get
7 plea. There's a lot of people working, a lot of
8 clerks. So, I mean, there's a lot of confusion
9 going on. The judge is on the bench. There are
10 people walking all around. I mean, it is a
11 confusing situation when you have a plea week. So
12 obviously that's what I heard. There were people
13 doing pleas that week.

14 But there is no order necessarily
15 granting a motion to reconsider. The motion pretty
16 much stops the clock, and the judge is going to
17 hear it. Now, he say may, "I'll hear it later.
18 I'll hear it when I come back. I may hear it by
19 the end of the week," and that would be -- I guess
20 you could consider that an order, but I don't know
21 that you actually have -- and I think there's been
22 some confusion here -- that there's an order to
23 reconsider.

24 The actual motion is the filing of the
25 motion to reconsider, and then the hearing is held

1 and an order is issued from that. And I've had
2 them go out several months.

3 MS. SHULER: That's all I have,
4 Mr. Swerling.

5 CHAIRMAN McCONNELL: Anybody have any
6 questions?

7 The senator from Lexington.

8 SENATOR KNOTTS: Mr. Swerling, you've,
9 like I said, been in law practice, criminal law --
10 I know when you came out of Clemson. And --

11 MR. SWERLING: You do.

12 SENATOR KNOTTS: -- you're pretty good
13 at what you do.

14 Let me ask you about this GPS
15 monitoring. He had the two-piece monitoring?

16 MR. SWERLING: He had -- he had the
17 two-piece at one time. I think there was -- he had
18 several different monitors actually. They tried
19 several different ones because, as you know,
20 there's -- sometimes there's problems with them, so
21 they go ahead and they switch them out. They
22 change them. Sometimes the batteries are not
23 working. I mean, they're still working on this
24 kind of system. It's a very sophisticated system.

25 SENATOR KNOTTS: Not been plugged in

1 or --

2 MR. SWERLING: Right.

3 SENATOR KNOTTS: -- battery goes
4 dead or whatever, but usually -- are you aware that
5 the probation parole office has two separate types
6 of --

7 MR. SWERLING: Yes. There's a single
8 unit one and there's a two-piece.

9 SENATOR KNOTTS: The single unit is an
10 ankle bracelet.

11 MR. SWERLING: That's correct.

12 SENATOR KNOTTS: That actually is put
13 on the person, and it does not have a second
14 unit --

15 MR. SWERLING: Right.

16 SENATOR KNOTTS: -- that you can --
17 that you got to tote around or you forget to leave
18 here or forget to leave -- leave there.

19 MR. SWERLING: That's correct.

20 SENATOR KNOTTS: Was your client ever
21 put on one of those?

22 MR. SWERLING: Senator, I don't -- I'd
23 have to look back in the transcript and see whether
24 or not it was a two-piece unit or a one-piece unit.
25 I apologize. I don't know. I probably do know

1 from my file, but I'd have to go into the file and
2 take a look.

3 It appears that most -- some of -- the
4 ones that were -- the monitor he had in the
5 probation violation I represented him for in
6 February 2nd, it appears it was a two-piece monitor
7 because he was off the monitor for 19 minutes, 20
8 minutes, 15 minutes. So I -- I would suspect that
9 that was a two-piece unit.

10 SENATOR KNOTTS: When I -- when I heard
11 that, I immediately related to that because that
12 would appear to be a two-piece monitor --

13 MR. SWERLING: Yes.

14 SENATOR KNOTTS: -- because the actual
15 monitor is on the piece that you -- you tote
16 around, not the piece that's on you. On a
17 one-piece you can't take it off, you can't tamper
18 with it, and it monitors you everywhere you go.

19 MR. SWERLING: That's correct.

20 SENATOR KNOTTS: And it monitors you if
21 you're in a place you're not supposed to be, and
22 you can program it to say you can't go around a
23 school, can't go around a day care center, can't go
24 around your victim, and it also notifies the
25 victim -- a lot of them --

1 MR. SWERLING: Yes.

2 SENATOR KNOTTS: -- can program to
3 notify the victim if you come within their
4 circumference zone.

5 MR. SWERLING: It's a pretty
6 sophisticated instrument.

7 SENATOR KNOTTS: That's the -- that's
8 the one-piece ankle bracelet. It seems to me that
9 the one that he had from testimony here was the
10 two-piece where he left it in the house and was
11 gone for a period of time and came back, which it
12 notifies that the agent -- notifies the agent that
13 the subject is gone, but the monitor -- and left
14 the monitor.

15 So I was just wondering if -- which one
16 he had. It appeared to me if he was under the
17 highest supervision, maybe the probation office
18 should have him on a -- the one-piece.

19 MR. SWERLING: One-piece. And I
20 know -- like I said, I know there's different --
21 very expensive for you to have these. It's like
22 \$80 a week now to run these GPS monitoring systems.
23 And I have a number of clients who are on them,
24 whether they're on bond or they're in the sentence.
25 And I don't -- frankly I just want the Commission

1 to know, I have no problem with GPS monitoring. I
2 think it's an essential element in the treatment of
3 offenders.

4 But I just think that when you -- when
5 you put somebody on probation, you can't have a
6 cookie cutter probation. You have to individualize
7 the treatment. In this particular case, as I
8 pointed out, there's some things that Mr. Gavin was
9 just set up for failure. He didn't have any
10 support mechanism.

11 SENATOR KNOTTS: Well, I had two of
12 those monitors that -- whenever they came here to
13 the Gressette Building a couple years ago and
14 demonstrated them to myself and the -- the senator
15 from Charleston, Senator Ford. It demonstrated in
16 this building here with it on a person each office
17 that he went into, how long he stayed and
18 everything. So it's a real good, sophisticated
19 system. And I thought --

20 MR. SWERLING: It is tracking -- it is
21 tracking you. And there's not -- as I said,
22 there's no evidence that I'm aware of that any of
23 these probation violation reports on the GPS
24 monitoring that he went out and did something
25 wrong, that he went out and came near a victim or

1 committed any kind of violation. They were
2 off-monitor situations.

3 SENATOR FORD: Chairman, one quick
4 comment.

5 CHAIRMAN McCONNELL: Yes, sir, Senator.

6 SENATOR FORD: We tried -- Senator
7 Knotts and I introduced a bill about six years ago,
8 because the GPS is basically out of style now.
9 What we use now is satellites, the one-piece. And
10 satellites is almost foolproof. You can't do
11 nothing with it once we put it on you.

12 But every time we pass the bill in the
13 Senate, we send it to Mr. Laney committee in the --
14 in the judiciary -- House judiciary, and so maybe
15 they might have got some enlightenment here today
16 because there's three or four things we tried to do
17 that they keep rejecting from the Senate.

18 But one question.

19 MR. SWERLING: Yes.

20 SENATOR FORD: Are you court appointed
21 in this case?

22 MR. SWERLING: No. I do accept court
23 appointments even though I'm exempt. But I still
24 do that. I still do pro bono work.

25 SENATOR FORD: Somebody told me you was

1 \$2,000 an hour.

2 MR. SWERLING: That cheap?

3 SENATOR FORD: And you've been --
4 you've been here nine hours.

5 MR. SWERLING: My reputation has gone
6 down. I feel like Gedney Howe.

7 SENATOR FORD: That's what I'm saying.
8 I can -- I can imagine because they call you Gedney
9 Howe Columbia, and I know Gedney would never take a
10 case like this.

11 MR. SWERLING: No. Gedney criticizes
12 me for my charges enough. We went to law school
13 together, so --

14 SENATOR FORD: Both -- both of y'all
15 trained by Professor -- Professor Freeman.

16 MR. SWERLING: Well, I learn -- he was
17 not there at the time, but I've learned everything
18 I know about ethics from Professor -- Professor
19 Freeman since that time. I call on him frequently,
20 as do all the lawyers.

21 SENATOR FORD: He's a good one.

22 MR. SWERLING: He's the best.

23 SENATOR FORD: He can't really fight,
24 but he's still the best.

25 MR. SWERLING: Well, he's a good

1 fighter now. He's yelled at me a few times too,
2 so...

3 CHAIRMAN McCONNELL: All right. Is
4 there any other questions? Anything else?

5 Thank you, sir.

6 MR. SWERLING: Senator, can I make one
7 comment? This Greenwood issue, I want the
8 Commission to know I cannot represent -- I'm not
9 going to represent that that was not included still
10 in his probation. What I would like you all to
11 understand is that it was my understanding that
12 that -- that supervision had been terminated some
13 time ago, and so that's on information and belief.
14 And I just want you to know that.

15 CHAIRMAN McCONNELL: Thank you.

16 MR. SWERLING: I think I said that
17 before, but I wanted to make sure. Thank you.

18 (EXH. 20, Order for State vs. Zail
19 Gavin, marked for identification.)

20 (EXH. 21, October 3, 2008, Letter to
21 Mr. Jack Swirling From Connye M. Post, marked for
22 identification.)

23 CHAIRMAN McCONNELL: Ms. Shuler, what's
24 next?

25 MS. SHULER: Ms. Crocker would like to

1 be sworn in and just respond to --

2 CHAIRMAN McCONNELL: You have already
3 been sworn in today?

4 MRS. CROCKER: (Shakes head.)

5 CHAIRMAN McCONNELL: You -- you have
6 not.

7 MRS. CROCKER: Uh-uh.

8 CHAIRMAN McCONNELL: Please raise your
9 right hand. Do you swear to tell the truth, the
10 whole truth, and nothing but the truth, so help you
11 God?

12 MRS. CROCKER: I do.

13 CHAIRMAN McCONNELL: Thank you, ma'am.
14 Please answer any questions or -- Ms. Shuler.

15 MS. SHULER: Ms. Crocker, you had some
16 concerns regarding the testimony --

17 MRS. CROCKER: Yes.

18 MS. SHULER: -- pertaining to
19 Mr. Gavin's Greenwood conviction.

20 MRS. CROCKER: First of all, it was not
21 '99. It was 2001. Excuse me, this is hard for me.
22 I have brought my girl. She was six years of age.
23 And this man was 42 years old. It was the middle
24 of January. He was standing in his underwear in
25 her window. We caught him behind our swimming pool

1 that night about nine o'clock. He was charged
2 with -- with Peeping Tom where he did -- he did his
3 time. He was released early.

4 My concerns are that his parents' home
5 is a hundred yards from mine. We share a driveway,
6 and it's his step-father. He -- he has been caught
7 at primary schools watching children on
8 playgrounds. He has a very, very long history
9 of -- of sex offenses. I don't understand. Judge
10 Goode knows his history, but they keep giving him
11 chances. And I'm scared whether it be my family or
12 someone else's that he's going to murder someone,
13 and it all comes down to Megan's Law. Is that what
14 it takes to get someone with a mind like his off of
15 the streets?

16 I did have -- they claim we're no
17 longer victims. Back in August, probation did give
18 us pagers for the electronic monitoring. He was
19 told not to be back at his parents' house because
20 we lived so close. He had five violations. My
21 daughter, who will soon be 15, has a hard time
22 being at home alone when I'm at work for an hour
23 and a half before I get home while she keeps our
24 son because she's scared he's back there, what he
25 might do.

1 It is his step-father and his mother.
2 His step-father has two grown sons, very nice guys.
3 They'd do anything for him, for Mr. or Ms. Willner.
4 They -- they're there every -- every morning at
5 7:00 getting the paper. So for them to say that he
6 needs to come help is not true. This really needs
7 to be looked at. I know that his criminal history
8 record is 23 pages long. There's no helping this
9 man.

10 Regardless, I understand my case is
11 from 2001, but I don't want anybody else to go
12 through torment like I've gone through worrying
13 about my children getting home from school. I
14 can't afford to be home with them, which I'm not a
15 big woman. He can overpower me easily, but from
16 the bottom of my heart I just ask for help on this
17 and just please do something to get this man off
18 the streets and -- and have Judge Goode or any
19 other judge that hears cases on him to punish him
20 like he should be. That's all I ask.

21 CHAIRMAN McCONNELL: Are there any
22 questions?

23 Thank you, ma'am.

24 MRS. CROCKER: Thank you.

25 CHAIRMAN McCONNELL: We have some

1 remaining two witnesses and a few things to take
2 up, but I need to go back and let Judge Goode
3 respond to what's been put in the record to this
4 point, and then I believe we've got his physician.

5 Yes, sir, what --

6 MR. SWERLING: Senator, I just want to
7 clarify something --

8 CHAIRMAN McCONNELL: Sure.

9 MR. SWERLING: -- I can probably
10 just -- so for the record. The court date on those
11 charges in Greenwood was April 12th, 2001.
12 Somewhere or another I got information that the
13 offense took -- or the arrest was in '99. So if I
14 misstated that, I apologize, but the conviction was
15 on April 12th, 2001.

16 CHAIRMAN McCONNELL: 2001. Thank you,
17 sir.

18 Yes, the senator from Charleston.

19 SENATOR FORD: Who was the judge in
20 that case, Attorney?

21 MR. SWERLING: I think --

22 MR. TAYLOR: Hughston.

23 MRS. CROCKER: Hughston.

24 SENATOR FORD: So Judge Goode didn't
25 have anything to do with that Greenwood case?

1 MR. TAYLOR: No, sir.

2 MR. SWERLING: No, sir.

3 MR. TAYLOR: Not a thing.

4 MR. SWERLING: And I do have -- I'd
5 like to say, I didn't call them -- that they were
6 weren't victims. I just said in this particular
7 case. That's what I mean. I apologized and then
8 said I understood how they felt.

9 CHAIRMAN McCONNELL: All right. Judge
10 Goode, do you want to come up and respond at this
11 particular point? I'll give you -- if there's
12 anything you want to respond to, sir.

13 JUDGE GOODE: Yes, sir, I'll make this
14 as -- as brief as possible.

15 First, as to Ms. Lee's comments about
16 my having lunch with an attorney from Moore,
17 Taylor & Thomas, and I wasn't sure that I followed
18 her testimony. At first it seemed that someone
19 else had heard us talking and then I thought it was
20 that she had heard. But in any event, I don't
21 even -- Mr. Taylor I guess she's talking about, who
22 is not with Moore, Taylor & Thomas, I don't even
23 know where he lives. I now know from the testimony
24 that he lives in Quail Hollow. I don't hunt. I
25 don't fish. And I certainly wouldn't discuss a

1 case in an inappropriate ex parte manner. I was
2 taught by Professor Freeman, and I might not be the
3 brightest light, but I know better than to do that.

4 So I don't know where that information
5 came from, but I've never been there. I don't even
6 know where his house is. And I think it's
7 important -- and there are some other things that I
8 can mention, but the thing that's most important
9 about these line of hearings that have involved
10 Mr. Gavin, I did retain jurisdiction because, as
11 you have heard me state earlier, I try to do
12 justice.

13 I thought it would be the type case
14 that one judge keeping his thumbs on the pulse
15 would be in a better position to fix. That
16 certainly proved not to be the case, and the
17 hearing that was not talked about particularly was
18 the case of the 9th of November. I believe that's
19 the date. I called a hearing less than a week
20 after the previous hearing because, as corny as it
21 sounds, I do go home and lose sleep. I do go home
22 and study what I have done, and how it has impacted
23 individuals involved in that particular case.

24 And Ms. Sirmon -- and that's
25 S-I-R-M-O-N -- the probation agent, at the hearing

1 on the 2nd, I was a little pointed with her because
2 that's about as far as I ever get is -- but I had
3 to say something quickly because it was my
4 impression that she was about to introduce
5 something that I didn't think was appropriate, and
6 so I stopped that. We went on with the hearing. I
7 issued an order, as explained by Mr. Swerling and
8 the victims, and then on my own motion, on my own
9 motion, I called the hearing for -- a rehearing of
10 that matter, and I placed many more restrictions on
11 Mr. Gavin.

12 He could not even go in the area of his
13 parents' home. He can't even go into that
14 neighborhood. I had them bring -- I say I had
15 them. Mr. Crocker, if he's still here --

16 MRS. CROCKER: He's still here.

17 JUDGE GOODE: -- he was kind enough to
18 bring a plaque and it says -- it appeared to be a
19 small subdivision on Lake Greenwood, and the Gavin
20 family had about a five or an eight acre tract, and
21 the others were more acre-ish type residential
22 lots, and then those other lots -- there were a lot
23 of young children.

24 And I just -- and there was great
25 discussion between Mr. Harris who was representing

1 Mr. Gavin on that date, let him see his infirm
2 parents. One has this. One has that. One is
3 wheelchair bound. And I said under no
4 circumstances could he go there, that what was more
5 important -- he lived 11 miles away and indicated
6 that there was a way to transport his parents to
7 his home. That what was more important was that
8 those children could go into their yard and to look
9 out their windows and not have to worry that they
10 were going to see him because just the sight of him
11 from the testimony I had heard by that time would
12 be frightful to them.

13 I put that restriction. I put tighter
14 GPS monitoring than I think he had ever had before.
15 I put him on curfew. These are -- some of these
16 things I had not done before because he did have a
17 crew of ten and was supporting two children, and
18 the ramifications of putting him in jail and
19 putting him out of business would have been
20 multifold.

21 But I did I think -- and I had reduced
22 his probation by a year. I reinstated that year,
23 and I made it as tight as I could. And I
24 relinquished jurisdiction because it was apparently
25 something that my methods weren't doing their job.

1 I mean, I wasn't accomplishing what I had hoped to
2 do to help him with his problems and protecting the
3 victims, and so I relinquished jurisdiction, put
4 him on a curfew.

5 He cannot go around his parents' home.
6 And there's a back way and a front way, and he
7 can't go either way. And if he sees any of the
8 children, he is to vacate the premises and not be
9 around them. I put it as tight as I could while
10 still allowing him to make a living as a painter.
11 And I haven't heard from him since then, but I felt
12 like I had put as many restrictions as possible.

13 Of course counseling was still there,
14 and -- but, anyway, that -- that was the last
15 chapter. No one talked about that, but that's
16 where we are now. There's no -- no hearing
17 pending. He's in contact with his probation
18 officer, and as far as I know, he's in compliance.
19 But I would not be notified if he's not because I
20 have -- you know, what I have tried to do to help
21 everyone didn't work and I bowed out of the case.

22 Be happy to answer any questions.

23 CHAIRMAN McCONNELL: All right. Any
24 questions?

25 SENATOR FORD: Judge --

1 CHAIRMAN McCONNELL: The senator from
2 Charleston.

3 SENATOR FORD: -- I think you did -- I
4 think you did a layman's job except one thing. The
5 monitor system, like Senator Knotts and I said
6 earlier, is simply outdated. GPS is no longer used
7 basically. Everybody is going to satellite. If he
8 was on satellite, we would know his every move at
9 all times, and I think if -- in the future I hope
10 you realize that GPS is a dinosaur and that you
11 need to come up -- come up to the 21st century --
12 22nd century.

13 JUDGE GOODE: Well, I've been accused
14 of that in a number of cases.

15 SENATOR FORD: Well, you did a good job
16 on the rehabilitation because Senator Knotts always
17 tell me that we too nice in Charleston on these sex
18 offenders. He -- he got a system where he showed
19 me every sex -- sex offender in Lexington County --
20 I mean, the whole county, his -- his district,
21 Senator Cromer's district and Nikki Setzler's
22 district. He got -- he got a monitor -- I mean, he
23 got a system where he know where every one of them
24 is, and so you -- you have -- you rehabilitate a
25 guy for four years which is amazing, and I think

1 you should be -- I mean, I'm not -- I'm not, you
2 know, bragging, but you did a wonderful job in
3 bringing this man back to civilized America --

4 JUDGE GOODE: I tried.

5 SENATOR FORD: -- except for the
6 monitoring. The next time use satellite
7 monitoring, but if you call us, we'll help with you
8 that.

9 JUDGE GOODE: Thank you. And I'm
10 serious.

11 CHAIRMAN McCONNELL: Any other
12 questions?

13 Thank you, sir.

14 Did you have something?

15 MS. SHULER: I do.

16 Just to follow up, who recommends the
17 type of monitoring, satellite versus GPS? Is that
18 within your jurisdiction or probation?

19 JUDGE GOODE: Well, it's in mine now.
20 I didn't realize that there were two types.

21 SENATOR FORD: Oh, yes, sir. Yeah.

22 JUDGE GOODE: Well, I'm -- I'm -- I'm
23 learning that tonight, and in the future whenever I
24 order monitoring, it will be by a one-piece system.

25 SENATOR FORD: Yeah, satellite. That's

1 why you should spend more time in Charleston. You
2 would be aware of these things. The county --
3 Senator Knotts is not doing his job in the
4 Midlands.

5 JUDGE GOODE: Maybe you should talk
6 with court administration, but talk to the folks in
7 General Assembly first.

8 CHAIRMAN McCONNELL: The senator from
9 Lexington.

10 SENATOR KNOTTS: Let me ask you
11 something, Judge Goode. When a sex offender
12 comes -- the charge -- charges -- a person charged
13 with sex offenses comes before a judge and the
14 judge sentences him, does the sex offender -- once
15 he's convicted, is he automatically put on the sex
16 offender registry, or is it those -- does the judge
17 have to write on his sentencing report that he will
18 be registered -- he shall register as a sex
19 offender?

20 JUDGE GOODE: It depends on the
21 offense.

22 SENATOR KNOTTS: Okay. When any of the
23 offenses that's listed in the law that comes under
24 the sex offense, those are automatically -- that
25 they're automatically have to register as a sex

1 offender or does the judge have to write on there
2 "He shall register as a sex offender"?

3 JUDGE GOODE: Again, they're -- the
4 best example I can think of quickly is assault and
5 battery of a high and aggravated nature. It's
6 within the judge's discretion whether or not to
7 require registration as a sex offender.

8 SENATOR KNOTTS: That's if it was
9 originally a charge involving sex, right?

10 JUDGE GOODE: That -- that's correct.
11 But oftentimes like all matters of sentencing in
12 the crimes, the solicitors will come back and "We
13 don't want the registry. We just want you to
14 sentence him on the charge," or her, as the case
15 might be.

16 SENATOR KNOTTS: And that's part of the
17 plea -- plea negotiation?

18 JUDGE GOODE: It can be, yes, sir.

19 SENATOR KNOTTS: Even though that it is
20 a listed offense that must be registered according
21 to the statute, solicitors are plea bargaining that
22 down?

23 JUDGE GOODE: No, sir. I apparently
24 did not make myself clear. On the ones that
25 there's discretion -- and I mentioned ABHAN,

1 assault and battery high and aggravated. That is
2 one that I know can -- it can be listed or not
3 listed.

4 SENATOR KNOTTS: Okay. Thank you.

5 JUDGE GOODE: Thank you.

6 CHAIRMAN McCONNELL: Judge, let me
7 follow up very quickly so we -- I can make sure I
8 understand. On these criminal sexual conduct
9 charges, the Court has no discretion on that
10 registry; isn't that correct?

11 JUDGE GOODE: That's --

12 CHAIRMAN McCONNELL: All right. If
13 I'm -- if they're convicted on that, they have to
14 go in the registry?

15 JUDGE GOODE: Yes, sir, I think so.

16 CHAIRMAN McCONNELL: Okay. Anybody
17 else have any questions?

18 All right. You --

19 JUDGE GOODE: Thank you so much from
20 hearing from me.

21 CHAIRMAN McCONNELL: Yes, sir.

22 One more person. Call your next --

23 MS. SHULER: I'd like to call Roger
24 Gaddy who is a physician.

25 CHAIRMAN McCONNELL: All right. Do you

1 swear to tell the truth, the whole truth, and
2 nothing but the truth, so help you God?

3 DR. GADDY: I do.

4 CHAIRMAN McCONNELL: Thank you, sir.
5 Please answer counsel's questions.

6 MS. SHULER: Dr. Gaddy, you have
7 been -- you have known Judge Goode for 30 years.
8 How long have you been his treating physician?

9 DR. GADDY: Oh, probably about 15.

10 MS. SHULER: All right. You have
11 submitted an affidavit to the Commission. I'll
12 have Ms. Traywick provide you with a copy.

13 DR. GADDY: Do you want this one?

14 MS. SHULER: That's fine. It's the
15 same I think. Is that your affidavit?

16 DR. GADDY: Yes, ma'am.

17 MS. SHULER: I'd like to offer
18 Dr. Gaddy's affidavit for the record.

19 CHAIRMAN McCONNELL: Is there any
20 objection? Being none, so ordered.

21 (EXH. 22, Witness Affidavit Form of
22 Roger A. Gaddy, marked for identification.)

23 MS. SHULER: In December 2008 you
24 treated Judge Goode?

25 DR. GADDY: Correct.

1 MS. SHULER: And what did you find as a
2 result of your treatment?

3 DR. GADDY: I -- whenever I saw him in
4 mid December, he was having some complaints of
5 fatigue ability, lethargy, and also some frequent
6 urination, et cetera, and found that his blood
7 sugar was elevated. I also did some other tests.
8 Checked his thyroid which was normal, did an MRI of
9 the brain to make sure he didn't have a brain tumor
10 or stroke or something such as that, and also did
11 a -- cardiac work on him, make sure he didn't have
12 any coronary artery disease such as that that would
13 be giving him fatigue ability.

14 MS. SHULER: Since December what has
15 been the status of his health?

16 DR. GADDY: Well, once we got him on
17 medicine and the proper diet, his blood sugars have
18 come down. I guess whenever I saw him in mid
19 December, they were around 355. They ought to be
20 about 125, and since that time, we've got him on a
21 regime where he checks his blood sugar twice a day,
22 and it's running in the 120 to 140 range.

23 MS. SHULER: That's all I have for
24 Dr. Gaddy.

25 CHAIRMAN McCONNELL: Any questions?

1 The senator from Charleston.

2 SENATOR FORD: I need your -- I need
3 your card. It sounds like I need to see you
4 myself.

5 But, Doctor, do you know the caseload
6 of judges in South Carolina?

7 DR. GADDY: No, sir. I can tell you
8 about the doctors.

9 SENATOR FORD: Y'all got it made
10 compared to judges.

11 DR. GADDY: The lawyers are catching up
12 fast.

13 SENATOR FORD: I mean, we need about --
14 we need at least 12 judges.

15 DR. GADDY: I know the caseload is --
16 is very overloaded, and I know they stay real busy.
17 And what I know primarily is what I read in the
18 paper.

19 SENATOR FORD: You think that had
20 something to do with Judge Goode?

21 DR. GADDY: No -- you mean with his
22 blood sugar being up?

23 SENATOR FORD: Yeah.

24 DR. GADDY: No, sir. I think it was
25 probably more genetic factors. It kind of runs in

1 his family, and I think that's probably what the
2 etiology was. I don't think it was related to his
3 work schedule, although I'm sure if work schedule
4 wasn't conducive to a good diet. I don't know how
5 y'all are surviving tonight. I had to go --

6 SENATOR FORD: You attended --

7 DR. GADDY: -- I had to go get
8 something to eat the break before last.

9 SENATOR FORD: You attended MUSC?

10 DR. GADDY: Beg your pardon?

11 SENATOR FORD: Did you attend MUSC?

12 DR. GADDY: Yes, sir.

13 SENATOR FORD: Okay. I need your card
14 before you leave.

15 DR. GADDY: All right.

16 CHAIRMAN McCONNELL: Any other
17 questions?

18 Representative Mack.

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

21 About how long was Judge Goode running
22 that high blood sugar around 350?

23 DR. GADDY: You know, there's no way to
24 know. There's a blood test that we do other than
25 checking the blood sugar called a hemoglobin A1c

1 that gives us about a four to six week average, and
2 I checked that and also it was elevated.

3 REPRESENTATIVE MACK: Are you his
4 regular physician that he goes to on a regular
5 basis?

6 DR. GADDY: Yes, sir.

7 REPRESENTATIVE MACK: And he's never
8 had that problem before?

9 DR. GADDY: Never -- he's had it
10 borderline, but never -- never where he needed
11 medicine or elevated to that degree.

12 CHAIRMAN McCONNELL: Anything further?

13 SENATOR KNOTTS: One more.

14 CHAIRMAN McCONNELL: The senator from
15 Lexington.

16 SENATOR KNOTTS: Blood sugar, can --
17 can it come on to you without you really knowing
18 it --

19 DR. GADDY: Oh, it certainly can.
20 Usually if it comes on more acutely or it gets
21 worse because your blood sugar goes up, it
22 concentrates in your blood which filters through
23 your kidneys that make you urinate more. So you
24 urinate more, drink more, drink more, urinate more,
25 and you just -- it's one of -- one of the symptoms.

1 But it's not uncommon for your blood sugars to be
2 up and not really be aware of it if happens very
3 gradually.

4 One of the things that we do in
5 medicine is that we -- you know, people are more
6 concerned about cholesterol if they feel pretty
7 good. Well, if you check their cholesterol and you
8 find their triglycerides are up, a lot of times the
9 triglycerides will be elevated as -- as a result of
10 their abnormal glucose metabolism. So then you
11 check them for diabetes, and lo and behold they've
12 got diabetes, and they didn't know it and you
13 didn't know it. You just kind of found out because
14 the triglycerides were up and they're -- you're
15 going to have a higher index of suspicion.

16 So it's very easy to have it, and
17 there's probably a significant number of people
18 that are walking the streets that have it that
19 don't know it.

20 CHAIRMAN McCONNELL: Any further
21 questions?

22 Thank you, Doctor.

23 You had three questions left for Judge
24 Goode?

25 MS. SHULER: Yes, I do.

1 CHAIRMAN McCONNELL: Judge Goode, if
2 you'd come forward one more time.

3 JUDGE GOODE: I'm sorry.

4 CHAIRMAN McCONNELL: No, I dismissed
5 you and then she told me that she had three more
6 questions.

7 MS. SHULER: All right.

8 JUDGE GOODE: Yes, ma'am.

9 MS. SHULER: Judge Goode, I have three
10 questions for you.

11 First, several times today you
12 indicated that after reflection you believe the
13 sentence -- sentencing of Ms. Smith may have been
14 too light. I guess as a subpart of that, do you
15 understand that some persons hearing you discuss
16 your thoughts about reconsideration may conclude
17 you intend to resentence her to some jail time?

18 JUDGE GOODE: If -- if that was the
19 language that I used -- and I of course -- we could
20 check the transcript, but I don't think it was --
21 my recollection is that I said that it was an
22 appropriate case for review and was attempting to
23 be careful, not up, not down, but that it was a
24 case after reading the transcript that I felt that
25 likely would be appropriate to be reviewed.

1 And I have tried not to indicate up or
2 down, just that there's evidence in there. I'm
3 certain there will be a motion made to supplement
4 the record in the form of medical documentation.
5 We'll just have to see how that ball rolls, but I
6 hope no one gets that impression because that was
7 the impression I meant -- I meant to lend. It was
8 simply that it's an appropriate case for
9 reconsideration after -- of course a motion to
10 reconsider has to be heard first.

11 MS. SHULER: As a follow-up, do you
12 think you can be fair and impartial after -- given
13 all the testimony today to hear that motion for
14 reconsideration?

15 JUDGE GOODE: Absolutely.

16 MS. SHULER: All right. Would you --

17 JUDGE GOODE: I'll be happy to have it
18 assigned to someone else if the parents or the
19 solicitor or anyone would be more comfortable with
20 a different judge, but I do not think that I have
21 heard or seen anything that would keep me from
22 being fair and impartial.

23 MS. SHULER: Let me clarify your
24 answer. If one of the parties made a motion that
25 another judge would hear the motion for

1 reconsideration, would you be willing to consider
2 granting that motion?

3 JUDGE GOODE: I would certainly hear --
4 hear their reasons, and if they have a good factual
5 basis for that, I would -- but, again, it's opinion
6 matter, and as I -- my cohort and solicitor we're
7 limited in what we can say, but I would certainly
8 consider that.

9 MS. SHULER: Thank you, Judge Goode.
10 Judge Goode, over 49 affidavits have
11 been submitted in support of your candidacy, many
12 of which are from criminal defense attorneys, as
13 well as a resolution on your behalf from the
14 Lancaster County Bar. Judge Goode, are you able to
15 still be impartial and not accord any favoritism to
16 any of the attorneys who submitted affidavits on
17 your behalf when they subsequently appear in your
18 courtroom on a matter?

19 JUDGE GOODE: Yes, ma'am. That
20 wouldn't be a problem. We have one law school.
21 I'm from a small circuit. I travel. It's the same
22 solicitors typically on each visit, and it's not
23 unusual for me to have a personal -- nothing
24 inappropriate, but a personal relationship with the
25 folks who handle cases in front of me. And if I

1 ever felt that my relationship with any person
2 would influence my ability to be fair and
3 impartial, I would recuse myself.

4 And I have recused myself. I recently
5 recused myself from a case because I knew the
6 people on one side too well and didn't feel like I
7 could -- could be fair.

8 MS. SHULER: Thank you, Judge Goode.

9 Last question. Do you believe if
10 reelected to the circuit court bench that you could
11 still act impartially towards any lawyer,
12 legislator who appears before you?

13 JUDGE GOODE: Oh, yes, ma'am. It -- it
14 may seem strange, but I've heard of the fog of
15 grief, but when you get into a courtroom, you get
16 so encapsulated in what's going on. If you're
17 serious about your job, you -- you really lose
18 sight of the things around you and you concentrate
19 on the facts and issues that are before you.

20 Just as I pointed out to Senator
21 McConnell with me rubbing my face and that
22 sometimes I'll turn sideways in the chair, it's
23 because it's an unconscious -- I'm thinking, you
24 know, what can I do that would be the right thing
25 in this case. But I could be fair, and would be,

1 and have been.

2 MS. SHULER: Thank you, Judge Goode.

3 SENATOR FORD: One question.

4 Judge, there's another law school in
5 South Carolina. We have --

6 JUDGE GOODE: Now. I've got a son
7 there.

8 SENATOR FORD: Don't -- don't -- don't
9 forget that now.

10 Welcome to Charleston.

11 I think that would be too much pressure
12 if you would --

13 JUDGE GOODE: I don't think I could
14 hear his case.

15 SENATOR FORD: No, I don't mean that.
16 I was talking about the other case. That would be
17 too much pressure.

18 JUDGE GOODE: Which one is that?

19 SENATOR FORD: The case we've been
20 discussing all day. The retrial -- not the
21 retrial, resentencing.

22 JUDGE GOODE: If the committee would be
23 desirous of my relinquishing jurisdiction over that
24 case, I -- I have no problem with that. I'm not
25 married to that case. I did the best I could with

1 it. Someone else hopefully could do a better job.

2 SENATOR FORD: Well, I wouldn't want
3 you to get to that pressure. That's just my
4 personal opinion.

5 JUDGE GOODE: Yes, sir. Well, that's
6 part of the job, but I could be fair and --

7 CHAIRMAN McCONNELL: Thank you, sir.

8 JUDGE GOODE: Thank you. Again, I
9 thank you all for allowing me to speak.

10 CHAIRMAN McCONNELL: Now, as I
11 understand it, counsel, that concludes everything
12 that -- the testimony. I would ask the panel at
13 this point if this would be a satisfactory way to
14 proceed. To ask the staff -- we all have the
15 exhibits, anything you want.

16 Ask the staff to begin to draft for us
17 a report to give back to the Joint Assembly, that
18 that draft be circulated amongst the committee, and
19 that after you've had a chance to review that,
20 we'll make the collective decision as to whether we
21 need to get together and -- to discuss it or
22 whether or not we're satisfied with the text. And
23 you'll have an opportunity, each of you, to make
24 any comments to the staff, and then if we reach a
25 point that we need to get together collectively to

1 make decisions on the text of it, that we would do
2 so.

3 Is -- is that satisfactory with
4 everyone to proceed on that basis?

5 (The Judicial Merit Selection Committee
6 answered in the affirmative.)

7 CHAIRMAN McCONNELL: All right. And
8 what we would do is ask the staff -- I know they
9 don't have enough to do. I'm saying that --
10 they're swamped -- to proceed to put this report
11 together, that when we receive -- we will stand in
12 recess. If -- if there is not a need, then this
13 hearing will be adjourned pursuant to the
14 resolution. If we are unable to resolve among
15 ourselves the text of it, then we will reserve the
16 right to reconvene and to resolve any differences
17 in that report.

18 With that, thank you all for coming and
19 have a good evening.

20 (The hearing was concluded at
21 8:58 p.m.)

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CERTIFICATE OF REPORTER

I, Yvonne R. Bohannon, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of February, 2008, at Columbia, Richland County, South Carolina.


Yvonne R. Bohannon
Registered Merit
Reporter, CRR
My Commission expires
April 11, 2015



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