THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

COLLETON COUNTY
Court of General Sessions
The Honorable Clifton B. Newman, Circuit Court Judge

Case No. _____

Richard Alexander Murdaugh..... Petitioner,

v.

The Honorable Clifton B. Newman, in his capacity as a Circuit Court Judge, and the State of South Carolina ..... Respondents.

PETITION FOR A WRIT OF PROHIBITION
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT
(Expedited Consideration Requested)

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INTRODUCTION

Pursuant to Rule 245(b) of the South Carolina Appellate Court Rules, Petitioner Richard Alexander Murdaugh hereby petitions for a Writ of Prohibition to issue in the original jurisdiction of the Supreme Court, prohibiting the Honorable Clifton Newman, Circuit Judge, from adjudicating Mr. Murdaugh's pending motion for a new trial or presiding over future trials of indictments against him. Judge Newman presided over a six-week trial in which Mr. Murdaugh was convicted of the murders of his wife Maggie and son Paul. The basis for Mr. Murdaugh's motion for a new trial is that the Colleton County Clerk of Court engaged in deliberate jury tampering during the trial to advance her own personal interests.

The basis for this Petition is that Judge Newman has personal knowledge about the Clerk of Court's conduct which will undoubtedly be disputed at an evidentiary hearing on the motion for a new trial. Further, after the jury returned guilty verdicts, Judge Newman made numerous statements in violation of the Code of Judicial Conduct that require his disqualification from presiding over further proceedings in this matter. These statements include congratulating the jury for returning the correct verdict, statements at sentencing evidencing personal bias, and statements in public interviews after the trial (including an interview on a nationally broadcast news program) in which Judge Newman stated his personal opinions regarding Mr. Murdaugh's guilt, legal issues on appeal, and strategic choices by Mr. Murdaugh's counsel during trial.

Mr. Murdaugh's right to have his cause heard by an impartial judge will be violated if Judge Newman proceeds to hear his motion for a new trial. Ordinary appellate proceedings will not be able to remedy the violation after it occurs. Thus, Mr. Murdaugh's only recourse to preserve his rights is an extraordinary writ of prohibition from this Court to prevent the violation from occurring. *See Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931) (holding the writ of prohibition "is primarily a preventive process, and is only incidentally remedial").

STATEMENT OF THE CASE

Mr. Murdaugh is a disgraced former attorney and drug addict. Once a prominent member of the Bar, Mr. Murdaugh is charged with stealing millions from his clients and others who trusted him, and he gave millions to violent drug dealers who fed his voracious opioid addiction. His law firm confronted him about his thievery on September 3, 2021. He resigned from the firm and, after a failed suicide attempt assisted by his drug dealer, entered drug rehabilitation. He was arrested immediately upon leaving a rehabilitation facility and has been incarcerated ever since.

Three months earlier, on June 7, 2021, Mr. Murdaugh's wife, Maggie Murdaugh, and younger son, Paul Murdaugh, were brutally murdered at approximately 9 p.m. at the dog kennels on their rural family property in Colleton County, commonly called Moselle. Paul was shot at close range in the chest with 12-gauge buckshot, then again with duck shot while the muzzle was pressed against his skull, ejecting his brain from his skull entirely. Maggie was shot several times with a different long gun, an AR-style .300-caliber assault rifle commonly referred to as a "Blackout" after the name of its ammunition, then finished with a point-blank shot to the back of the head.

Mr. Murdaugh was indicted for the murders on July 14, 2022. The State alleged Mr. Murdaugh was confronted at his law firm earlier that day about missing attorney's fees, and that he came home and decided to kill his wife and son that night to temporarily distract the bookkeepers from investigating those fees and to reduce his financial exposure in a negligent entrustment suit filed over two years earlier regarding a boat which Paul allegedly operated while intoxicated, resulting in the horrible death of a young woman, Mallory Beach. To prove that alleged motive, the State was allowed to present weeks of testimony about Mr. Murdaugh's many financial crimes, which were otherwise unconnected to the murders.

Mr. Murdaugh vehemently denies murdering his family. There is no direct evidence of Mr. Murdaugh's guilt. There were no witnesses to the crime, no videos or photos of the crime occurring, no recovered murder weapons, no blood or DNA evidence establishing guilt. There is only circumstantial evidence, much of which is inconsistent with him being guilty.

No murder weapons were recovered. The Blackout cartridge cases recovered matched extractor marks but not firing pin impressions on cartridge cases recovered from the family firing range, and so the matches are unreliable. No human blood or significant amounts of gunshot residue were found on Mr. Murdaugh or his clothing, despite him having only about 11 minutes to clean himself thoroughly, according to the prosecution's theory,[1] before driving from Moselle to his mother's house and despite him supposedly having been standing almost in contact with Paul's head when it exploded in blood and gore. There was a water hose at the kennels, but it remained coiled on a wall mount in the exact manner seen in Paul's video taken only minutes before the murders. That the murders were close in time and place but used different long guns suggests multiple shooters.

[1] Originally the State was going to argue the T-shirt Mr. Murdaugh was wearing that night was stained with blood in a high-velocity impact spatter pattern that could only come from being next to someone being shot. That evidence was leaked to the public a few weeks before the indictments were returned, apparently by the Attorney General's office given that the leak occurred months after SLED began working with an external blood spatter expert but less than a week after the first meeting in which SLED disclosed that work to prosecutors. However, it turned out the evidence was fabricated, and the State was unable to present it to the jury. In closing arguments, prosecutor Johnny Meadors explained:

> And, you know, they're putting these law enforcement on trial, talking about blood evidence, talking about other things that were presented to the grand jury, which you -- that blood evidence was investigated, and the State didn't offer it. That's what you do when you're a prosecution. Didn't try to offer it.

Trial Tr. 5841:11–17 (**Exhibit A**).

Unidentified male DNA was discovered on Maggie. Maggie's cell phone was taken from her when she was murdered and was later thrown unto the side of Moselle Road about half a mile from where her body lay. No explanation was offered as to why Mr. Murdaugh would take Maggie's phone, for which he had the passcode, but not Paul's, for which he did not have the passcode, or why he would throw it unto the side of the road near his home. GPS data from Mr. Murdaugh's car shows that if he did throw it, he must have done so while his car was travelling approximately 40 miles per hour yet without the phone recording any event associated with physical movement. It is unlikely the phone could be thrown from a car moving at 40 miles per hour without causing the phone to record any event, given that merely picking the phone up or rotating it 90 degrees causes a recorded "screen on" event. Mr. Murdaugh called his wife several times after she was murdered, and the last event ever recorded on her phone before it was recovered, other than missed calls and messages, was a physical rotation during one of Mr. Murdaugh's calls, suggesting the phone was thrown in response to his incoming call. Moreover, the State's expert admitted that if her phone and Mr. Murdaugh's phone were at some point moving together on the same person he would expect at least to see "step" data on both phones in about the same time spans, but that there was nothing indicating their phones were moving together.

While driving to and from his mother's house, Mr. Murdaugh had multiple telephone calls with several people, who found his affect completely normal. Everyone who knew them testified Alex, Maggie, and Paul had a normal, loving relationship. The motive the State alleged was implausible and was nearly abandoned by the State in closing arguments after it served its purpose of justifying weeks of testimony about Mr. Murdaugh's financial crimes:

> Mr. Griffin goes does that [motive] make sense? It did in his mind. His world is collapsing; his world is coming down. This was the only way he could save – it's the only way – it's the only way he could save Alex. But if you don't, if that motive -- well, I don't know, is that enough? Is that enough? We don't have to prove

> motive. We're certainly there. That's one explanation. But if he's down there and he's angry -- this don't sound like a real jovial –
>
> Bubba [a dog], don't let me forget about, about Bubba. Bubba, come here. Maybe he just got angry. Maybe he got angry at Paul. Maybe he got angry. You know, we started all of this with the boat case, and maybe he just lost it. Maybe he just lost it. Maybe he wanted it to look like a suicide, and then Maggie came and he had to shoot her. I don't know. Only one person knows. And that's why we've got the motive. That's why we say he did it. But we don't even have to have motive. Just angry. He did it.

Trial Tr. 5824:6–24. In posttrial interviews, discussed at length below, Judge Newman admitted his decision to let the State present weeks of testimony on Mr. Murdaugh's financial crimes was "pretty controversial." Cleveland State Interview Tr. 41:20 (**Exhibit B**).

The evidence presented at trial would appear to present a Gordian knot requiring extensive deliberation to untangle. But the case was submitted to the jury at about 3:45 pm on March 2, 2023, and a verdict was returned early that evening. Jurors' television interviews indicate the actual deliberations took less than one hour. On the last day of closing arguments, the same day the verdict was returned, one juror wore a suit coat for the first time during the six weeks of trial, which was obviously not his as it was many sizes too large, and he recorded an appearance on national television that very night.

When the jury returned its verdict that evening, Judge Newman congratulated them on reaching what he saw to be the correct verdict. Trial Tr. 5877:16–23 ("[T]he verdict that you have reached is supported by . . . all of the evidence pointing to only one conclusion, and that's the conclusion that you all have reached. So, I applaud you all for, as a group and as a unit and individually, evaluating the evidence and coming to a proper conclusion . . . .").

Mr. Murdaugh was sentenced the next day. When sentencing Mr. Murdaugh, Judge Newman repeatedly expressed disdain for Mr. Murdaugh's denial of murdering his own family. *E.g.*, Trial Tr. 5886:11–13; 5888:8–15; 5891:6–9; 5891:20–5892:1. Mr. Murdaugh filed a notice

of appeal on March 9. Nineteen days later, on March 28, Judge Newman gave a lengthy public interview about the trial at his *alma mater*, the Cleveland State University College of Law. In the interview, he expressed opinions about defense counsel's decision to seek a jury view of the murder scene. Cleveland State Tr. 24:4–6 ("And it ended up, I thought, being helpful to the prosecution and not to the defense, though requested by the defense."). He expressed personal opinions regarding Mr. Murdaugh's guilt. Cleveland State Tr. 33:13–15 ("[B]ut he committed an unforgivable, unimaginable crime. And there's no way that he'll be able to sleep peacefully."). He also explained his reasoning for his decision to allow weeks of testimony on admitted financial crimes unrelated to the murders, which he knew to be a central issue in the then-pending appeal. Cleveland State Tr. 41:19–7. Later, on or shortly before June 21, 2023, Judge Newman gave another interview on the *Today* show, a national broadcast, again expressing his persona opinions regarding Mr. Murdaugh's guilt. *Today* show Tr. 3:12–19 ("I cannot imagine him having a peaceful night knowing what he did. I'm sure if he had an opportunity to -- to do it over again, he'd never do it.") (**Exhibit C**).

On August 1, 2023, the Colleton County Clerk of Court, Rebecca Hill, published a book, "Behind the Doors of Justice," about Mr. Murdaugh's trial. The book was a final straw that led to some jurors coming forward to describe Ms. Hill's jury tampering. In brief, jurors stated that after the State rested and the defense began it case, Ms. Hill entered the jury rooms often, telling jurors not to let the defense "throw you all off," or "distract you or mislead you," and telling them "not to be fooled" by Mr. Murdaugh's testimony in his own defense. Def.'s Mot. for a New Trial, *State v. Murdaugh*, Indictment Nos. 2022-GS-15-592 *et seq.* (Ct. Gen. Sess. Oct. 27, 2023) (**Exhibit D**). She had multiple private conversations with the jury foreperson (a court-appointed foreperson who replaced the jury's elected foreperson). *Id.* She fabricated a Facebook post in an attempt to remove

a juror she thought might vote not guilty (who was removed on the last day of trial for a different reason). *Id.* Judge Newman even stated on the record in in camera proceedings, "Oh boy. I'm not too pleased about the clerk interrogating a juror as opposed to coming to me and bringing it to me." Trial Tr. 5562:18–19. After Judge Newman made that comment, Ms. Hill interrogated the juror again about her views on the evidence presented and the views of other jurors. Ex. D. When the jury began deliberations that evening, Ms. Hill told them that "this shouldn't take us long," and that if they deliberated past 11 p.m., they would be taken directly to a hotel even though none were prepared to stay overnight. *Id.* She told the jury they would not be allowed to take smoke breaks as they had previously been allowed to do during the six-week trial. *Id.* There were six smokers on the jury. *Id.* She told jurors that after the trial they would be famous and predicted that the media would request interviews with them. *Id.* She even handed out reporters' business cards to jurors during the trial, and she traveled with jurors to New York City when they appeared on the *Today* show. *Id.*

On September 5, 2023, Mr. Murdaugh filed a motion to suspend his appeal and for leave to file a motion for a new trial based on the evidence of Ms. Hill's jury tampering, attaching his proposed motion for a new trial as an exhibit with supporting affidavits and documents. On October 17, 2023, the Court of Appeals granted the motion. Order, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Ct. App. Oct. 17, 2023). Mr. Murdaugh filed his motion for a new trial with the Colleton Count Court of General Sessions on October 27. Ex. D. Judge Newman is currently assigned to decide the motion.

LEGAL STANDARD

The Supreme Court may issue writs of prohibition in its original jurisdiction. S.C. Const. art. V, § 5. A party may seek issuance of an extraordinary writ in the original jurisdiction of the Court by petition. Rule 245(b), SCACR.

"The ancient prerogative writ of prohibition has been recognized and employed in the common-law system of jurisprudence for more than seven centuries, and like all prerogative writs should be used with forbearance and caution, and only in cases of necessity." *Ex parte Jones*, 160 S.C. 63, 158 S.E. at 137. "It is primarily a preventive process, and is only incidentally remedial." *Id.* (emphasis added). The writ "will be granted only to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure . . . ." *State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602, 603 (1938) (internal quotation marks omitted). But "writ may not be invoked to perform the office of an appeal." *Id.* "[I]f the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment . . . ." *Id.* If "the court in which the original action is brought has jurisdiction and the usual remedies provided by law are adequate and complete, the writ should not issue." *Woodworth v. Gallman*, 195 S.C. 157, 10 S.E.2d 316, 319 (1940)

ARGUMENT

I. THE CODE OF JUDICIAL CONDUCT REQUIRES JUDGE NEWMAN TO DISQUALIFY HIMSELF FROM HEARING MR. MURDAUGH'S MOTION FOR A NEW TRIAL.

A. Judge Newman has personal knowledge about the Clerk of Court's alleged misconduct.

"A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has personal knowledge of disputed evidentiary facts concerning the proceeding." Canon 3(E)(1)(b), CJC, Rule 501, SCACR. The gravamen of the motion for a new trial is that Colleton County Clerk of Court Rebecca Hill's interactions with members of the jury were improper and material to the merits of the evidence presented at trial. The motion does not suggest that Judge

Newman did anything improper during the trial as the presiding judge. However, Ms. Hill actions make Judge Newman a material witness regarding *her* conduct.

For example, *in camera* testimony, statements made in open court and excerpts from Ms. Hill's book indicate that Ms. Hill told Judge Newman about a Facebook post purportedly made by Juror #785's ex-husband claiming that this juror discussed her opinions about the evidence to the ex-husband. Ms. Hill at some point claimed the post had been deleted and as evidence she provided an unrelated "apology" post by a person coincidentally having the same name as Juror #785's ex-husband. It turns out that that no such Facebook post was made by anyone associated with Juror #785, and that it never existed at all. Ex. D at 3–5.

Statements made by Judge Newman during an *in camera* hearing involving Juror #785 indicate that Judge Newman and his law clerk had multiple conversations about Juror #785 with the Clerk of Court that are not reflected on the record. Trial Tr. 5533:5–5535:15. Judge Newman also stated on the record on the evening of February 28, 2023, that "I'm not too pleased about the clerk interrogating a juror as opposed to coming to me and bringing it to me." Trial Tr. 5562:18–19. At one point, Judge Newman indicated that he wanted to speak with the Clerk of Court about her knowledge of the Facebook posts. Trial Tr. 5536:1-10 ("Of course, the clerk, you know, I would want to hear directly from her because when she had indicated that she read a Facebook post over the weekend referencing this, this is Friday and she just mentioned it today."). Judge Newman's personal knowledge of her actions about Juror #785 is relevant to the Clerk's credibility if she disputes the representations made by other jurors that she engaged in inappropriate communication with them. As a result, Judge Newman must be disqualified under Canon 3(E)(1)(b), CJC, Rule 501, SCACR; Affidavit of Dr. Gregory B. Adams, ¶7(C)

(hereinafter "Adams Aff. ¶__") (**Exhibit E**). Mr. Murdaugh raised this issue with Judge Newman via letter. Ltr. from R. Harpootlian to C. Newman, Oct. 18, 2023 (**Exhibit F**).

The State responded with a letter asserting Judge Newman's knowledge of these facts is not critical or unobtainable by other means and therefore he need not recuse himself. Ltr. from C. Waters to C. Newman, Oct. 25, 2023 (**Exhibit G**). The cases cited therein for support are inapposite. *State v. Talbert*, 41 S.C. 526, 19 S.E. 852 (1894), is a Nineteenth Century case in which a trial court's decision to disallow testimony from a judge about a warrant issued against the defendant was affirmed because the judge's testimony was irrelevant. *In re Whetstone*, 354 S.C. 213, 580 S.E.2d 447 (2003), concerns an attempt to subpoena the trial judge to testify regarding an ineffective assistance of counsel claim in postconviction relief proceedings. The prudential consideration against allowing trial judges to be called to testify about trial counsel's effectiveness at every postconviction relief hearing is obvious. Here, the issue is much more unique. A clerk of court is accused of bringing fabricated evidence to the judge in an attempt to influence the jury's verdict to achieve personal fame and money in a high-publicity case.

But the issue is not whether Mr. Murdaugh may call Judge Newman to testify at an evidentiary hearing. The standard for quashing a subpoena to a judge is not the standard for the judge's recusal. It could be the case that the information the judge possesses is readily obtainable from other sources. But that would not change his knowledge of disputed evidentiary facts. For example, no one would question the need for a judge to recuse himself from presiding over the prosecution of a crime he personally witnessed, even if there were many other witnesses and the crime were caught on video so that his testimony would be unnecessary.

Here, Judge Newman has personal knowledge of Ms. Hill's representations to him about a Facebook post she said was by the ex-husband of a juror who was discussing the evidence with

him during trial. Judge Newman asked her to produce the post; she told him it was deleted and replaced with a post apologizing for it, which she did produce. Mr. Murdaugh alleges the first post never existed and that she knew the purported replacement post was not by the ex-husband of a juror. Ms. Hill presumably will not admit that.[2] The facts Judge Newman has knowledge of therefore are "disputed." They are "evidentiary" facts because they are evidence regarding Ms. Hill's attempts to influence the jury's verdict. Judge Newman therefore has personal knowledge of "disputed evidentiary facts." It is his personal knowledge of these facts that disqualifies him from impartially weighing evidence probative of them. Adams Aff. ¶ 7(C).

B. Judge Newman's comments to the jury after the verdict was returned violated Canon 3 of the Code of Judicial Conduct.

"A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community." Canon 3(B)(10), CJC, Rule 501, SCACR. Despite this rule, at sentencing Judge Newman told the jury,

> I will make no comment now as to the extent of the overwhelming nature of the evidence, but certainly the verdict that you have reached is supported by the evidence, circumstantial evidence, direct evidence, all of the evidence pointing to only one conclusion, and that's the conclusion that you all have reached. So, I applaud you all for, as a group and as a unit and individually, evaluating the evidence and coming to a proper conclusion . . . .

Trial Tr. 5877:16–23. To "applaud" the jury for coming to the "proper conclusion" in its verdict is a commendation for reaching the right decision in violation of Canon 3(B)(10). Adams Aff.

[2] Ms. Hill certainly will be a witness, and she will be asked about bringing the Facebook issue to the attention of Judge Newman. If she testifies falsely about that, Judge Newman might know it. If that happens, what then? Would he simply announce that her testimony is incorrect? Would he make a finding of fact based on personal knowledge that contradicts sworn testimony in the record? Such questions are why judges having personal knowledge of disputed evidentiary facts must disqualify themselves.

¶7(A)(ii). The Supreme Court of New Jersey found a judge violated the canon against commending the jury for its verdict when he merely told the jury that "Your verdict has been adequately and amply supported by the evidence." *In re Mathesius*, 910 A.2d 594, 600 (N.J. 2006). Judge Newman's comment "applaud[ing]" the jury for coming to a "proper conclusion," the "only one conclusion" that "all of the evidence point[ed] to" is, in contrast, a much more egregious flouting of the well-known rule against commending or criticizing the jury for its verdict.

Further, Judge Newman's use of the word "overwhelming" to describe the evidence when applauding the jury for coming to the only conclusion that "all of the evidence point[ed] to," was no accident. As the Court is aware, "overwhelming" is a term of art in reviewing criminal proceedings. *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). Trial errors may be deemed harmless if the evidence is otherwise "overwhelming." *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020). Likewise, deficient performance by trial counsel is usually not deemed prejudicial if the evidence is "overwhelming." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843.

By commending the jury for coming to the only conclusion permitted by the "overwhelming" evidence, Judge Newman was placing into the record his opinion that if his decision to allow weeks of testimony on financial crimes unrelated to the murders, which he admits was "pretty controversial" (Cleveland State Interview Tr. 41:20), is error, it should not result in a new trial. Likewise, in his opinion any issues raised in post-conviction review proceedings should not result in a new trial. Judge Newman broke a binding rule of conduct to opine on the record that any errors discovered in the trial proceedings, whether on direct appeal or collateral review, should not result in a new trial. That shows bias against granting a new trial even if warranted.

C. Judge Newman's statements at Mr. Murdaugh's sentencing show personal bias in violation of Canon 3 of the Code of Judicial Conduct.

"A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice . . . ." Canon 3(B)(5), CJC, Rule 501, SCACR. The commentary to the Canon states, "A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute." *Id.*

Mr. Murdaugh denies murdering his family but does not deny that the jury returned a guilty verdict and that it would be appropriate for the sentencing judge to comment with disapproval on the commission of such a horrible crime. *See, e.g.*, *United States v. Guglielmi*, 615 F. Supp. 1506, 1512 (W.D.N.C. 1985) ("Personal bias [a grounds for disqualification] is to be distinguished from 'judicial' bias, and does not include views based upon matters arising during the course of the litigation or upon general attitudes common to the public generally."). But Judge Newman's comments at sentencing show personal bias regarding Mr. Murdaugh and his family that is well beyond the "general attitudes common to the public generally" about murder. Judge Newman's comments take personal offense that Mr. Murdaugh denied he committed the murders—which is Mr. Murdaugh legal right. *State v. Rivera*, 402 S.C. 225, 241–42, 741 S.E.2d 694, 702–03 (2013) ("The right of a criminally accused to testify or not to testify is fundamental."); *see also Rock v. Arkansas*, 483 U.S. 44, 52 (1987) ("[F]undamental to a personal defense ... is an accused's right to present his own version of the events in his own words."). The Court's outrage that Mr. Murdaugh presumed to defend himself is a manifestation of personal bias against Mr. Murdaugh arising from other acts that occurred years before the murders, and from the prominence and privilege Mr. Murdaugh's family enjoyed and which Mr. Murdaugh abused.

For example, Judge Newman stated at sentencing,

> And you've engaged in such duplicitous conduct here in the courtroom, here on the witness stand.
>
> . . .
>
> But amazingly, to have you come and testify that it was just another ordinary day, that my wife and son and I were out just enjoying life, not credible. Not believable. You can convince yourself about it, but obviously you have the inability to convince anyone else about that. So, if you made any such arguments as a lawyer, you would lose every case like that . . . .

Trial Tr. 5886:11–13, 5891:20–5892:1. On the witness stand, Mr. Murdaugh admitted all his financial crimes but denied murdering his family. Judge Newman's comments do not express the outrage "common to the public generally" for which Mr. Murdaugh was convicted—murder—but his personal outrage at how Mr. Murdaugh practiced law for many years, viewing Mr. Murdaugh's denial of murdering his family as a continuation of that dishonest conduct.

That outrage could be judicial bias, not personal bias, because it was perhaps based on facts Judge Newman learned through his participation in criminal proceedings against Mr. Murdaugh—details of how Mr. Murdaugh lied to and stole from people who trusted him. But what was unquestionably personal was the outrage extending beyond Mr. Murdaugh's own conduct to the supposed conduct of Mr. Murdaugh's ancestors.

> Even during this trial, the law enforcement has been maligned for the past five or six weeks by one who had access to the wheels of justice to be able to deflect the investigation.

Trial Tr. 5891:6–9. Mr. Murdaugh did lie about being at the kennels shortly before the murders, which could be called a "deflection" of the investigation (albeit a very ineffectual one),[3] but that had nothing to do with being "one who had access to the wheels of justice." It was a statement given to investigators.

[3] Mr. Murdaugh also briefly lied about his attempted assisted suicide attempt because he did not want his son Buster to know he attempted suicide. Trial Tr. 5079.

Judge Newman's comment about being "one who had access to the wheels of justice to deflect the investigation" does not refer to him as a criminal suspect who failed to tell investigators the truth when interviewed. Nor does it refer to Mr. Murdaugh's sporadic service as a part-time unpaid assistant solicitor, in which he first chaired a single trial and second chaired four trials with his father over a 23-year period. *See* Trial Tr. 4814–17. It refers to Mr. Murdaugh's family as a symbol of corruption in the Lowcountry, and specifically to his father, grandfather, and great-grandfather serving as the Solicitor in the 14th Judicial Circuit for 86 years.

Judge Newman elaborated on that theme in his sentencing comments:

> And this case qualifies under our Death Penalty Statute based on the statutory aggravating circumstances of two or more people being murdered by the defendant, by one act, or pursuant to one scheme or course of conduct. I don't question at all the decision of the State not to pursue the death penalty, but as I sit here in this courtroom and look around the many portraits of judges and other court officials and reflect on the fact that over the past century, your family, including you, have been prosecuting people here in this courtroom, and many have received the death penalty, probably for lesser conduct.

Trial Tr. 5887:5–15. What Mr. Murdaugh's grandfather or great-grandfather did in a courtroom before Mr. Murdaugh was born has no relevance to any issue in sentencing. Judge Newman's discussion of Mr. Murdaugh's ancestors *sua sponte* is evidence of personal bias. His *sua sponte* discussion of the death penalty is also evidence of personal bias. Judge Newman expressed his opinion that the death penalty would be desirable in this case, reasoning that Mr. Murdaugh should get the death penalty because his family sought it for others who were less deserving of it than him.

Judge Newman's comment that "law enforcement has been maligned for the past five or six weeks"—referring to the length of the trial—is further evidence of personal bias against Mr. Murdaugh and against his counsel. Defense lawyers have a duty to challenge the quality of the investigation that generates evidence against their clients:

> As a defense attorney you have a duty to question and challenge the state's evidence .... You have a duty to investigate these matters and use the means at your disposal to conduct that investigation. You have a duty to test the state's evidence.

State v. Petway, 2017-Ohio-7954, ¶ 21 (O'Toole, J., dissenting) (internal quotation marks omitted). In this case, the lead investigator admitted under cross-examination that he provided false testimony to the Colleton County grand jury to obtain indictments. Trial Tr. 3695:1–3697:15. Mr. Murdaugh's lawyers worked many hours, after midnight and on holidays, to prove the State fabricated evidence that Mr. Murdaugh's T-shirt was stained with human blood in a pattern unique to gunshots. That effort was successful—the State conceded the point and did not attempt to introduce the fabricated evidence. Trial Tr. 5841:11–17. The State's expert admitted GPS data on Maggie Murdaugh's phone for the night of the murders—which would have conclusively proven whether Mr. Murdaugh ever had possession of her phone after her murder—was overwritten and lost because it was left powered on for a week in SLED's forensic laboratory while not secured in a Faraday bag or box. *See* Trial Tr. 1364–65. There are many other examples. That Judge Newman would state on the record that these efforts were objectionable "maligning" of law enforcement rather than defense attorneys doing their job is evidence of personal bias.

D. Judge Newman's extra-judicial statements after Mr. Murdaugh's trial violated Canon 3 of the Code of Judicial Conduct.

"A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing . . . ." Canon 3(B)(9), CJC, Rule 501, SCACR. The commentary to that section provides, "The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition." *Id.* During the pendency of this case, Judge Newman nonetheless gave public interviews in which he expressed

his personal opinions regarding Mr. Murdaugh's guilt, legal issues on appeal, and strategic choices by Mr. Murdaugh's counsel during trial in violation of Canon 3(B)(9). Adams Aff. ¶ 7(A)(i), (B).

It is almost unheard of for a judge to give interviews about a pending case, even cases in other jurisdictions. *See In re Boston's Children First*, 244 F.3d 164, 169 (1st Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (Mar. 2, 2001) ("Judges are generally loath to discuss pending proceedings with the media . . .."). When it does occur, it is almost universally found to be misconduct. *See, e.g.*, *United States v. Microsoft Corp.*, 253 F.3d 34, 113 (D.C. Cir. 2001) (holding a judge's press interviews about the case before him violated the rule prohibiting public comment about pending cases); *In re Int'l Bus. Machines Corp.*, 45 F.3d 641, 645 (2d Cir. 1995) (granting writ of mandamus directing the trial judge to recuse himself because of newspaper interviews he had given); *Broadman v. Comm'n on Jud. Performance*, 959 P.2d 715, 725 (Cal. 1998), *as modified* (Sept. 2, 1998) (holding a judge violated canons of the Code of Judicial Conduct by publicly commenting in Time magazine and another magazine on two criminal cases that were pending either in his court or in the court of appeals); *In re Inquiry of Broadbelt*, 683 A.2d 543, 548 (N.J. 1996) (holding a judge violated a canon of the Code of Judicial Conduct prohibiting judges from making public comments about pending or impending proceeding in any court, by appearing on television to comment on cases pending in other jurisdictions). But Judge Newman did exactly that about Mr. Murdaugh's case on multiple occasions. Judge Newman even went on a major national broadcast, the *Today* show, to proclaim Mr. Murdaugh's guilt before Mr. Murdaugh's direct appeal was even briefed and before he had a chance to move for a new trial.

Shortly after Mr. Murdaugh filed a notice of appeal, Judge Newman gave an extended interview about Mr. Murdaugh's case at his *alma mater*, the Cleveland State College of Law. The interview was held in a law school moot courtroom and was open to the public. More than 300

people attended. It was streamed live on the internet and the recording is still available. https://csuohio.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=2d7f75e9-ca3d-463a-95da-afcf01554535. During the interview, Judge Newman expressed his personal opinions regarding Mr. Murdaugh's guilt:

> [I]n my mind, no doubt he loved his family. I don't believe that that he hated his wife. And certainly I do not believe that he did not love his son, but he committed an unforgivable, unimaginable crime. And there's no way that he'll be able to sleep peacefully.

Cleveland State Tr. 33:10–15. Judge Newman also commented on choices made by defense counsel. Cleveland State Tr. 24:1–9 (commenting that defense-requested site visit was more helpful to the prosecution than the defense); Cleveland State Tr. 41:19–42:7 (commenting that defense counsel "opened the door to many other things by the manner in which they presented the evidence"). He explained his reasoning for his decision to allow weeks of testimony on admitted financial crimes unrelated to the murders, which he knew to be a central issue in the then-pending appeal:

> Hello, Judge Newman. One of the most kind of contentious things that happened in the trial was your decision to allow the financial crimes to come out as inadmissible prior bad act. How did you come to that decision and what was your rationale for allowing those to come in?
>
> Yeah, a lot of it is it was a pretty controversial decision. And and as will be the subject of an appeal and, you know, no case is final until there's a final ruling on the appellate issues. So I think the record speaks for itself.
>
> Initially, the ruling was going to be limited to things occurring within the res gestae of the moment of the day of the murders. And the lawyers I ruled opened the door to many other things by the manner in which they presented the evidence. Then, of course, once the defendant takes the stand and testifies, then almost everything is fair game at that point.

Cleveland State Tr. 41:19–42:7.

The "pretty controversial decision" was this. Before trial, the State moved in limine for a ruling allowing it to introduce evidence of Mr. Murdaugh's financial crimes in support of its theory

of motive. Judge Newman declined to rule on the motion. His ruling on the admissibility of prior bad acts was revealed during trial following the examination of Will Loving, a 25-year-old construction worker who was friends with Paul Murdaugh. On cross-examination, defense counsel asked Mr. Loving about his observations of the relationship between Alex, Maggie, and Paul:

> Q. And did you spend a lot of time with Paul around his dad and his mom?
>
> A. Yes, sir, I did.
>
> Q. And how would you describe Paul's relationship with his father?
>
> A. It was an awesome relationship.
>
> Q. What do you mean by awesome?
>
> A. It just kind of seemed like Paul was the apple of his eye.
>
> Q. Okay, and from your observations, would you tell the jury what you observed of Alex's relationship with Maggie?
>
> A. I thought they had an awesome relationship as well through everything that I can see. You know, they were always laughing and everybody got along and it was -- nothing was out of the ordinary at all.

Trial Tr. 1503:15–1504:4. Similar questions were asked of other another friend of Paul's. Judge Newman ruled those questions solicited character evidence that "opened the door" to allowing the State to present weeks of testimony about unrelated financial crimes to rebut that character evidence. Trial Tr. 1514–16.

Whether Judge Newman's ruling constitutes error is an issue for the Court of Appeals based upon the trial record. Of importance here is that Judge Newman loses the appearance of impartiality when he attempts to influence that proceeding by extra-judicial public comments. "[O]ther courts have agreed that under some circumstances a judge's defense of her own orders, prior to the resolution of appeal, may create the appearance of partiality." *In re Boston's Children First*, 244 F.3d at 170; *see also Broadman*, 959 P.2d 715 (Cal. 1998) ("By making public comments in an attempt to justify and defend his decisions while those decisions were pending on appeal,

petitioner adopted the role of an advocate. Such actions would appear to an objective observer to be 'prejudicial to public esteem for the judicial office.'").

Later, on or shortly before June 21, 2023, Judge Newman gave an interview on the *Today* Show again expressing his personal opinions regarding Mr. Murdaugh's guilt:

> CRAIG MELVIN: Do -- do you think that he'll been haunted by his -- his wife and – and son?
>
> JUDGE CLIFTON NEWMAN: Oh, I think so, it has to be. I -- I cannot imagine him having a peaceful night knowing what he did. I'm sure if he had an opportunity to -- to do it over again, he'd never do it.

Today show Tr. 3:12–19.

Judge Newman gave yet another interview for a podcast hosted by the dean of his former law school. In that podcast interview he discussed Mr. Murdaugh's family, speculating that Mr. Murdaugh's family may have been disappointed Mr. Murdaugh never became the 14th Circuit Solicitor. Podcast Tr. 15:3–20 (**Exhibit H**). He also commented on Mr. Murdaugh's credibility and culpability during sentencing: "And looking him in the eyes at that moment with really, you know, great empathy for him, I -- he gave himself a way out by saying it wasn't me –." Podcast Tr. 21:2–5.

In another high-profile case, the U.S. Court of Appeals for the D.C. Circuit held the trial judge "breached his ethical duty . . . each time he spoke to a reporter about the merits of the case." *Microsoft Corp.*, 253 F.3d at 112. It further explained,

> It is clear that the District Judge was not discussing purely procedural matters, which are a permissible subject of public comment under one of the Canon's three narrowly drawn exceptions. He disclosed his views on the factual and legal matters at the heart of the case. His opinions about the credibility of witnesses, the validity of legal theories, the culpability of the defendant, the choice of remedy, and so forth all dealt with the merits of the action.

United States v. Microsoft Corp., 253 F.3d 34, 112 (D.C. Cir. 2001). Judge Newman's extrajudicial comments likewise are about the "merits of the case." His comments express views on the