

# **Exhibit 4**

1 if this was some sort of conspiracy, and frankly, I don't  
2 think there's any evidence that that was the conspiracy,  
3 or that it's even reasonable. if the issue was that they  
4 somehow thought, well, if we filed this, she'll  
5 eventually sue us, and therefore, won't have to hear our  
6 cases, that doesn't injure her. That's not special  
7 damages.

8 And the last thing I want to note is that Angus  
9 versus Burroughs and Chapin. We handed a copy of that up  
10 at the very beginning of the case. That's clearly  
11 against third parties. The other defendants were  
12 Burroughs and Chapin, and the son knew. And the holding  
13 of that Supreme Court case, which I can get the site  
14 again, it's purely that. It's not against third parties.  
15 You can't bring a civil conspiracy action against third  
16 parties.

17 Thank you.

18 THE COURT: Okay. All right. Okay.

19 MS. JOLLEY: I'm sorry.

20 THE COURT: Oh, that's okay. Do you want to move on  
21 as to defamation or?

22 MS. JOLLEY: Yes. I apologize.

23 THE COURT: Okay. That's okay.

24 MS. JOLLEY: First, your Honor, of course, in terms  
25 of the defamation action for a public official, the

1 initial question is whether there is clear and convincing  
2 evidence of actual malice. Defendants argue that, of  
3 course, that there isn't clear and convincing evidence of  
4 actual malice.

5 There's no evidence that -- there's not clear and  
6 convincing evidence that defendants published the  
7 defamatory statements knowing they were false, or in  
8 fact, entertained serious doubts as to the truth of their  
9 publication. There's no evidence that the defendant had  
10 a high degree of awareness of probable falsity of any  
11 statements. And I really believe the main case here is  
12 *Elder versus Gaffney Ledger*.

13 Now, it's clear throughout, plaintiff's counsel's  
14 argued that circumstantial may be used to show state of  
15 mind indicative of actual malice. And that's correct,  
16 under *Anderson versus Augusta Chronicle*. However, all of  
17 the circumstantial evidence examined by the court in that  
18 case was related to the article that was the subject of  
19 that case. In other words, to the actual publication.

20 Here, there's been a lot of kind of bring-in  
21 evidence about things other than the letter, but there  
22 isn't actual evidence that Mr. Breed, in writing that  
23 letter, entertained a high degree of awareness that the  
24 letter was probably false. In fact, Mr. Breed's  
25 testimony was that he believed it then, he believed it

1 now, and that he believes that the plaintiff, frankly,  
2 has admitted to the factual precedence of the letter.

3 Absent evidence of sufficient caliber or quantity to  
4 allow a rational find or fact, to find actual malice, by  
5 clear and convincing evidence, that issue shouldn't be  
6 submitted to the jury. It's, of course, a question for  
7 the court.

8 Looking at the circumstantial evidence the Court  
9 considered in *Elder*, it's very similar to this case.  
10 First, there was a failure to investigate or verify  
11 information that the reporter received via an anonymous  
12 caller. There was a missing telephone recording the  
13 plaintiff alleged Sossaman's employer had erased.  
14 Sossaman was the actual reporter that had also been sued  
15 individually. They tried -- they brought in Sossaman's  
16 prior guilty plea for manufacturing marijuana. And then,  
17 they also brought in alleged rudeness, by Sossaman to the  
18 plaintiff's wife. And they said, look, these things are  
19 all indicative of a state of mind, looking at  
20 circumstantial evidence, that this person could have had  
21 actual malice.

22 And what the Supreme Court said is, this evidence is  
23 patently insufficient to demonstrate the defendant, in  
24 fact, entertained serious doubts as to the truth of the  
25 publication. And they said that shouldn't have gone to

1 the jury. So, that's our first one.

2 I'd just as soon go through all the defamation  
3 things, but we can do it however you want.

4 THE COURT: Okay. You can go through it. Let's  
5 just go ahead.

6 MS. JOLLEY: All right. We believe that there's no  
7 causation. The plaintiff has not and cannot prove that,  
8 but for the alleged defamatory publications, as opposed  
9 to learning of -- and learn -- defending Breed's  
10 complaint to the Commission, and quite frankly, the  
11 later the Russell Keep complaint, which you have kept  
12 out, but did, in fact, occur, which everyone agrees is  
13 absolutely privileged itself. Quite frankly, she was not  
14 fired. She had a term contract always. There's been  
15 some evidence about whether most of those contracts were  
16 two years. One of them was two years and some months.  
17 She ended up getting another two-year contract, each time  
18 her contract term ended, she did not have an automatic  
19 renewal.

20 She had to renegotiate each time. That's clear from  
21 the record. There's actually -- that's not even in  
22 question. Each time she had to renegotiate. She had no  
23 absolute right to a three-year contract. She had no  
24 absolute right to any compensation or even a job from the  
25 Town upon the termination of her contract. So those

1 damages are just speculative, at best.

2 Next, we believe that Breed's publication to Cary  
3 Kelley or to the CSA Security Committee, and Cary  
4 Kelley's publication to CSA, is subject to a qualified  
5 privilege, because the communications remained in good  
6 faith and in the usual course of business.

7 We're looking here at *Conwell versus Spur Oil, 240,*  
8 *South Carolina 170*, a 1962 case. The plaintiff bears the  
9 burden of proving that the privileged publication  
10 exceeded or abused. Of course, it's for the Court to  
11 decide whether the privilege exists. If the Court finds  
12 that there is evidence in the record that that was  
13 exceeded, then the jury gets to decide whether or not it  
14 was, in fact, exceeded. However, I think there's no  
15 question that there wasn't privilege, qualified  
16 privilege, in that case.

17 We believe that Breed's publication to Greg DeLoach  
18 was permissible public comment. Of course, in South  
19 Carolina, citizens have a right to criticize public  
20 office, officials, and their fitness for office, so long  
21 as the criticism is fair, honest, and without common law  
22 malice, which, of course, would have to be proved here,  
23 in addition to actual malice. If there is a privilege  
24 based on public comment, it is not actionable.

25 I think there's -- there's no question that the

1 fitness of a judge for office is a matter of public  
2 concern. Whether you disagree or believe that the letter  
3 was poorly written, it's clear that the point of the  
4 letter was to let the judicial commission know. And in  
5 giving that letter to Greg DeLoach was to let him know  
6 that there were concerns by a citizen about Judge  
7 Coffey's fitness for office and what they felt were  
8 inserting herself into a criminal investigation involving  
9 her brother and her family.

10 So we believe that, if there is public comment  
11 privilege, then that claim is not actionable. So.

12 THE COURT: Okay.

13 MS. JOLLEY: We don't believe there's any other  
14 defamatory statements that are attributable to Breed or  
15 CSA. Frankly, there's been no testimony linking George  
16 Breed to any claim that Mr. Jolin was having an affair  
17 with Judge Coffey. There's been no testimony that would  
18 link such statements to Mr. Kelley or any other person  
19 having a position of control with CSA.

20 Insofar as there was testimony, which Officer Woods  
21 refuted, that Sergeant Woods had said anything about  
22 there being an affair going on, there is no evidence that  
23 he said such things in the scope of his employment or  
24 agent of the parent agency of CSA. And I don't think  
25 that there's any way those statements, even if they were

1 true, could be taken back to CSA.

2 Plaintiff, of course, because she's a public  
3 official, bears the burden of truth.

4 The proof of falsity, the standard of substantial  
5 truth, we don't believe that there's evidence in the  
6 record to show that plaintiff has proved that the letter  
7 was substantially false and all throughout.

8 We don't believe there's any evidence of special  
9 damages. I believe plaintiff is still attempting to say  
10 that she is presumed damages. However, under *New York*  
11 *Times versus Sullivan*, that presumption is in conflict  
12 with the federal rule. And she has not shown actual  
13 damages related to the proposed publication.

14 And the last ground, your Honor, is that there's no  
15 punitive damages. There's no clear and convincing  
16 evidence that defendants acted with constitutional actual  
17 malice. And the plaintiff cannot recover punitive  
18 damages, and her claim for punitive damages may not be  
19 sent to the jury.

20 THE COURT: Okay. Mr. Mathison.

21 MR. MATHISON: May it please the Court. I'm not  
22 sure that I got the entire list, but I gave you the most  
23 important part. And basically, the showing on  
24 constitutional actual malice, I think, not only exists,  
25 but it certainly rises above and beyond clear and

1 convincing.

2 Just to start with, there's no explanation, and my  
3 colleague has not addressed the fact that they said that  
4 she had not been fair or impartial in adjudicating cases,  
5 pretty clearly in the next to last paragraph of that  
6 letter. And they made it a clear-cut statement, and they  
7 have recanted or refuted that statement. Not a single  
8 person, not one person in the defendants' array of people  
9 who were offered for testimony has ever stated, other  
10 than what they put in their answers to Interrogatory 19,  
11 which is that Maureen Coffey has never, there's not one  
12 case in which they can find that she did anything that  
13 was not completely free of bias, free of partiality, and  
14 free of prejudice. And yet that terminology, that  
15 incarnation, is hammered home repeatedly in that letter.  
16 And at least in one instance, it's made on a factual  
17 basis that suggests that Mr. Breed knows of instances  
18 that have already occurred where she was biased,  
19 prejudiced and partial. That was an out and out, rank  
20 lie, with no explanation.

21 If anything, the plaintiff ought to be entitled to a  
22 directed verdict in its favor on that.

23 In addition, to prove constitutional actual malice,  
24 if we just allow the declarant to profess his own belief  
25 in that which he said, there would be no defamation law

1 left. And that's not what's required. Because under the  
2 law as published in *Anderson versus Augusta Chronicle*,  
3 the way it works is as follows:

4 *The Supreme Court has recognized that a plaintiff*  
5 *will rarely find success in proving that a statement is*  
6 *false from the mouth of the defendant himself.*

7 Well, I think that, if that were the standard,  
8 there's no question but what they've won the case.  
9 Because he would say it's true; he's said it's true.

10 However, the law is:

11 *Therefore, any direct or indirect evidence relevant*  
12 *to the plaintiff's state of -- relevant to the*  
13 *defendant's state of mind is admissible to prove actual*  
14 *malice.*

15 And it's clear from *Anderson* that this burden may be  
16 met by circumstantial evidence.

17 In addition, specifically, it says:

18 *The plaintiff may present confident circumstantial*  
19 *evidence of bad faith to establish actual malice, despite*  
20 *a defendant's contention the public [sic] was made with a*  
21 *belief the statements were true.*

22 Well, I think that we've come up with abundant  
23 evidence of actual malice. How does a person who,  
24 regardless of whether he actually saw or tried to  
25 reconcile the two incident reports that were prepared by

1 Jolin and for Jolin, how does he learn, by his own  
2 admission, within several days, according to Officer  
3 Woods, and certainly not later than a week after it  
4 occurred, that he does not have a positive identification  
5 of Otis Coffey out of Officer Jolin? How does that  
6 person turn around and one week later write to the  
7 Conduct Commission that he does have a positive  
8 identification?

9 He knew to a substantial certainty that was a lie  
10 when he wrote it, and he knew it not because he looked at  
11 necessarily at the incident reports, but he had talked to  
12 Jolin. And the evidence is clear that he knew it of his  
13 own mind. Yet, he wrote something that was  
14 demonstratively false.

15 What else bears directly on his state of mind?  
16 Within three weeks of having written this letter, a man  
17 confident that he was correct and he was telling the  
18 truth, conveyed his interest in his house to his wife, an  
19 interest that he'd own in common with her for sixteen and  
20 a half years.

21 Two questions, two pages before he was asked why he  
22 did that, he had testified unequivocally that he didn't  
23 have any medical problems. I mean, he just said it.  
24 *None, or I can't recall.* And then, all of the sudden,  
25 when it became clear what was in store in terms of the

1 questions that were being asked, he came back and said,  
2 well, he did it for medical reasons, not because he was  
3 afraid of the plaintiff's judgment.

4 I believe that on the record in this case, that's an  
5 indication that he's disegenuous. He never, ever  
6 expressed what the medical problem was. I believe that's  
7 evidence of constitutional actual malice.

8 In addition, starting just with the primary suspect  
9 aspect of each of the statements made about Ms. Coffey's  
10 brother. In 2004, there's ample evidence in the record  
11 that the person about whom most of these crimes were, and  
12 many of which were closed, was an offender by the name of  
13 John Thomas Levy. He withheld that information from Cary  
14 Kelley. He withheld it from the board of directors. He,  
15 under oath, didn't know who Mr. Levy was, and yet from  
16 the stand, Mr. McNeill, his officer, admitted that Mr.  
17 Breed himself had submitted the report on Thomas Levy,  
18 John Thomas Levy, and Mr. Breed himself had recommended  
19 he, McNeill, receive officer of the year as a result of  
20 his participating in his arrest.

21 This is a man who did not know of Mr. Levy's  
22 existence when examined under oath; had, in fact,  
23 participated directly in his arrest; and recommended one  
24 of his officers for a citation, if you will, by the  
25 Rotary Club, for his participation. That is, to my way

1 of thinking, evidence that goes directly to Mr. Breed's  
2 state of mind.

3 With respect to the 2008 primary suspect allegation,  
4 the person in charge of those investigations, Meredith  
5 Florencio, testified for the Bench unequivocally and  
6 unconditionally that Otis Coffey was never the primary  
7 suspect in any of them. Mr. Breed, in addition, never  
8 bothered to contact her. Investigation, or failure to  
9 investigate, not only is a lynchpin of the decision in  
10 *Elder*, but it's also a lynchpin in the decision in  
11 *Augusta Chronicle*, the *Anderson* case.

12 Because, what had happened there is, the man had  
13 said something that maybe had been misinterpreted by the  
14 newspaper reporter. It had to do with whether he had had  
15 military service or whether he was adjusting claims for  
16 an insurance company with respect to hurricane damage in  
17 North Carolina. Somehow the two got conflated, and there  
18 was many opportunities for the defendant to find out what  
19 had actually happened, because the gentleman from  
20 Clearwater, South Carolina had made an effort to tell  
21 him.

22 In this situation, there was interaction between  
23 Florencio before, during, and after the incident on May  
24 20th and their letter on June 6th. Had Mr. Breed ever  
25 once wanted to know the truth about the primary suspect,

1 all he had to do was ask her. So he had, in my view,  
2 what is a state of mind that was open to debate in terms  
3 of his honesty on the dates that the letter was written  
4 for that reason as well.

5 In addition, there's the question of impeding an  
6 investigation, obstructing an investigation. The  
7 suggestion is that, somehow, Ms. Coffey, in 2008, caused  
8 her brother to leave the jurisdiction. That just isn't  
9 true. There's no evidence here that would suggest she  
10 did that. The evidence is that her brother did move out  
11 of the house to alleviate strain on Ms. Ann Coffey, but  
12 he moved to Janesta Street, which if anything, is fewer  
13 than ten minutes away by car from where Ann Coffey lives  
14 on Gadwall inside Sea Pines.

15 It's an area from which, had he been the burglar  
16 that they were worried about, he could have continued to  
17 do what was going on in 2004, because, in 2004, although  
18 Mr. Breed didn't seem to know it, Mr. Coffey didn't live  
19 in Sea Pines. He lived somewhere else. The scourge of  
20 Sea Pines in 2004 did not live there. His return to the  
21 community was something that was made up. It was a  
22 fiction.

23 There is nothing here, to my way of thinking, that  
24 rises above someone being polite in terms of Ms. Coffey's  
25 interactions with Mr. Baird, her interactions with the

1 officers on the phone in 2004. I don't know about you,  
2 but if I get a call at 8:00 o'clock in the morning from  
3 my father, I'm going to answer the phone. I'm not going  
4 to have a filter on it that lets me know somehow  
5 scientifically that my father is, God rest his soul,  
6 standing next to deputies with my brother, although  
7 that's entirely possible, or it would have been at one  
8 point in time.

9 And you know, that's an innocent conversation. She  
10 asks what's going on. Officer Calendine told her what  
11 was going on. And nothing happened, other than the fact  
12 that her brother was arrested. All right? If that's a  
13 mortal sin, then I have no chance at heaven, your Honor.

14 Subsequently, in 2008, you've got a conversation  
15 between Ms. Coffey and a deputy who came to the house and  
16 was driving by on one of those saturation patrols, I  
17 guess. And what she said is, that, please stop harassing  
18 my mother. And he said that he didn't know what she was  
19 talking about. And he, evidently, went back and told Mr.  
20 Breed that this was somehow untoward. I don't understand  
21 how it could have been.

22 What happened was that Otis Coffey did move out of  
23 Sea Pines Plantation, but not far enough away that anyone  
24 would have been inhibited if they had wanted to talk to  
25 him. What we have here is, we have something that went

1 on for pretty close to five years, in which either Otis  
2 Coffey is such a skillful burglar and peeping Tom that  
3 nobody ever got enough evidence to actually interview  
4 him, let alone arrest him, or he simply didn't do any of  
5 this stuff. And the chase to find him was predicated by  
6 the color of his skin or by some antipathy that had been  
7 developed for him previously, as a result of something  
8 that had happened that hasn't come in the record.

9 I don't know when trespassing became essentially a  
10 warrant to assume that a person is doing all things wrong  
11 inside your plantation. Consequently, I believe that,  
12 without a doubt, there is sufficient evidence that Mr.  
13 Breed knew what he was saying was false at the time he  
14 said it, and that -- and/or that he was reckless in not  
15 knowing it was false. And therefore, we should go to the  
16 jury on constitutional actual malice. And since there's  
17 enough clear and convincing evidence on that, I think  
18 that the burden would also be met with respect to  
19 punitive damages, because, while the standards are not  
20 identical, they're sufficiently similar, that I don't --  
21 I wouldn't try and parse the difference between the two.

22 I believe Kelly next alleged that there was no  
23 causation; that somehow what Mr. Breed did is not  
24 responsible for the damages that Ms. Coffey said that she  
25 sustained. I don't think there's any doubt but what the

1 evidence is clear that she had a three-year contract that  
2 expired in September of 2011; that she was not given the  
3 opportunity to have a three-year contract again. It was  
4 not a negotiated item. She was told that she could have  
5 two, and no more. And effectively, that resulted in  
6 damage.

7 The damages, the value of the third year, I realize  
8 that my analogy to a professional baseball player may not  
9 have been a perfect pitch, but it is, in fact, true. And  
10 that's how one would measure the value of a contract.  
11 That is, in fact, how one would measure the value of the  
12 damages that come with a reduction in the contract term.

13 I believe that there's evidence that she had  
14 additional babysitting charges as a result of the  
15 headaches. I don't think that, if the headaches are  
16 attributable, as she did, to the fact that this was done  
17 to her, that you really need any causation beyond that.

18 She said she had a predisposition to have headaches  
19 beforehand, but they were different in kind and quality.  
20 She said that she was incapacitated by the headaches  
21 within two to three months of the occurrence of this  
22 event. I think it would be remarkable to have anyone  
23 parse the headaches in terms of what percentage of the  
24 headaches was caused by the fact that a judicial  
25 complaint was filed or the fact that one that was filed

1 was without authorization and in violation of  
2 confidentiality rules shared with her employer.

3 And while I'm at it, I think that the  
4 confidentiality conundrum that Mr. Breed seems to have,  
5 it's confidential when it suits his convenience and it's  
6 not. That's another example of having guilty knowledge,  
7 if you will, that would allow him to be considered  
8 convincingly guilty of constitutional actual malice.

9 With respect to her sessions with Dr. Geiger, I  
10 believe that there are clinical notes that reflect the  
11 catastrophe of this event, dating from Dr. Geiger's  
12 meeting with her on July 8th, and then again in August.  
13 That is, July 8th of 2008. And I think that that's  
14 sufficient cause, especially with her tying up the  
15 medical effects that she attributed as resulting from it,  
16 specifically, the headaches and the weight gain, to allow  
17 Ms. Coffey to prove special damages.

18 I am not proceeding on the assumption that I get to  
19 go to the jury on presumed malice alone. I honestly  
20 don't understand the cases making a distinction between  
21 what is a pressed defendant and what is a non-pressed  
22 defendant. But in an abundance of caution, I'm going to  
23 hope that this jury returns a verdict that has some  
24 special damages in it, other than just the damage to  
25 reputation.

1           As to reputation, I think that we've been impeded  
2 here by not being allowed to put in a number that could  
3 be supported as the plaintiff's reputation, but I don't  
4 have any case law that suggests that your ruling is  
5 inaccurate. I just don't believe that it's been  
6 encountered in this context before.

7           I believe there's plenty of causation. I believe  
8 the injury is, in fact, that which normally flows  
9 proximately for what happened to her, and I don't think  
10 the fact that stress causes this kind of secondary  
11 symptoms is unusual. I think that there's a good  
12 argument that could be made in this day and age, when  
13 everyone has access to the Internet, that it's something  
14 that probably does not require expert testimony. There  
15 was expert testimony, however.

16           As to the privileges, I think, arguably, there's a  
17 qualified privilege, but for the fact that Mr. Breed  
18 worked for Mr. Kelley, and both of them worked for the  
19 board of directors. All right? Something of this  
20 magnitude, I think, should have been submitted to someone  
21 on the board of directors in advance to get it approved.

22           If the board of directors was going to be  
23 responsible, I think they had the right to have some  
24 prior knowledge. They didn't have that right, and that's  
25 pretty obvious. Both Mr. Breed and Mr. Kelley said to

1       them it was operational, it was something they could do.  
2       They basically informed the board afterwards as a matter  
3       of courtesy. By the time the board found out, they  
4       couldn't do anything about it. They couldn't take back  
5       what had been said; they couldn't unfire a gun. They  
6       were dependant upon the situation in which they were  
7       placed.

8               I believe that, over the course of time, what was  
9       not a privileged publication became adopted by the board  
10       in terms of going along with it. If, in fact, the  
11       testimony is true and they never discussed it for the  
12       ensuing six months, until after the lawsuit was filed, I  
13       find that shocking. But I find that an acquiescence of  
14       what Mr. Breed did and what Mr. Kelley apparently  
15       tolerated, which would make it sufficient to be the act  
16       of the CSA board.

17               In addition, I think that the indemnity proved two  
18       things beyond a shadow of a doubt. One is that those  
19       people believed what Breed said was true. And the other  
20       is, that they ratified what he'd done by agreeing,  
21       essentially, to pay for it. I believe that those  
22       inferences can be drawn. I don't think that the  
23       dissemination to the board was privileged in its first  
24       instance. I don't think discussing it with Kelley was  
25       privileged either.

1           With respect to Ms. Jolley's argument that this was,  
2 you know, fair comment because my client is a public  
3 official, while I dispute that, under the *Goodwin versus*  
4 *Kennedy* decision, it's the law of this case, at least for  
5 now. And my view is that if you're going to make a  
6 public comment, you need to make it in public. There's  
7 no reason that he couldn't have just said something to  
8 the Town of Hilton Head town council.

9           The letter that you held out from Mr. Breed to Mr.  
10 Herring was actually a letter to the town council,  
11 written in 2004, complimenting him publicly to the town  
12 council on something Mr. Herring had done to accomodate  
13 Mr. Breed. Mr. Breed knew where to take any complaints  
14 he had if he was really interested in having public  
15 dialogue on the subject. He chose, instead, to take what  
16 was nominally a confidential document, under  
17 consideration by the Conduct on Judicial - the Commission  
18 on Judicial Conduct, and circulate that in the back  
19 channel to someone who he admits was his friend, to  
20 someone he admits he knew was, or thought he knew, was  
21 Maureen Coffey's direct report.

22           There's no question but what he did that in an  
23 effort to, if not get her fired, get her, in some way,  
24 impaired or impeded, in terms of what he thought she was  
25 doing in the case.

1           And that brings me to another point. Because Mr.  
2 Weir's memo never got in this case, there's a great deal  
3 of evidence that suggests that Sea Pines was just out  
4 there -- this is Sea Pines Security; Russell would be  
5 upset if I didn't say that -- Sea Pines Security, a  
6 division of Community Services Associates, was out there,  
7 I mean, pulling stakeouts, saturation patrols, deciding  
8 who it was that they were going to investigate.

9           The fact of the matter is, the investigation about  
10 which Mr. Breed professed such indignation in his letter,  
11 was not his. By law it couldn't be his. It wasn't Sea  
12 Pines Security's. It was the Beaufort County Sheriff's  
13 Office. And nobody from the Beaufort County Sheriff's  
14 Office has endorsed this. I mean, there's an effort to  
15 say that Mr. McSwain did in 2004, but nobody in the  
16 present tense has endorsed this.

17           I mean, we've put three officers on the stand. They  
18 don't say this is a good idea. They didn't say Otis  
19 Coffey was a suspect. And Officer Florencio said beyond  
20 the shadow of a doubt, Ms. Coffey never interfered in any  
21 investigation by the BCSO.

22           Public comment, I realize that it's something that  
23 stirs a lot of people's interest, but I think you have to  
24 make it in public for it to be considered a public  
25 comment. And I don't think sneaking around and giving

1 the letter to Mr. DeLoach would qualify.

2 Last -- and we concede that we have the burden of  
3 proving falsity. I think the burden has been  
4 established. Certainly, there's nothing in this record  
5 that would convince anyone that Ms. Coffey is other than  
6 unbiased and impartial when it comes to being a sitting  
7 judge. We think that the only other evidence doesn't  
8 really require expertise to figure out whether or not  
9 she's discharged whatever duties she would have. The  
10 question is, did she interfere with or obstruct  
11 something. And we think the evidence is clear that she  
12 didn't. We don't think there could be anything more  
13 clear that there is no obstruction, if, in point of fact,  
14 the person gets arrested while you're having a telephone  
15 conversation with your father. We don't think that's  
16 obstruction.

17 We don't think it's obstruction that the fact that  
18 they couldn't get a conviction; that's not the result of  
19 her obstruction.

20 THE COURT: Okay. Let me just --

21 MR. MATHISON: And for reasons that I have stated,  
22 we do think that there's evidence of special damages.  
23 And we're going to argue to the jury that they need to  
24 find special damages in order to make our verdict good.

25 I think I covered them all.

1 THE COURT: Do you need to respond or?

2 MS. JOLLEY: It's --

3 THE COURT: You all don't think you need to?

4 MS. JONES: It's all right, your Honor.

5 THE COURT: Okay. You may if you want, but. I can  
6 tell you, what I'm going to do is, just over the  
7 remaining 20 minutes of our lunch hour, I am going to  
8 just check some things as to the civil conspiracy cause  
9 of action.

10 As far as the defamation claim is concerned, I'm  
11 going to let it go to a jury. I mean, I do think there  
12 is evidence, both circumstantial and some direct, that  
13 this jury could find by clear and convincing evidence,  
14 actual malice, and specifically, a reckless disregard of  
15 the truth in the statements that are made.

16 As to the qualified privilege, I do think, arguably,  
17 it could be Breed to the CSA board was a qualified  
18 privilege. He could extend that. But the question of  
19 whether or not it was exceeded, I think, is a jury issue  
20 in this case, certainly.

21 As far as the fear of public comment is concerned, I  
22 just think there are facts in this case make it a jury  
23 issue, I really do. I think that's where this is all  
24 going.

25 I do think, arguably, they have put up some special

1 damages. Again, I think it's going to be up to the jury.  
2 Let's do this. Let's go ahead and break. I told the  
3 jury to come back at about quarter till. That doesn't  
4 give you all a whole lot of time.

5 MR. HALIO: Can we get a continuance?

6 THE COURT: Pardon?

7 MR. HALIO: Can we get a continuance till 2:00  
8 o'clock?

9 THE COURT: Till 2:00 o'clock? What time is Bill  
10 Howard coming?

11 MR. HALIO: He's supposed to be in the area now.

12 THE COURT: Okay.

13 MR. HALIO: I just want to have a chance to get  
14 something to eat.

15 THE COURT: Absolutely. Okay. All right. Yeah.  
16 I'll go ahead and give you all -- you can have until 2:00  
17 o'clock. Hopefully, the jury won't be here too early.  
18 And that will give me a little more time, as well.

19 In addition to Bill Howard, is there anyone else you  
20 anticipate putting up, or are you going to make that  
21 decision over lunch, or? I just want to anticipate for  
22 the rest of today, tomorrow, kind of where we're going.

23 And let me tell you this, and I will go ahead and  
24 just let you all know. My son graduates on Wednesday, at  
25 7:00 o'clock, at Hilton Head High School, and I missed