

RECEIVED

Sep 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
Circuit Court Judge

Appellate Case No.: 2022-001332

Andrew Pampu, ...Appellant-Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan..... Respondents-Appellants.

RECORD ON APPEAL
VOLUME VI

Thomas J. Rode (SC Bar #77480)
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf Charleston,
South Carolina 29401 (843) 937-8000

-and-

Kimberly C. Lau (Pro Hac Vice)
James E. Figliozzi (Pro Hac Vice)

***Attorneys for Appellant-Respondent
Andrew Pampu***

David L. Moore, Jr., (SC Bar #4050)
Turner Padget Graham & Laney, P.A. Post
Office Box 1509
Greenville, South Carolina 29602 (864)
552-4625

***Attorney for Respondents-Appellants
Colin J. Gahagan***

John M. Grantland (SC Bar #64158)
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

-and-

C. Mitchell Brown (SC Bar #012872)
Nelson Mullins Riley & Scarborough LLP
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

***Attorneys for Respondents-Appellants
Erin and David Wingo***

INDEX
VOLUME I

Order of August 22, 2022.....	1
Order of July 11, 2022.....	4
Order of November 16, 2021.....	14
Order of October 13, 2021.....	17
Order of January 10, 2018.....	26
Order of October 25, 2017.....	28
Complaint (June 15, 2017)	31
Answer of Defendants Erin Wingo and David Wingo (November 17, 2017)	72
Amended Answer of Defendants Erin Wingo and David Wingo (October 2, 2020)	89
Defendant Colin J. Gahagan’s Answer (October 6, 2020)	109
Defendants Erin Wingo and David Wingo’s Motion for Summary Judgment (July 2, 2021) ...	133
Motion for Summary Judgment by Colin J. Gahagan (July 13, 2021)	134
Defendants Erin Wingo and David Wingo’s Memorandum of Law in Support of Summary Judgment (September 22, 2021)	135
Exhibit A.....	156
Exhibit B.....	160
Exhibit C.....	163
Exhibit D.....	167
Exhibit E.....	177
Exhibit F.....	202
Exhibit G.....	207
Exhibit H.....	210

Exhibit I.....	295
Exhibit J.....	342
Exhibit K.....	344
Exhibit L.....	348
Exhibit M.....	353
Exhibit N.....	355
Exhibit O.....	359
Exhibit S.....	363
Exhibit T.....	390
Brief in Support of Motion for Summary Judgment on Behalf of Colin J. Gahagan (September 22, 2021), <i>together with all Exhibits except where duplicative</i>	404

VOLUME II

Plaintiff’s Memorandum of Law in Opposition to Defendants Erin Wingo and David Wingo’s Motion for Summary Judgment (September 30, 2021), <i>together with all Exhibits except where duplicative</i>	464
Exhibit A.....	499
Exhibit B.....	528
Exhibit C.....	549
Exhibit D.....	581
Exhibit E.....	591
Exhibit F.....	597
Exhibit G.....	607
Exhibit H.....	610
Exhibit I.....	638
Exhibit J.....	641

Exhibit K.....	663
Exhibit L.....	667
Exhibit M.....	723
Exhibit N.....	726
Exhibit O.....	788
Exhibit P.....	798
Exhibit Q.....	801
Exhibit R.....	812
Exhibit S.....	816
Plaintiff's Memorandum of Law in Opposition to Defendant Colin J. Gahagan's Motion for Summary Judgment (September 30, 2021).....	819
Defendants' Motion to Alter or Amend the Judgment and Memorandum in Support (October 22, 2021).....	847
Memorandum in Opposition to Defendants' Motion to Alter or Amend the Judgment (November 12, 2021).....	855

VOLUME III

Plaintiff's Motion in Limine to Exclude Testimony of Alesia Smith (March 14, 2022).....	865
Exhibit A.....	870
Exhibit B.....	1067
Plaintiff's Motion in Limine to Exclude Clemson's Title IX Decision or Plaintiff's Settlement with Clemson (March 14, 2022).....	1077
Exhibit A.....	1082
Post-Trial Motions of Colin J. Gahagan (March 30, 2022).....	1086

Defendant Wingo's Notice of Motion and Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Remittitur of Verdict (April 4, 2022).....	1094
Plaintiff's Memorandum in Opposition to Defendants' Motion for JNOV or Judgment as a Matter of Law or in the Alternative for a New Trial Absolute or, in the Alternative, for Remittitur of Verdict (April 14, 2022).....	1110
Plaintiff's Memorandum of Law in Opposition to Post-Trial Motions of Gahagan (April 14, 2022).....	1130
Defendant David Wingo's Notice of Motion and Motion to Reconsider Order Denying JNOV and/or New Trial (July 20, 2022).....	1148
Exhibit A.....	1152
Exhibit B.....	1196
Plaintiff's Memorandum in Opposition to Defendant David Wingo's Motion to Reconsider Order Denying JNOV and/or New Trial (August 12, 2022).....	1217
Exhibit 1.....	1222
Exhibit 2.....	1237
Andrew Pampu Notice of Appeal (September 21, 2022), <i>together with all Exhibits except where duplicative</i>	1239
ORDER FOR ADMISSION PRO HAC VICE OF JAMES E. FIGLIOZZI.....	1244
ORDER FOR ADMISSION PRO HAC VICE OF KIMBERLY C. LAU.....	1247
Colin J. Gahagan's Notice of Appeal (September 21, 2022).....	1249
Motion for Leave to Deposit Judgment Amount (May 15, 2023).....	1258
Pre-Trial Hearing Transcript of Record (March 18, 2022).....	1262

VOLUME IV

Transcript of Trial (March 21-25, 2022).....	1338
 <u>Andrew Pampu</u>	
Direct Examination by Ms. Lau.....	1427

Cross-examination by Ms. Porter.....	1470
Cross-examination by Mr. Moore.....	1587
Redirect examination by Ms. Lau.....	1610

Erin Wingo

Direct Examination by Ms. Lau.....	1625
Cross-examination by Ms. Porter.....	1699
Cross-examination by Mr. Moore.....	1725
Redirect examination by Ms. Lau.....	1740

VOLUME V

Trial Transcript (March 21-25, 2022) *Continued*

CJ Gahagan

Direct Examination by Ms. Lau.....	1755
Cross-examination by Mr. Grantland	1798
Cross-examination by Mr. Moore.....	1824
Redirect examination by Ms. Lau.....	1840

David Wingo

Direct Examination by Mr. Figliozi.....	1850
Cross-examination by Ms. Porter.....	1872
Redirect examination by Mr. Figliozi.....	1882

Dr. Harrison Pope

Direct Examination by Mr. Figliozi.....	1893
Cross-examination by Ms. Grantland	1909
Cross-examination by Mr. Moore.....	1924

Redirect examination by Mr. Figliozi.....	1927
---	------

Steven Shedlin

Direct Examination by Mr. Figliozi.....	1930
---	------

Cross-examination by Ms. Porter	1959
---------------------------------------	------

Cross-examination by Mr. Moore.....	1982
-------------------------------------	------

Redirect examination by Mr. Figliozi.....	1999
---	------

Rachel Corbin

Direct Examination by Ms. Lau.....	2006
------------------------------------	------

Cross-examination by Ms. Porter.....	2031
--------------------------------------	------

Redirect examination by Ms. Lau.....	2044
--------------------------------------	------

Jami Hafner

Direct Examination by Mr. Figliozi.....	2048
---	------

Cross-examination by Mr. Grantland.	2055
--	------

Redirect examination by Mr. Figliozi.....	2065
---	------

Ben Zboray

Direct Examination by Mr. Figliozi.....	2072
---	------

Cross-examination by Mr. Grantland.	2076
--	------

Leslie Snider

Direct Examination by Mr. Figliozi.....	2080
---	------

Cross-examination by Ms. Porter.	2087
---------------------------------------	------

Alesia Smith

Proffer Examination by Ms. Porter i.....	2095
--	------

Proffer examination by Ms. Moore.....	2120
---------------------------------------	------

Olivia Pescatore

Direct Examination by Mr. Grantland.....	2155
Cross-examination by Ms. Lau.....	2170
Redirect examination by Mr. Grantland.....	2180

VOLUME VI

Trial Transcript (March 21-25, 2022) *Continued*

Jonathan Stoddart

Direct Examination by Ms. Porter.....	2181
Cross-examination by Mr. Figliozzi	2198
Redirect examination by Ms. Porter.....	2202
Post-Trial Hearing Transcript (May 4, 2022)	2318
Andrew Pampu Deposition Excerpts (January 16, 2020).....	2393
Pampu deposition exhibits <i>except where duplicative</i>	2399

VOLUME VII

Alesia Smith Deposition Excerpts (May 22, 2020).....	2403
Smith deposition exhibits <i>except where duplicative</i>	2406

VOLUME VIII

Smith deposition exhibits <i>except where duplicative Continued</i>	2903
David Wingo Deposition Excerpts (February 25, 2021)	3029
Wingo deposition exhibits.....	3033
Defendants' Trial Exhibits:	
2.....	3033
5.....	3036
6.....	3038

10.....	3040
12.....	3067
13.....	3075
14.....	3077
15.....	3080
16.....	3084
17.....	3092
18.....	3093
19.....	3096
20.....	3108
21.....	3115

Plaintiff's Trial Exhibits

1.....	3116
4.....	3118
5.....	3122
6.....	3124
7.....	3125
10.....	3130
11.....	3131
12.....	3133
13.....	3134
14.....	3135
15.....	3136

16.....	3137
17.....	3140
18.....	3142
Dental School Application.....	3147
Clemson University Settlement Agreement (July 1, 2019)	3190
Certification of Counsel	3194

1 MR. GRANTLAND: Thank you, Olivia. I'm going
2 to log you off. Thank you.

3 (Witness excused.)

4 THE COURT: All right. Are you ready to call
5 your next witness?

6 MS. PORTER: Yes, sir. The defense calls
7 Jonathan Stoddart to the stand, please.

8 THE CLERK: If you would, raise your right
9 hand.

10 THE WITNESS: (Complying.)

11 THE CLERK: Do you solemnly swear that the
12 testimony you're about to give in this case to be
13 the truth, the whole truth, and nothing but the
14 truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: All right. State your name for the
17 record.

18 THE WITNESS: Jonathan Stoddart.

19 JONATHAN STODDART,
20 having been produced and first duly sworn as a
21 witness on behalf of the Defendant, then testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MS. PORTER:

25 Q. Afternoon, Mr. Stoddart. How are you?

1 A. I'm doing alright.

2 Q. Great. Will you please tell this jury where
3 you're from?

4 A. I'm from Cumberland, Rhode Island.

5 Q. And are you currently living in Rhode Island?

6 A. I am. Yes.

7 Q. Okay. Where did you go college?

8 A. Clemson University.

9 Q. And when did you begin your education at
10 Clemson University?

11 A. It was August of 2014.

12 Q. August of 2014?

13 A. Yes.

14 Q. And when did you graduate?

15 A. May of 2019.

16 Q. 2019. At some point, did you become a pledge
17 member of the Phi Delta Theta fraternity?

18 A. I did. Yes.

19 Q. All right. And were you pledge brothers with
20 Andrew Pampu?

21 A. Yes.

22 Q. All right. Do you recall October 24, 2015?

23 A. Assuming that's the date of the occurrence,
24 yes.

25 Q. Yes. Do you have an independent recollection

1 of that day?

2 A. Sorry. Could you repeat the question?

3 Q. Sorry. I was walking away. I apologize.

4 A. It's okay.

5 Q. Do you have an independent recollection of that
6 day?

7 A. I do. Yes.

8 Q. Okay. Were you a sober driver for the party
9 that was held at the compound on October 24, 2015?

10 A. I was. Yes.

11 Q. All right. Did you have a car while you were
12 at Clemson University in fall of 2015?

13 A. I did. That's not the car that I drove that
14 night though.

15 Q. All right. Why didn't you drive your car that
16 night?

17 A. I believe at that point in the term, my car had
18 broken down and needed a drive belt replaced. So I
19 borrow -- I reached out to my pledge brothers and
20 asked for a car to borrow and was provided with
21 Drew's Buick Verano.

22 Q. Okay. And I'm glad you brought that up. How
23 did y'all communicate as a pledge class?

24 A. Mostly via our pledge class GroupMe, which is
25 a -- essentially, like a group chat and also

1 individually via text message.

2 Q. Okay. And who had access to your pledge class
3 group chat on GroupMe?

4 A. Every pledge, so every member of the pledge
5 class that was a pledge at the time.

6 Q. All right. And do you recall how many pledge
7 brothers you have?

8 A. At the time of the incident, maybe around 34.

9 Q. All right. Can you please briefly describe to
10 the jury what being a pledge -- a sober driver for a
11 party entailed?

12 A. Yes. So as a sober driver for a party, you're
13 expected to have your phone on and to answer calls
14 from members of the fraternity and other students
15 who attend the party and need a ride there or home
16 from there. And you're active as a driver answering
17 calls from typically around 9:00 p.m. to 2:00 a.m.

18 Q. Okay. Do you recall -- well, let me ask this:
19 Other than being -- on the night of October 24,
20 2015, had you ever met Erin Wingo?

21 A. Not to my knowledge.

22 Q. After October 24, 2015, have you ever hung out
23 with or spent any time socially with Erin Wingo?

24 A. Not to my knowledge.

25 Q. Do -- did you know Haley Sinclair, Rachel

1 Corbin, or Olivia Pescatore on October 24, 2015?

2 A. I believe I had met Rachel Corbin. Can I ask
3 is that -- or was that Ben Zboray's girlfriend? Do
4 you know?

5 Q. Unfortunately, I can't testify ---

6 A. Okay.

7 Q. --- so to what I know because I wasn't there,
8 but you believe you may have met Rachel based on her
9 relationship with Ben, if that's correct girl?

10 A. I believe so, yes.

11 Q. Okay. Did you know them?

12 A. Not personally, no.

13 Q. All right. Could you pick them out of a line
14 up?

15 A. Back then, no. Definitely not.

16 Q. Okay. At around 1:00 a.m., did you receive a
17 call to from Ben Zboray to come pick up some people
18 and take them home?

19 A. I did. Yes.

20 Q. All right. And where did you drive up when you
21 went to go pick them up?

22 A. I had parked in the driveway at the compound
23 right in front of the left of the main house on
24 Wigington Street.

25 Q. Okay. Do you recall who got into your car?

1 A. Could you ---

2 Q. Who did you pick up?

3 A. I assume from context later on, I did not know
4 who I was picking up at the moment, but later on
5 when all this information arose, I assumed that Erin
6 Wingo was one of the people I picked up.

7 Q. Okay. Well, let's break that down then. Ben
8 Zboray was one of your pledge brothers, correct?

9 A. That's correct.

10 Q. All right. And you believe he was dating
11 Rachel Corbin at the time; is that correct?

12 A. Yes.

13 Q. All right. And so did Ben bring a group of
14 four girls to get into your vehicle or the vehicle
15 you were driving that night?

16 A. I would like to say it was four, yes. It was
17 at least three.

18 Q. Okay. And did -- who got in the front seat if
19 you recall?

20 A. I don't recall. Yeah, I don't recall.

21 Q. All right. Let's look at your deposition and
22 see if that refreshes your memory. I'm going to
23 give you your deposition, page 38. I'm going to let
24 you read it and see if that refreshes your memory.
25 I asked you a question on line 11. And then if you

1 want to refresh your memory. Okay.

2 A. Reading on that page?

3 Q. Yep. On page 38.

4 A. (Reading.) Okay.

5 Q. Does that refresh your memory?

6 A. Yes. Yes.

7 Q. Okay. Do you recall who got in your car?

8 A. Yes. It was Rachel Corbin and Ben Zboray in
9 the front seat, and I believe there was three girls
10 in the back seat that I did not know at the time.

11 Q. All right. Do you have any reason to believe
12 today that that wasn't Haley Sinclair, Olivia
13 Pescatore, and Erin Wingo?

14 A. In the front seat?

15 Q. In the back seat.

16 A. Oh, no.

17 Q. Okay. What do you recall about where you
18 dropped those three girls off?

19 A. It was -- I remember it exactly. It was at
20 the, for lack of a better explanation, like the
21 Wendy's side of the horseshoe, the corner up near I
22 believe it's Byrnes and Manning, the two high rise
23 dorms.

24 Q. Okay. And I'm sorry. Let me back up. When
25 you arrived at the compound and they -- do you

1 recall their condition walking towards the car and
2 getting into the car?

3 A. I do. Yes.

4 Q. All right. Please tell the jury what you
5 observed?

6 A. I had observed one of the girls was crying
7 hysterically. I didn't particularly know anything
8 out of the ordinary in terms of drunkenness, besides
9 the crying hysterically, but, you know, I don't
10 recall if anyone had stumbled or fallen or vomited
11 or anything like that before the ride.

12 Q. Okay. And when you got to the horse shoe and
13 stopped, do you recall anybody vomiting?

14 A. I do. Yes.

15 Q. Do you recall who vomited?

16 A. No. I just remember it was someone that had
17 gotten out the rear right door of the vehicle.

18 Q. Why do you recall that?

19 A. I had to clean it up.

20 Q. All right. Did you clean it up after that
21 ride?

22 A. Yes. I -- I drove back to, I believe, my
23 apartment and grabbed some, like, Lysol wipes and
24 wiped the bit up that was on the floor of the
25 vehicle.

1 Q. Okay. When you dropped them off at Manning,
2 did you notice anything as they exited the vehicle?

3 A. Not that I recall.

4 Q. Okay. Do you recall watching them walk to the
5 dorm or do you -- or did you just kind of go --
6 well, let me ask this: How many people got out at
7 Manning dorm?

8 A. I believe it was three.

9 Q. Okay. So you took Ben and Rachel somewhere
10 else?

11 A. Yes. To their apartment, which is, I believe,
12 north of downtown Clemson.

13 Q. Okay. So three people got out, the three girls
14 that you're really not clear who they were, got out
15 of the car at Manning dorm?

16 A. Yes. That correct.

17 Q. All right. Did you observe them walk to the
18 front door?

19 A. I don't think for the entirety of the walk, but
20 I -- I believe at least a portion of it, maybe about
21 half of the walk there.

22 Q. Okay. Do you recall anything specifically
23 about their demeanor as they were walking towards
24 the door?

25 A. Not particularly, no.

1 Q. Okay. Just that somebody threw up on -- in the
2 car on the way out the door?

3 A. Yes. That's correct. Before like -- I believe
4 it was closer to the Wendy's and then I pulled up
5 further.

6 Q. Okay. So they threw up twice, like once in the
7 car or outside the car?

8 A. No. It was on -- on the way out. Well, they
9 had opened the door as we were pulling up, so I
10 stopped immediately and allowed them to kind get out
11 and throw up. And just a small portion of it had
12 gotten on the floor where the door opens.

13 Q. Okay. Great. All right. Now, do you recall
14 any discussion during the car ride between the
15 parties that were there?

16 A. Only from immediately when they got in. I
17 recall hearing one of the girls in the back, which I
18 can only assume would be Erin Wingo, saying
19 repeatedly, "CJ doesn't love me." That's the one
20 specific phrase that I vividly remember.

21 Q. Okay. Was she -- is that the same person that
22 was hysterically crying?

23 A. Yes.

24 Q. Okay. All right. After dropping off these
25 girls at Manning dorm and then dropping Ben Zboray

1 and Rachel Corbin off at his apartment, what did you
2 do?

3 A. I think that might've been the last or second
4 to last ride I gave of the night. I remember
5 parking Drew's car that I was borrowing in one of
6 the lots near the Calhoun area of campus. And I
7 don't particularly remember where I went after that.
8 I may have stayed the night at my girlfriend's
9 apartment on campus.

10 Q. At some point that evening, did you text with
11 Drew Pampu.

12 A. Yes.

13 Q. All right. I'm going to hand you what has been
14 marked as Defense Exhibit 22. Do you recognize
15 this?

16 A. I do. Yes.

17 Q. And what is that?

18 A. It's a screen shot of the text conversation I
19 had with Andrew from the late hours of the night of
20 the incident into the afternoon the following day.

21 Q. Now, during this litigation, I subpoenaed you
22 to testify in a deposition on May the 1st, 2020; is
23 that correct?

24 A. Yes. That's correct.

25 Q. And as a part of that subpoena, did I request

1 that you provide me with any communications with the
2 plaintiff regarding this evening?

3 A. You did. Yes.

4 Q. And did you provide this text message to me as
5 a response to that subpoena?

6 A. I did. Yes.

7 MS. PORTER: Will you -- can you tell me on
8 this subpoena -- on this text message -- well, at
9 this time, Your Honor, I'd like enter Defendant's
10 Exhibit 22 into evidence.

11 THE COURT: Any objection?

12 MS. LAU: No objection.

13 THE COURT: All right. In without objection.

14 (Defendant's Exhibit No. 22 was received into
15 evidence.)

16 BY MS. PORTER:

17 Q. All right. Who is in white? Who -- who is
18 authoring those white messages?

19 A. That's Drew.

20 Q. All right. And who is in blue?

21 A. That is me.

22 Q. All right. It's a little bit hard to read, but
23 at 2:56 a.m., I'm just going to read what Drew wrote
24 to you, and then if you will read your responses.

25 Okay?

1 All right. "Yo, bro, after 3:00 a.m., you're
2 good. Just keep my car at the lofts and we'll
3 figure it out tomorrow. Thanks for driving, man."

4 A. I said, "Word. Car is by Calhoun."

5 THE COURT: Speak up.

6 THE WITNESS: I said, "Word. Car is by
7 Calhoun."

8 BY MS. PORTER:

9 Q. "Word, dude. Just keep the keys and make sure
10 it's locked up. I'll figure it out tomorrow."

11 A. "I got you. Should I bother waking up early?"

12 Q. "I-d-k." What -- what does that mean?

13 A. I don't know.

14 Q. Okay. "Dude, I don't think so. If you can,
15 yea, but honestly. Can you -- I'm
16 s-o-r-n-e-j-d-c-u-e-k-c up." Is that an acronym for
17 something?

18 A. I honestly have no idea what that was intended
19 to say.

20 Q. Okay. "E-m-u." Is that an acronym or
21 anything?

22 A. No.

23 Q. "If I wake up, f-m-e-j-f-m-i, it'll be a
24 miracle."

25 A. It's not an acronym.

1 Q. Not an acronym. Okay. And what -- what did
2 you respond?

3 A. I said, "L-m-f-a-o," which is an acronym for
4 laughing my effing behind off. I said, "Aight, man.
5 I hope you killed it on your birthday." "Aight"
6 meaning like alright. And "killed it on your
7 birthday" means like had a good time basically.

8 Q. Okay. And then he responds, and I -- I'm not
9 going to say that word again. I'm sorry. "I effed
10 this chick by the garbage thing behind Chipotle, so
11 I think I definitely did with that alone. Thanks,
12 my man. Thanks for contributing for tonight in a
13 huge way." And what was your response?

14 A. I said, "Are you effing serious? Ha-ha-ha."
15 Several ha-has.

16 Q. All right. And then he responds, "Yes. Need a
17 new condom for my pledge pack. She wouldn't let me
18 jerk use no condom, so it was like half an hour.
19 Ha-ha. Way to blacked out to care about getting
20 fucked by 12." Did you understand what that meant?

21 A. Yes, I did.

22 Q. All right. What does ---

23 A. Mostly.

24 Q. --- the 12 reference?

25 A. Twelve is like a nickname for police.

1 Q. Okay. And then you respond?

2 A. I said, "That is legendary."

3 Q. And then she says, "I definitely agree with
4 that. I eke, man. I'm about a cash out because I'm
5 falling over my futon. Thanks again, homey."

6 And then next morning, y'all continue to text
7 about getting the car back?

8 A. Yes. That's correct.

9 Q. All right. Now, did you take a screen shot of
10 that text message and place it into the pledge class
11 GroupMe?

12 A. I did. Yes.

13 Q. Okay. I'm going to show you what has been
14 previously entered into evidence as Defendant's
15 Exhibit 2. Do you recognize this as the screen
16 shot?

17 A. Yes. That is correct.

18 Q. All right. So you took a screen shot of this
19 conversation and put it into the GroupMe with the 34
20 pledge brothers; is that correct?

21 A. Yes. That's correct.

22 Q. Okay. You did that without talking to the
23 plaintiff, correct?

24 A. Yes. That's correct.

25 Q. All right. Did the plaintiff ever call you and

1 say what the hell, man? Why would do that?

2 A. No. He did not.

3 Q. Did he ever call you and say take that down?

4 A. No. He did not.

5 Q. Did he ever call and say I can't believe you
6 did that to me, man. That's so disrespectful to
7 women?

8 A. No. That's not -- no. He did not.

9 Q. Was there any reaction from him in a negative
10 way whatsoever?

11 A. No. I don't recall any reaction.

12 Q. All right. Do you recall a message placed in
13 the same GroupMe written -- authored by CJ Gahagan?

14 A. Not specifically, no.

15 Q. All right. I'm going to show you what has been
16 marked or entered into evidence. Well -- all right.
17 I -- I can't find my small one, but it's in
18 evidence. Do you recall that GroupMe message?

19 A. I do now, yes.

20 Q. All right. Who -- did you recall seeing that
21 GroupMe the following day, correct, Monday the 26th?

22 A. I can't recall when I saw it, but it was soon
23 after.

24 Q. Okay. By Mr. Gahagan?

25 A. Yes.

1 Q. And he is standing up about respecting women in
2 your particular pledge class; is that correct?

3 A. Yes. That's correct.

4 MS. PORTER: Okay. Give me just one second.

5 Beg the Court's indulgence. Thank you,
6 Mr. Stoddart. Please answer any questions the other
7 attorneys have.

8 BY MR. MOORE:

9 Q. Just a couple. I'm going to follow-up on the
10 last one with regard to the text that came from CJ,
11 and I want you to read for us what CJ put in his
12 text to the GroupMe.

13 A. It says, "Guys, I feel this should go without
14 saying, but we need respect girls. We all complain
15 about what older brothers do to scare away girls and
16 failing to realize some of the shit that we do
17 ourselves. I've heard things from multiple girls
18 about how they are not happy with the way they are
19 treated at the compound. We all talk this big talk
20 about how we want to make this fraternity better and
21 disrespecting just one girl could make that all
22 impossible. I think it's sad that I have to say
23 this in the first place."

24 Q. Now, what's the date on that?

25 A. The date is October 26, 2015, at 2:47 p.m.

1 Q. Okay. Let me turn over to the next page.

2 THE COURT: What's the exhibit number?

3 MR. MOORE: It is Exhibit No. 18. I'm sorry.

4 BY MR. MOORE:

5 Q. And there's several responses, but all I want
6 you to do is read out what the response from Drew
7 Pampu would've been?

8 A. It tags CJ and it says, "Fuck off, dude. Girls
9 are fine. The next time, just don't let your girl
10 hook up with your pledge brothers."

11 MR. MOORE: Okay. Thank you. Judge, I may
12 have given the wrong exhibit number. It's Exhibit
13 6. I apologize.

14 CROSS-EXAMINATION

15 BY MR. FIGLIOZZI:

16 Q. Good afternoon, Mr. Stoddart. My name is James
17 Figliozzi. I'm an attorney for Andrew Pampu. I
18 just have a couple of questions for you based on
19 question you just answered defense counsel.

20 You testified that Haley, Olivia, and Erin were
21 in the backseat of the car. Do you remember that?

22 A. Not specifically naming them, but I guess so,
23 yes.

24 Q. Okay. And Erin was in the middle seat in the
25 back on the drive from the compound to the dorm,

1 right?

2 A. I was fairly confident, yes.

3 Q. Okay. And your testimony was that the girl who
4 was sitting on the right-hand passenger side was the
5 individual who threw up on the ride home, right?

6 MS. PORTER: Can we just clarify if he's
7 talking about testimony today or testimony in his
8 deposition.

9 MR. FIGLIOZZI: Testimony he just gave.

10 THE COURT: I think he -- he said that.

11 MS. PORTER: I'm sorry. I was asking for
12 clarification.

13 THE WITNESS: I didn't intend to say that it
14 was specifically sitting in the right that threw up,
15 but that is where the person exited the vehicle,
16 yes.

17 BY MR. FIGLIOZZI:

18 Q. Bear with me for one second. And you testified
19 that Ms. Wingo was saying, "CJ doesn't love me,"
20 right?

21 A. Yes. Correct.

22 Q. And while you were driving her from the
23 compound to the horseshoe, Ms. Wingo made no mention
24 of Andrew Pampu, right?

25 A. Not to my recollection, no.

1 Q. And during that car ride, Ms. Wingo was aware
2 of her surroundings, correct?

3 A. I could assume, but I can't conclude that.

4 MR. FIGLIOZZI: I'm going to show you your
5 deposition transcript. May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. FIGLIOZZI:

8 Q. I'll give you the page number in a second.
9 Would you please turn to page 76 of the transcript,
10 and please review lines 18 through 21.

11 A. Would you like me to read it?

12 Q. Just read it to yourself and let me know when
13 you're done.

14 A. (Complying.) Okay.

15 Q. AND does reading that refresh your memory?

16 A. Yes.

17 Q. Okay. So during the car ride from the compound
18 to Manning, Ms. Wingo was aware of her surroundings,
19 right?

20 A. I can't conclude that, but what I said that was
21 I did not observe her to be unaware of them.

22 Q. Okay. And she was not slurring her words
23 during the car ride, correct?

24 A. Not that I recall.

25 Q. And she was in control of her motor functions

1 during the car ride, correct?

2 A. It would appear so.

3 Q. Okay. And she did not vomit during the car
4 ride, correct?

5 A. I -- I'm not sure of that.

6 Q. Okay. Well, can you go to -- back to page 76
7 of your deposition transcript and please review
8 lines 15 through 17 to yourself and let me know when
9 you're done.

10 A. (Complying.) I'm done.

11 Q. Okay. And does reviewing that testimony that
12 you provided at your deposition refresh your memory?

13 A. Yes.

14 Q. So Ms. Wingo did not throw up during the car
15 ride from the compound to Manning, correct?

16 A. I can't conclude that, but I did not observe
17 it.

18 Q. Okay. And Ms. Porter asked you some questions
19 about the GroupMe message that you had sent to the
20 pledge class. Do you recall those -- that testimony
21 you provided?

22 A. In the deposition?

23 Q. No, today. Here today?

24 A. Oh, yes.

25 Q. Okay. And just confirm, Mr. Pampu did not tell

1 you to put that text message in the GroupMe chat,
2 right?

3 A. No.

4 Q. Okay. And you didn't ask Mr. Pampu for
5 permission before you put that text message in the
6 GroupMe chat, right?

7 A. No. I did not.

8 MR. FIGLIOZZI: No further questions.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. PORTER:

12 Q. As a result of putting that in the GroupMe, did
13 the plaintiff sue you for defamation?

14 A. No.

15 MS. PORTER: Thank you.

16 THE COURT: You may step down.

17 (Witness excused.)

18 MS. PORTER: Your Honor, at this time I'd ask
19 that Mr. Stoddart be released from his subpoena.

20 THE COURT: Any objection?

21 MS. LAU: No, Your Honor.

22 THE COURT: All right. You may be released.

23 MS. PORTER: Defense of Erin and Dave Wingo
24 rests.

25 THE COURT: Okay.

1 MR. MOORE: I'm not going to add anything to
2 it.

3 THE COURT: All right. Do y'all need -- do
4 y'all need to take a few minutes to decide if you
5 want to do a reply?

6 MS. LAU: No, Your Honor.

7 THE COURT: All right. So that's all the
8 evidence; all the testimony. Well, see I told you.
9 I said we were looking good.

10 So, ladies and gentlemen, that concludes all
11 the evidence that you will have to make a
12 determination in this case. Now, there's a lot of
13 stuff that we still have to go over before I can
14 present it to you, so we're going to have our
15 early -- and I promised you we would be late today
16 and I'm letting you go early.

17 So let just kind of tell you what we'll be
18 doing tomorrow. Tomorrow will be the final phase of
19 the trial. And that will be -- we'll start off with
20 closing statements by the attorneys. And then once
21 they complete their arguments, I will charge you on
22 the law. And then at that point, you will go back
23 into the jury room with the evidence that has been
24 presented and you will at that point determine what
25 the verdict should be and begin your deliberations.

1 So at this point, once again, it's not proper
2 to be discussing this case yet because you hadn't
3 heard the law and that's important. So do not
4 discuss the case among yourselves or anybody else.
5 Don't do any type of research. All of the issues
6 that you'll need, all of the law, all the
7 information that you will need, you've gotten in
8 this courtroom and I will be giving you tomorrow.
9 Don't pay attention to any media coverage. And,
10 finally, if anybody contacts you other than somebody
11 from the clerk's office, please let the bailiffs
12 know.

13 Just so we can make sure everything's ready to
14 go when you get here in the morning, I'm going to
15 ask that you come in -- be here at ten o'clock. And
16 like I said, at that point closing arguments and
17 then begin deliberation after that point. So at
18 this point, you're free to go and we will see you in
19 the morning at ten o'clock.

20 (At 3:15 p.m., jury was dismissed for the day.)

21 MR. MOORE: Just so the record is clear with
22 regard to our motion for directed verdict, I know
23 what your ruling is going to be with regard to
24 collateral estoppel. I wanted to make sure that it
25 was put on the record that we had moved for a

1 dismissal in this matter based upon that defense.

2 MS. PORTER: We would join in that.

3 THE COURT: Let me check with -- I have an
4 officer here I need to deal with. I printed that.
5 I'm going to -- then I'll rehear any motions, so
6 let's talk about five minutes.

7 (From 3:16 to 3:36 p.m., recess.)

8 THE COURT: Thanks, y'all. The court reporter
9 and I think y'all threw out all kinds of numbers and
10 apparently there's an issue with it being
11 introduced.

12 MS. PORTER: We introduced Number 6.

13 THE COURT: She's got it marked as ID, plus
14 it's got -- that particular copy has lots of stuff I
15 know I ruled was inadmissible.

16 MS. PORTER: Well, we agreed per the redactions
17 and we just entered in the first -- the top page and
18 the -- and the plaintiff's comment is what we agreed
19 on.

20 THE COURT: Right. I think the document that's
21 in evidence or that was marked there has all of it
22 on there.

23 MS. PORTER: Yes, sir. Because we haven't done
24 any of the redactions yet. All of the
25 plaintiff's -- and, in addition, all of the

1 plaintiff's exhibits haven't been redacted yet
2 either.

3 THE COURT: Oh, I thought that y'all did that
4 yesterday.

5 MS. PORTER: No, sir.

6 THE COURT: Is there any issue then with
7 defendant's exhibit? Let me -- let me see this.
8 All right. Is there any issue with this document
9 here being into evidence as Defendant's Exhibit 6?
10 Y'all look at it.

11 MR. MOORE: And what's that?

12 THE COURT: And then y'all called it something
13 else.

14 MS. PORTER: It's the GroupMe that CJ authored.

15 THE COURT: Well, I'm just -- no. I'm not --
16 I'm just asking.

17 MS. PORTER: I'm say what it is.

18 THE COURT: All right. Show them and make
19 sure. I just want to make sure the record.

20 MS. LAU: So the message from CJ himself and I
21 think it was the message from Mr. Pampu is fine, but
22 the rest of it all ---

23 MS. PORTER: Right. We -- we agreed to redact.
24 We just haven't physically ---

25 THE COURT: Well, it's just the top page.

1 MR. MOORE: No, no, no. It's this page and
2 this particular one going to ---

3 THE COURT: So one's marked as Defendant's
4 Exhibit 6 is ID. It should be Defendant's Exhibit
5 6 ---

6 MR. MOORE: Correct.

7 THE COURT: --- which will contain the first
8 page and the page 2 where it states CJ Gahagan; is
9 that correct?

10 (Affirmative responses.)

11 THE COURT: All right. That's just a
12 housekeeping matter. I just want to make sure we --
13 it is in with redactions.

14 All right. Let's get back to our motions. All
15 right. Okay. Well, one of them I took under
16 advisement. Let's just start with that one. I took
17 under advisement.

18 I have read the Paradise case which makes for
19 interesting ruling because every justice had to
20 weigh in on it. And I'm not sure you exactly argued
21 this, but okay. Under Paradise, they have -- they
22 kind of went -- they went back and said, "Oh, by the
23 way, all of our appellate courts have been messing
24 this cause of action up for many years and it's our
25 time now to say exactly what the elements are. And

1 then they can't totally agree on stuff, but under --
2 under Paradise, which is 2021, South Carolina
3 Supreme Court, requires a combination or agreement
4 of two or more persons to commit an unlawful act or
5 lawful act by unlawful means, together with the
6 commission of an overt act in furtherance of the
7 agreement and damages approximately resulting to the
8 plaintiff. So those are your -- that's actually the
9 elements as they stand as we sit here today.

10 Ms. Lau, again, I don't think you particularly
11 argued this, but what are the unlawful acts or
12 lawful acts by unlawful means that are in evidence?

13 MS. LAU: I'm sorry, Your Honor. I don't have
14 that case in front of me, but overt acts and I did
15 not hear illegal acts, so am I -- thank you.

16 THE COURT: I'll let you have the case.

17 MS. LAU: Sure.

18 THE COURT: I'm tired of looking at it. And
19 this was a big deal when it -- I mean, it was --
20 when it came out, it was like -- the pink at the top
21 is the actual elements that they kind of came up
22 with.

23 MS. LAU: Okay. Thank you.

24 THE COURT: My question to you is: What --
25 what evidence of unlawful acts or unlawful means?

1 MS. LAU: Well, as I understand it and we're
2 not arguing that there wasn't necessarily an
3 unlawful act by the defendants, but there were
4 certainly potentially lawful acts by unlawful means
5 certainly to -- to work together toward a common
6 plan of having someone kicked out of the university,
7 and it's been well established that a contract is --
8 is between a student and a University. That's --
9 the tortious interference with contract and at also
10 with the fraternity because the fraternity, you
11 can't be fraternity member if you're not -- if
12 you're no longer a student at the university
13 anymore. It's tethered to the fact that you are a
14 student there. There are no nonstudent fraternity
15 members there.

16 So, certainly, we believe that there is -- that
17 element has been met. To cause a -- to work
18 together to cause a tort to somebody else is
19 unlawful means, or if you want to consider it an
20 unlawful act.

21 THE COURT: Okay. Mr. Moore.

22 MR. MOORE: Your question has to do with the
23 second element under ---

24 THE COURT: I mean, I'm going to talk about all
25 of them, but ---

1 MR. MOORE: Right now we're talking about ---

2 THE COURT: That is different from the one that
3 I was actually looking at on the one that was before
4 this case came out. It just with intent.

5 MR. MOORE: My understanding of Paradise
6 basically is we could get basically summary judgment
7 if they failed to plead to special damages. That's
8 no longer the law based on Paradise.

9 THE COURT: Well, before Paradise though the
10 elements were joined for the purpose of injuring the
11 plaintiff was the element.

12 MR. MOORE: I'm not sure there's a lot of
13 difference in it. Maybe I'm reading it wrong.

14 THE COURT: Joining for the purpose the
15 plaintiff does an unlawful act. I don't know.
16 That's why I was asking y'all's brilliant legal
17 minds.

18 MR. MOORE: I mean, what it says is unlawful
19 act. We don't have an unlawful act in this
20 situation. Now, let's back up a little bit. We've
21 got two different situations here. One has to do
22 with the fraternity. That is only by virtue of what
23 Dave Wingo wrote to the fraternity. CJ Gahagan has
24 no part of that and there's no evidence of that,
25 which was why my first argument had to do with

1 combination.

2 So if that is inappropriate, you still got the
3 absence of the combination, but, number one, that's
4 not an unlawful act because what he is doing at that
5 point in time is contacting a fraternity with regard
6 to what has happened to his daughter raising a
7 claim. There's nothing wrong with that.

8 A lawful act by unlawful means. Again, this is
9 done all the time where you have a claim, you
10 contact the opposing party first to try resolve it.
11 So there's nothing unlawful about the means that he
12 utilized to that either. So my position with regard
13 to attorney aspect is that that act -- that factor
14 has not been met either.

15 Now, with regard to the allegations regarding
16 the combination to cause problems with him staying
17 in Clemson, the problem we run into with regard to
18 that is the fact that out of bounds is the
19 interaction with regard to the Title IX action. So
20 you can't get into that, and so there's no
21 indication that there's an unlawful act on their
22 part, nor is there indication of a lawful act by
23 unlawful means. I mean, if you consider what was
24 done with regard to getting him kicked out of
25 Clemson, that went through a process that they

1 didn't have control over for the first -- first
2 part, and, secondly, it's a process that they did
3 not make the decision. So I'm not sure it applies
4 in that situation either.

5 THE COURT: Well, actually, I just read a
6 footnote and it just kind of answers my question, so
7 I see why you didn't argue now, but there is a
8 footnote six. I mean, in my mind unlawful
9 conduct ---

10 MR. MOORE: Means criminal.

11 THE COURT: --- criminal. And there's a
12 footnote that says in cases discussing criminal
13 conspiracy, the Court has observed that unlawfully
14 merely means contrary to law. It's not limited to
15 criminal conduct. So -- all right. That kind of
16 answers my question.

17 MS. LAU: We were looking at the same footnote,
18 Your Honor.

19 THE COURT: Good comeback. No. But it does
20 take out the word "special damages" too though in
21 Paradise.

22 MS. PORTER: May I?

23 THE COURT: Yes.

24 MS. PORTER: I was going say, to that end, Your
25 Honor, if you look at paragraph 142 of the

1 complaint, and then again paragraph 169 of the
2 complaint. So paragraph 142 is what they're asking
3 for damages regarding the defamation claim, and then
4 169 is what their asking for with regards to the
5 civil conspiracy claim. And, again, it's the same.
6 Their complaining the same conduct. If you look at
7 the 167 is what they're complaining about, and it's
8 that the parties in concert with common purpose to
9 defame an injured John Doe mostly and revocationally
10 and economically by engaging in an act outlined
11 above.

12 THE COURT: Well, doesn't Paradise say that's
13 okay?

14 MS. PORTER: Doesn't Paradise say that?

15 THE COURT: Yeah. I mean, it specifically
16 addressed the issue and then Justice Few kind of
17 says, we need get rid of this whole cause of action,
18 period, because of that problem right there.
19 Although, you still have election of remedies that
20 you have to impose, so you don't get the double
21 recovery. I'm not sure that ---

22 MS. PORTER: Well, that's -- I mean, it's -- to
23 me I think that the civil conspiracy law is clear
24 that the damages have to be separate and distinct,
25 that you can't lump them together with another

1 cause.

2 THE COURT: Why don't you talk to these people
3 in Columbia?

4 MS. PORTER: I haven't read the Paradise case
5 to be honest. Nobody gave me a copy.

6 THE COURT: No. In reviewing, that's why I
7 wanted to read Paradise before I made my decision.
8 I believe -- I mean, I think very soon we're going
9 to probably have this thrown because I think a lot
10 of states have had it kicked out it saying this is
11 just -- it just kind of gets too morphed into the
12 other ones, but it does kind of support the fact
13 that it does not allow any kind of double recovery
14 either at some point.

15 MS. LAU: We're not arguing for double
16 recovery.

17 THE COURT: No, I know. And that's not the
18 point for that anyway. I think in light of our
19 review of Paradise, I'm going to deny your motion.

20 MR. MOORE: In response to your question about
21 special versus general damages, I'm not real sure
22 Paradise is kind of convoluted to be honest with
23 you, but I'm not real sure it really addresses that
24 particular issue. It does say from a pleading
25 standpoint you don't have to plead special damages

1 anymore.

2 THE COURT: It takes the word "special" out of
3 the elements.

4 MR. MOORE: Do what?

5 THE COURT: It takes the work "special" out of
6 the elements.

7 MR. MOORE: I'm not disagreeing with you on
8 that, but I'm just saying I'm not really sure. When
9 you prove damages, you've got to prove something
10 that you've lost and there's nothing here.

11 THE COURT: All right.

12 MS. PORTER: For civil conspiracy, it's not per
13 se damages. They must be proven.

14 THE COURT: All right. And I'm going to deny
15 your motion on that. Any -- anything else from
16 either side at this point?

17 MS. PORTER: Just to renew all of our
18 collateral estoppel and all of that, all the
19 pretrial.

20 THE COURT: And here is kind of my plan is,
21 that ---

22 MR. GRANTLAND: Just for the record, I think
23 we'd renew our arguments against the collateral
24 estoppel that we previously made just for the
25 record.

1 THE COURT: And I think y'all both submitted
2 jury charges. What I would like to do at this point
3 is, we come up with a draft of that. I send it out
4 to y'all later on this afternoon. And then at nine
5 o'clock in the morning, we can hash out any issues
6 with that and the verdict form.

7 MS. PORTER: So charge conference at 9:00 a.m.?

8 THE COURT: Or somewhere close to there.

9 MR. GRANTLAND: Your Honor, just briefly, we
10 would renew our directed verdict motion we
11 previously made. All the elements have been proven
12 and a reasonable juror couldn't find against us. I
13 think I know what your ruling is.

14 THE COURT: I think this is a jury question, so
15 I'm going to let the jury -- they've been a very
16 attentive jury. All right. Anything else?

17 MS. PORTER: We need to redact some exhibits.

18 THE COURT: All right. We'll see everybody at
19 nine o'clock. Destiny will send that to you at some
20 point.

21 (At 3:50 p.m., proceedings concluded for the
22 day.)

23 March 25, 2022

24 THE COURT: It's always interesting when you
25 get new things in the jury charge to consider and

1 think about. So let's get going here. All right.
2 First of all, let's get the easy one out first.
3 The -- as far as the verdict form, I believe both
4 parties -- both sides have looked at the verdict
5 form and there are no objections to that? Plaintiff
6 is good with that?

7 MS. LAU: That's correct, Your Honor.

8 THE COURT: Defense?

9 MR. GRANTLAND: Yes, Your Honor.

10 THE COURT: All right. Now, to the jury charge
11 itself. We've reviewed that in chambers. Went back
12 and forth. And I'll go through what we came up
13 with, and there were particular issues argued and
14 I'll tell you what I decided and then let y'all put
15 whatever you want to on the record.

16 All right. As to the defense of qualified
17 privilege or conditional privilege, I looked at the
18 cases of *Murray v. Holman* and the Prentice case, and
19 it's really kind of an odd case that I have not
20 looked at before, but it does have the judge making
21 a -- asked to make a finding first whether the
22 privilege applies, and then it's up to the jury to
23 decide whether that privilege has been abused.

24 In looking at this, I don't believe that
25 privilege applies to this case. And I think the

1 other -- the other defenses do, but I'm going to
2 find that it does not apply and I'll be glad to hear
3 your argument on that.

4 MR. GRANTLAND: Briefly, Your Honor. The --
5 Mr. Wingo -- Mr. Wingo made a statement to the
6 fraternity making a claim. He did not publish a
7 statement to the paper. He did not publish a
8 statement to third parties. He published the
9 statement solely to make a claim. And that's -- and
10 that -- under our case law, making a claim -- making
11 an insurance claim allows you to have a qualified
12 privilege, and that is without question. And so,
13 you know, we -- we argued initially that the
14 statement should not come into evidence at all
15 because of settlement discussions. It's barred by
16 our rules of evidence regarding offers of
17 compromise, settlement discussions.

18 The Court said it should come in redacted
19 portions of it. The Court did not -- the jury's not
20 going to have the complete letter, but at a minimum,
21 which we believe if they're going to have the letter
22 at all, they should have the whole letter, but at a
23 minimum, Your Honor, it was written in good faith to
24 make an insurance claim on behalf of his daughter.

25 MR. MOORE: My understanding of the cases you

1 cited is basically there is a qualified privilege
2 when the parties publishing the statement has an
3 interest involved in the matter. In this particular
4 case, Mr. Wingo would've been making a claim with
5 regard to the fraternity. So, obviously, he has an
6 interest in making that statement so he can
7 establish what his claim is. The fraternity also
8 has an interest in that particular matter because
9 somebody is making a claim against them.

10 THE COURT: Well, what interest does Mr. Wingo
11 have?

12 MR. MOORE: He's making a claim on behalf of
13 his daughter.

14 THE COURT: Okay. I mean, his daughter was an
15 adult, so what claim -- I mean, I know -- I realize,
16 but really what claim does he have as a parent?

17 MS. PORTER: We weren't allowed to get into it,
18 Your Honor, but he had a power of attorney. He had
19 a signed authorization to act on her behalf.

20 THE COURT: I mean, I'm going to -- I'll let
21 y'all put what you want have on the record, but I
22 find -- I think under those cases that I find that
23 it does not apply. So anything -- I didn't mean to
24 cut you off.

25 MR. MOORE: No, no. I was just making that

1 point.

2 THE COURT: All right. Self-publication,
3 here's -- I know that was an issue there. And I
4 guess, Ms. Porter, you kind of reminded me. A
5 portion of that, I think there is a portion possibly
6 that could fall within self-publication, so I felt
7 like adding a sentence, "The plaintiff would not be
8 able to recover any damage caused by
9 self-publication, but this would not prohibit him
10 from recovering from others that you find were not
11 self-publication.

12 MS. PORTER: No, objection, Your Honor.

13 THE COURT: All right. And that's -- I know
14 you want the whole self-publication. I realize
15 that.

16 MS. LAU: Just put that the on the record, Your
17 Honor, that we would want the entire charge removed
18 because it may confuse the jury, especially with the
19 "publication, publish, and what statements are
20 talking about." So any statements that this
21 defamation claim is based on are not any statements
22 that plaintiff made himself. They're based on
23 statements that the defendant made to others -- 20
24 other people to be exact, so we would like to put
25 that on the record.

1 THE COURT: I have -- I have removed any
2 reference to special damages, monetary damages in
3 the defamation claim. As to future earnings, that's
4 really a tough situation because you have an expert
5 that says he didn't get the job he would've gotten
6 which would've been -- he could've gotten, but there
7 was no actual value placed on that, so I think that
8 by putting laws of earning capacity in there, it's
9 only one is confusing the jury and it only -- the
10 only thing the jury could do was speculate as to how
11 much that would be. So, I mean, I don't think it
12 applies. I don't think there's been evidence to
13 charge loss of earning capacity. Plaintiff, I'll
14 glad to hear from you though.

15 MS. LAU: Your Honor, we argue that any future
16 damages is not speculative. The jury has a baseline
17 here. They know what he's currently making.
18 Mr. Shedlin's testimony was undoubtedly that he
19 would have made significantly more as an
20 orthodontist. So it is conceptualized there, not
21 just any number that they want to pick out. You
22 know, it's got to start at the baseline and
23 understanding where it goes from there.

24 Also, you know, we -- as discussed in chambers,
25 we would be fine with the charge nonspeculative

1 damages remaining. So that will safeguard any risk
2 here, but I think that the jury has the right to
3 determine that and as the charged damages for future
4 damages as a defense here is stated, future damages
5 may not be proof to a mathematical certainty. So we
6 don't believe that a specific number needs to be put
7 before the jury in order for them to decide for
8 themselves.

9 MR. GRANTLAND: Your Honor, the charge also
10 says any future damages must be reduced to present
11 value, and there's no number to reduce to present
12 value.

13 MR. MOORE: If this causes confusion, Judge,
14 because what they're saying is, okay, he's lost
15 opportunity with his future employment. Okay.
16 What's the -- what's the loss -- what's the damages
17 there with regard to lost opportunity? We know what
18 he's making now, but we don't know what he would
19 make as an orthodontist or as a dentist. So there's
20 nothing for the jury to really bite into with regard
21 as to how to measure those damages. Otherwise,
22 they're speculating as to what he might've lost,
23 which obviously we can't have.

24 THE COURT: And I agree, and I -- you know,
25 you've put on the record, but I'm not going -- I'm

1 not going to charge loss of earning. So I think
2 that covers all the ---

3 MR. GRANTLAND: How about the future damages,
4 Your Honor?

5 THE COURT: Well, I've left that in because I
6 think that there's -- part of the element of future
7 damages also relates to the defamation claim, as
8 well and future loss of reputation, but I'm going to
9 leave the general future damages in there and
10 nonspeculative.

11 MR. GRANTLAND: There's a sentence that says
12 any future damages that you award must be reduced to
13 their present day value.

14 THE COURT: And I guess since we don't have any
15 monetary amounts, there's no reason to put that in
16 there.

17 MR. MOORE: Yes, sir.

18 MR. GRANTLAND: And, Your Honor, just for the
19 record, we believe they go hand in hand, future
20 damages and loss of earning capacity. If one goes
21 out, they both go out.

22 THE COURT: I understand. Anything else from
23 the plaintiff?

24 MS. LAU: No, Your Honor.

25 THE COURT: Anything else from the defense?

1 MR. MOORE: No, sir.

2 THE COURT: All right. What we'll do is, since
3 I assume that your arguments will be, you know,
4 quite a while, I'll take a -- probably take a break
5 at the end of that before I charge because I'd like
6 to get set up. All right. Ready for the jury from
7 the plaintiff?

8 MS. LAU: Yes. Your Honor.

9 THE COURT: From the defense?

10 MR. GRANTLAND: Yes, sir.

11 THE COURT: All right. Bring the jury in.

12 (At 10:25 a.m., jury entered the courtroom.)

13 THE COURT: All right. Everybody, please be
14 seated.

15 THE JURORS: (Complying.)

16 THE COURT: Sorry about the delay, folks. It's
17 taken me a lot longer to get all of my stuff
18 together, and you'll see the charge is fairly --
19 fairly involved and it just took us a little bit
20 longer to work through that so I do apologize. The
21 delay was definitely caused my me.

22 As I told you yesterday, all the evidence is --
23 that is going to be presented is before you, so
24 everything that you will have to make a decision has
25 been presented. You will not be able to get

1 anything else. At this point, we have closing
2 argument by the attorneys. Now, closing arguments
3 are not evidence. This is their summation, their
4 arguments about the case and what the evidence
5 presented.

6 After that, we'll probably take a very short
7 break, and then I'm going to charge you on the law.
8 And then at that point, you can begin your
9 deliberations. Just to let you know, we have made
10 arrangements for lunch. It's not pizza today.
11 It's -- I think we're going to have some kind of
12 sandwiches or something from somewhere. Anyway,
13 then what we'll do is, we'll have that that y'all
14 can begin your deliberations or you can eat then
15 begin your deliberations. That will be up to
16 whatever y'all decide. So at this point, I would
17 ask that you give your full attention to the
18 attorneys and their closing arguments. Ms. Lau.

19 MS. LAU: Thank you, Your Honor. May it please
20 the Court?

21 Words matter. And when those words have the
22 damaging affect on a person's reputation and future,
23 it's only fair for those responsible for that damage
24 to pay because we work hard to build up and maintain
25 our reputation and character, don't we? And for

1 someone, or in this case three people, to make false
2 statements accusing you of a crime of moral
3 turpitude to 20 individuals on numerous occasions
4 when one of them knows the crime didn't occur and
5 the other two don't have firsthand knowledge that it
6 did occur. Well, that's no accident. That's
7 negligent, reckless, and downright intentional.

8 Do not tell CJ what happened. We all know what
9 Erin meant. Erin remembered more than she let on.
10 She even admitted to telling CJ some things about
11 the sexual encounter while omitting other details.
12 Erin was clearly covering her tracks. There's no
13 question Erin wanted a more serious relationship
14 from CJ, but he did not want to give that to her.

15 While he was telling her, go find someone else,
16 Erin knew she loved CJ and told him so eight hours
17 later. She knew CJ would be upset for having sex
18 with Drew because that went against the only
19 boundary they had in their relationship, no going
20 home with someone else. And she knew CJ had jealous
21 tendencies because she had witnessed it before.
22 Just a month before the sexual encounter with Drew,
23 she made out with CJ's hot pledge brother, namely
24 Drew. And as she told her friend Vicki, CJ was
25 furious about it, whether CJ wants to admit it or

1 not.

2 Drew could -- could not tell CJ what happened
3 and neither could she because it would mean the end
4 of the future for her and CJ's relationship if he
5 found out that it was consensual. Erin did what she
6 could to cover this up.

7 I think we can all agree that the defendant's
8 collective acts were beyond negligent. As Olivia
9 Pescatore testified, Ms. Wingo told her that she
10 wanted Drew Pampu kicked out of Clemson University.
11 Erin shared this common goal with CJ as we heard
12 from the testimony. One step closer to him being
13 gone. Well, you had four chances in the school to
14 get what you want. Then you have criminal. Half of
15 me wants to have him expelled and throw his ass in
16 jail. Half of me wants to hide. Right now, the
17 northern in me is coming out and I'm ready to hit
18 him with a lawsuit. There's no way this kid can
19 stay at this school. It's honestly impossible.
20 You're safe. He's gone, Erin. It's not going to be
21 possible for him to stay.

22 And their common plan worked. Drew was
23 suspended from Clemson University in the spring of
24 2016. Erin will have you believe that because she
25 had been drinking and did not remember having sex

1 with Drew, that she must've been raped. As an
2 initial matter, you have to ask yourself, why would
3 Erin need to tell Drew not to tell CJ what happened
4 if Erin did not remember the sex happening with
5 Drew? It's crystal clear what event Erin did not
6 want Drew to tell CJ about.

7 You heard from Jami Hafner who testified that
8 Erin told her that she had sex with Drew just hours
9 after she woke up on October 25th. This was long
10 before she was confronted by CJ with the GroupMe
11 chat when is when she suddenly claimed she did not
12 remember. But even if you believe she did not
13 remember the sexual encounter due to being in a
14 fragmentary blackout, Dr. Harrison Pope testified
15 someone experiencing a fragmentary blackout can
16 still appear to an outside observer as a normally
17 functioning human being who can book airfare travel
18 from St. Louis, Missouri, all the way to Las Vegas,
19 Nevada, and check into a hotel room. Or in this
20 case, offer a birthday kiss in exchange for sex,
21 walk a quarter to a half mile unassisted, take off
22 your own clothing, verbalize consent three times,
23 engage in two different sex positions, and put her
24 own clothing on again without anyone realizing she
25 was in a blackout. That's because blackouts only

1 refer to the brain's inability to form memories as a
2 result of consuming a certain amount of alcohol in a
3 short amount of time. Being in a blackout does
4 nothing about a person's outward appearance or their
5 inability to consent. Even self-reported -- I'm
6 sorry -- Erin self-reported and unlikely amount of
7 volume of alcohol that she allegedly consumed before
8 arriving at the compound.

9 According to Rachel Corbin's photo, the girls
10 were walking toward the compound at 11:32 p.m. and
11 arrived just before midnight. Then Erin claims she
12 took a few more sips of alcohol while talking to CJ,
13 but the evidence shows that nobody can testify to
14 the complete amount of alcohol that Erin had that
15 night, not Rachel, not Olivia, who were both
16 pre-gaming with Erin before the party.

17 Certainly, Drew was not present at that pregame
18 event. Drew was also not present when Erin claimed
19 she drank more from her water bottle with CJ. Drew
20 was not there when Erin allegedly tripped up the
21 stairs, and Olivia could not be certain that Erin
22 tripped because of her alcohol consumption or for
23 some other reason. Rachel also testified she saw
24 Drew and Erin together that night at the party just
25 moments before they had sex, and Erin was not

1 stumbling or unable to walk. Drew did not know and
2 could not have known Erin was allegedly too
3 intoxicated to consent. As you heard from Drew, the
4 sexual encounter was consensual. Drew consistently
5 testified to specific words Erin said and specific
6 actions Erin took to indicate her consent to their
7 sexual encounter.

8 Erin did not dispute that she gave Drew consent
9 to their encounter verbally. Then at 1:00 a.m.,
10 Erin texted CJ, "front steps" to meet him so she
11 could go home with CJ as -- after the party as they
12 had previously planned. She soon learned CJ was no
13 longer at the party and was upset that she had
14 messed up the plan. Based on the timeline, Erin was
15 only at the compound for about an hour before
16 getting a ride home to her dorm where she was
17 observed by at least four other witnesses who can't
18 agree on whether Erin was incapacitated, but do
19 agree Erin was crying for CJ.

20 Now, in CJ's case, he will have you believe
21 that he was just relying on Erin's claimed lack of
22 memory and observations by Erin's friends who say
23 she was incapacitated when they saw her after the
24 sexual encounter. CJ did not believe Erin was
25 intoxicated at the compound when see he saw her. We

1 heard that testimony. And as you heard from Rachel,
2 Erin was not slurring, but rather crying that CJ
3 would matter. Olivia thought she was crying drunk,
4 but could not definitively state that Erin was
5 anything but upset about CJ.

6 Jon Stoddart was the driver of the car that
7 took Erin and her friends back to the dorm that
8 night and remembered Erin crying CJ didn't love her.

9 Ben, who was in the car during this time, also
10 stated Erin was crying about CJ not loving her.

11 Moreover, despite her alcohol training, Erin's
12 RA, Leslie Snider, did not observe any signs of
13 intoxication, did not report her for any alcohol
14 violation.

15 CJ may claim there was nothing more a
16 reasonable person could've done in this situation,
17 but that's not true, is it? A reasonable person
18 would not have accused another person of a crime of
19 moral turpitude to several people about a situation
20 he had no firsthand knowledge about, but does CJ's
21 words mean anything to you at this point?

22 You saw it for yourself. CJ was playing both
23 sides between Erin and Drew. One day stating Drew
24 was not a criminal. Eleven days later telling Erin,
25 "I want you to press criminal charges on Drew."

1 Then five days later, telling Drew he knew the kind
2 of kid Drew was and knew he could never do that.
3 Almost a year after Drew's removal from Clemson
4 University, CJ texted Drew that he was innocent, and
5 CJ admitted four times that he lied.

6 He then testified at this very trial that he
7 was just lying when he said he was lying in those
8 text messages to Drew. Then CJ lied again this very
9 trial when he testified he did not observe signs of
10 intoxication from Erin at the compound, but then on
11 cross-examination testified Erin was so drunk when
12 he saw her at the party. There's no end to CJ's
13 lies. It's clear he will lie whenever it's
14 convenient for him just like he lied when he told
15 several individuals that Drew raped Erin, his best
16 friend.

17 Now, Mr. Wingo, he'll say he was merely a
18 father supporting his daughter, but the evidence
19 shows he went beyond that role and negligently
20 contacted Phi Delta Theta to submit a claim with
21 Erin's knowledge and consent about the nature of a
22 sexual encounter he never witnessed based on
23 conclusions that were never validated by any court
24 of law. Mr. Wingo claimed he was merely being a
25 good Samaritan in alerting Drew's fraternity about a

1 sexual encounter Drew had with his daughter, but,
2 again, words matter. Mr. Wingo said Drew sexually
3 assaulted Erin and was a predator, and it's clear he
4 did this to motivate the fraternity to remove Drew
5 and strip him of all membership privileges.

6 As a result of Erin and Mr. Wingo's claim, Drew
7 was indeed removed from the fraternity and stripped
8 of all his -- all of his membership privileges.
9 Mr. Wingo went where every parent wishes they
10 could -- they could go in that scenario, but the law
11 does not allow. Mr. Wingo and Erin's combined
12 actions have damaging consequences for Drew.

13 Defendants will assert the defense of
14 self-publication to plaintiff's defamation claim,
15 but the defense of self-publication doesn't save
16 them. Since it applies where defendants have made
17 their defamatory statement to the plaintiff himself
18 and that the plaintiff is the only one who then
19 tells other people about the defendant's defamatory
20 statements. That's simply not case here.

21 The only basis the defendant's -- defense is
22 Drew's one-on-one text with Jon Stoddart that Jon
23 sent to the GroupMe fraternity chat without Drew's
24 knowledge or consent. Drew was not proud of how he
25 characterized his sexual encounter in his initial

1 text message to Jon, and the defendants are going to
2 show you that message as often as they can to win
3 your emotions, but I need you to stick to the
4 evidence here. Nowhere in Drew's message did he
5 admit to raping Erin or having sex with Erin while
6 she was an incapacitated state and nowhere in Drew's
7 one-on-one conversation with Ben Zboray on the front
8 steps did he tell Ben that he raped Erin or that he
9 somehow knew she was incapacitated.

10 This case is not about statements Drew made.
11 This case is about defendants' statements made to
12 nearly 20 separate individuals on and off Clemson
13 University campus that Drew was a rapist.
14 Defendants were negligent in failing to stop
15 themselves before they went over the line of the
16 law. Defendants will claim they were justified in
17 their statements. You need to ask yourself based on
18 all the evidence whether any of the defendants were
19 really justified in calling Drew a rapist, which is
20 a crime of moral turpitude. When you ask yourself
21 this question, you should remember there is a
22 distinction between moral justification and legal
23 justification. That is that why the law exists?

24 Defendants perpetrated a fraud on Clemson.
25 Erin and CJ worked together to get Drew kicked out

1 of school when they made statements to Clemson that
2 caused irreparable damages that Drew must forever
3 self-report. The reason Drew cannot fulfill his
4 intended career goal of being an orthodontist is not
5 because of Clemson, but for Erin and CJ's
6 statements, Clemson would not have kicked him out.

7 Erin and Mr. Wingo were purposeful and had a
8 calculated goal of getting him removed from his
9 fraternity together with all the privileges and
10 lifelong networking opportunities that come with a
11 brotherhood. As Erin told her father, she felt they
12 had a good claim to submit, so that's what Mr. Wingo
13 did and he never would've done it unless Erin had
14 agreed to it.

15 As Steve Shedlin testified, while Drew may be
16 making \$70,000 as a salesman now, Drew would have
17 made significantly more as an orthodontist,
18 especially over his lifetime. And if you believe
19 Drew is less deserving of any damages for
20 defendant's wrongful actions just because he has a
21 job now, I want you to think about whether we want
22 to live in a society that condones someone, or in
23 this case three people, spreading harmful lies about
24 someone else to deprive them of any opportunity?
25 What if someone told you that you couldn't do

1 something that you worked so hard for just because
2 someone else took that opportunity away? That's not
3 fair, is it? Especially when the person responsible
4 for taking that opportunity away from you is able to
5 live their lives free and clear. Those are our
6 choices to make, aren't they? It's simply not right
7 to allow someone else to take that away from us, no
8 matter who we are.

9 I hope you now understand why we are seeking a
10 verdict of liability against all defendants for
11 defamation and civil conspiracy, together with
12 actual damages and punitive damages. Thank you.

13 THE COURT: Ms. Porter.

14 MS. PORTER: Thank you. May it please the
15 Court?

16 THE COURT: Yes.

17 MS. PORTER: It's been a long week. Tough
18 subject matter. Thank you.

19 I asked you to do three things when I spoke to
20 you. I asked you to come with an open mind. I hope
21 you did.

22 I asked you to listen to all the evidence. And
23 we've been watching, and you've been very attentive
24 and we appreciate it. I'm going to ask you to do me
25 a favor and listen to me a little bit longer. This

1 is the last time I get to address you. I don't get
2 to stand up to talk to you again, but I hope you'll
3 be patient with me.

4 The third thing I asked you to do is to use
5 your common sense. That's why this system is the
6 greatest one in the world. It's not perfect, but
7 it's great. Your experience, your life experiences,
8 your community, bring that common sense, those
9 experiences, and you apply it now. Now is the time.
10 You go back in that room, it's time to start using
11 common sense.

12 A minister and a lawyer walking down a dirt
13 road. And they come upon a puddle with a gold coin
14 at the bottom. And the minister says, hey, look at
15 that gold coin. And the lawyer picks up a stick,
16 stirs up the dirt in the puddle, and says what coin?
17 Do not let the lawyers in this case muddy up this
18 water.

19 What I say, what Ms. Lau says, what Mr. Moore
20 says is not evidence. We say something that differs
21 from your memory, you believe yourself. Have
22 confidence in your memory.

23 The judge is going to instruct you on the law.
24 He is the expert. What he says goes. He says
25 something different than what we say, go with what

1 he says. Do not let the lawyers muddy up this
2 puddle.

3 In South Carolina, anyone can sue anybody for
4 anything. There's one catch, you got to prove it.
5 When you file a lawsuit, you have to prove it. And
6 today, the plaintiff, Mr. Pampu, has got to prove to
7 you by a preponderance of the evidence that Erin
8 Wingo was not drunk on October 24, 2015, when they
9 engaged in sex. Defamation is a fault and
10 defamatory statement. He has to prove to you it was
11 false. What is rape? It's nonconsensual sex.
12 Nonconsensual sex. If you're too drunk, you can't
13 consent. It is that simple.

14 Now, how are they going to muddy up the waters?
15 They're going to get up here -- they got up here.
16 They said it one time, a hundred times, he wasn't
17 charged criminally. He wasn't sued civilly.
18 Muddying the waters. This is not a criminal trial.
19 Erin Wingo sat up here and told you why she didn't
20 charge him. This is not a criminal trial. We have
21 no burden. We do not have to prove her sober. He
22 has to prove her sober.

23 How does he do that? There are witnesses,
24 right? Credibility, believability of each witness
25 that sat on that stand. Who has an interest in the

1 outcome? Who has a motive to lie? Who has a bias
2 or interest? That's what you are to judge. You can
3 believe all of the witnesses, none of the witnesses,
4 or some of the witnesses. You can believe
5 everything they say, some of what they say, or none
6 of what they say. That's your job.

7 I'm going to tell you what I believe. I
8 believe that the plaintiff tried to muddy the
9 waters. He asked every witness. Was she slurring
10 her words? Was she stumbling? Was she unsteady on
11 her feet? Because that's how you tell if somebody's
12 drunk. Ladies and gentlemen, that's kind of like
13 pornography. You know when it when you see it.
14 Common sense. You know a drunk person who you see
15 one. Every one of witness that got on that stand,
16 every one of them said Erin Wingo was drunk, even
17 the plaintiff.

18 I'm not going to go through all of these text
19 messages. I am going through a few, but not all of
20 these text messages because y'all will have them
21 back there. You can read them if you want to. But
22 on the day after, what is he doing? He's texting CJ
23 and texting Erin, "It was a mistake. I didn't
24 realize how drunk you were until after we were done.
25 I'm sorry."

1 Read his text messages. First statement he
2 gave about it after it's been anonymously reported
3 to Clemson, first statement he gives in
4 December 2015, "I could tell she was drunk." He
5 didn't want to hear that. He didn't tell you that.
6 I -- I asked him about that. After it's become an
7 issue, "I could tell she was drunk. She was loud
8 and having a good time." Every witness.

9 Let's talk about the witnesses to the
10 pre-party. They didn't want to talk about the
11 pre-party. They glossed over it. They didn't want
12 to talk about it. Let's talk about the pre-party.

13 Let's talk about Rachel -- Rachel Corbin.
14 Rachel, fifth of Fireball. Three-quarters of the
15 way full at the beginning of the party, a fourth of
16 the way full at the end. She doesn't like Fireball.
17 Erin drank most of it.

18 She also had vodka in a water bottle. She made
19 some mixed drunks. Took shots at the party with
20 him. Took shots at the party with CJ. Nobody said
21 she didn't do the shots and the drinks. Not one
22 witness up here said Erin didn't drunk that night,
23 not one.

24 Olivia: "We had Fireball and vodka. We were
25 zigzagging on the walk to the compound. When we got

1 there, we went to the bathroom and she fell up the
2 stairs."

3 CJ, what did he say? The text messages before
4 the party, trying to get the ride, Erin says they're
5 all drunk. Gets to the party, she comes up to him
6 and he is like, I don't want to deal with a drunk
7 girl tonight. Go have fun with your friends. Erin
8 being drunk hears, go find somebody else. Gets her
9 feelings hurt. Does that happen when you're drunk?
10 Do you overreact to things? Are you extra
11 sensitive?

12 The plaintiff is muddying that water. Wants
13 you to believe that a sober woman, sober freshman in
14 college, is going to walk up in the middle of a
15 party between 100 and 200 people, somewhere near the
16 tree and say in front of a group of people sober,
17 "You don't kiss me, I'm not going to have sex with
18 you tonight." Who does that?

19 He wants you to believe then the sober woman
20 goes behind the doll house and begins to make out
21 with someone, with the plaintiff, while men,
22 fraternity boys, are coming up and peeing.

23 A sober woman will leave, walk past -- again,
24 you got to remember, the testimony is they're making
25 out, getting hot and heavy and leaving. He says,

1 "Will you give me a blow job?" because every sober
2 woman I know says, heck, yeah, let me give you a
3 blow job. But I'm going to leave and I'm going walk
4 down to downtown Clemson for more secluded location?

5 I'm going to walk past four bedrooms, four
6 bathrooms, and potentially his dorm room when his
7 roommate is out of town, to go to downtown Clemson
8 for a more secluded location? And a sober woman is
9 going to end up between a fence and a shed next to a
10 utility pole with a light on it. She's going to
11 stand there, drop her pants to her ankles?

12 Remember how he corrected me? She's going to
13 lean over, no romance, no foreplay, not even facing
14 one another? That yet a sober woman is going to get
15 down on her knees in the dirt and be screwed like a
16 dog, is going to be slapped on the butt, told to
17 stand up, I'm not done. That's what a sober woman
18 is going to do?

19 Statement in February of 2016, the plaintiff
20 said it right. After he discards his condom on the
21 ground, he helps her get dressed. We dressed her,
22 then I pull up my pants. That's the statement in
23 February of 2016. He tried to backtrack off that.

24 His statement in the text messages the night
25 after and in December and in February are she is on

1 the bad end of a drunk. When they're walking back,
2 she was stumbling, she's hysterically crying, and
3 she wants her best friend CJ. Each time he gives a
4 statement further away, the less drunk she gets and
5 the more emotional she gets.

6 One other thing I think is particularly
7 telling, do you remember me asking him what the
8 conversation was between the two when they left the
9 compound for their walk to the secluded location?
10 Do you remember what he said? "I don't recall."
11 Sure could tell you what they discussed on the way
12 back. Sure could tell you that she was crying
13 hysterically and asked for CJ so much so that he
14 picked up the phone and called CJ. Rocky terrain?
15 Or drunk, stumbling, can't walk. You decide.

16 Now, he testified that he and Erin had become
17 friends. She's an attractive woman, and he was
18 developing feelings for her. That's what he said.
19 Is that believable?

20 Ms. Lau's right about one thing, I am going to
21 pull out the text message because it is absolutely
22 relevant. It is relevant to that statement, those
23 statements. Erin becomes hysterical as they're
24 walking back to the compound, but he cares for this
25 woman. He's developing feelings for her, so he

1 calls CJ to come get her? When he can't get CJ on
2 the phone, he deposits her on the steps and hands
3 her off to his fraternity brother.

4 Do you remember this? Before when I asked him
5 about the proposition, her coercing him into having
6 sex with him at the compound before they leave, and
7 his December statement, he says, "I don't have a
8 care in the world. It's my birthday. Why not?"
9 They leave. He deposits a sobbing, hysterically
10 crying, drunk crying Erin Wingo on the steps, and he
11 brags to Ben Zboray. You heard it. He's like, what
12 y'all been doing? "I just got lucky. It's my
13 birthday."

14 Ben looks at Erin. He's got Rachel. Rachel
15 who pre-gamed with Erin who's throwing up at this
16 point, he's like, you know what? I got her.
17 Rachel's throwing up. Erin's sobbing hysterically.
18 Ben is like patting his buddy on the back, go on
19 back to the party. It's your birth day.

20 What does Drew do? What does he do to the
21 woman he's developing feelings for? "Text me if you
22 need help. I'm out." Back into a party with
23 another 200 people to continue celebrating his
24 birthday while Erin Wingo is sitting on the steps
25 sobbing.

1 Then he brags again. No telling how many
2 people he told in the party, but he brags again to
3 his other fraternity brother, Jonathan Stoddart.
4 Y'all can read it. I'm not going to read it again.
5 I'm tired of reading it. I've been reading it for
6 seven years. That's not true. I've not been
7 reading it for seven years because guess what? He
8 didn't give it to us. Jonathan Stoddart did. We
9 had to go to Rhode Island to get that text message.
10 Think about that.

11 "Fucked a chick by the garbage can." What is
12 Rachel's reaction? You heard her testimony. "Did
13 you realize where you had sex?" Now, Rachel was
14 with Erin before at the pregame, on the walk, and at
15 the party. Why would Rachel ask Erin, "Do you
16 realize where you had sex?" if she thought she was
17 sober?

18 And they want to make a big deal, they want to
19 muddy up the waters about what Erin would
20 (inaudible.) She said it in -- with four other
21 sorority girls, judgmental sorority girls according
22 to Rachel's own statement, less than 48 hours after
23 it happened.

24 Jonathan Stoddart admittedly screen shots this
25 text, puts it into the GroupMe, publishes it to the

1 34 fraternity brothers. He never even got a message
2 from the plaintiff. Not once did Jonathan Stoddart
3 get called and said, hey, man, dude, take that down.
4 Hey, I really like this girl. I'm -- I'm starting
5 to develop feelings about her. That was a private
6 message between the two of us. Nothing. Zero. No
7 response from the plaintiff, and he sure as hell
8 didn't sue him.

9 Jonathan also said Erin is sobbing, mentioning
10 CJ -- CJ in the back of the car. And somebody back
11 there, he couldn't recall who, he had never met Erin
12 before that night and hasn't seen her since, threw
13 up in that car. And how does he remember? Because
14 he had to clean it up.

15 It took two girls to get Erin into that dorm
16 room. Leslie Snider didn't file a report. You're
17 right. Leslie Snider did not file a report. She
18 also broke the rules when she let Haley go
19 downstairs and get a new key. Do you remember what
20 she said? "I asked Erin multiple times to get up
21 and she refused." Erin wasn't unsteady on her feet
22 because she was sitting against a wall. She was red
23 faced and sobbing and on the ground. Haley goes to
24 get the key with Leslie. Leslie broke two rules
25 that night as an RA. And Olivia helped Erin throw

1 up in the bathroom. Olivia and Haley put a drunk
2 girl to bed. And they left sticky notes on her desk
3 so the next morning she could pick up the pieces and
4 put them together.

5 Let's talk about the next morning. Let's talk
6 about the text to CJ. "What happened? Have you
7 seen my key?" Let's talk about the text to Drew.
8 "Have you seen my key? Don't tell CJ." Erin
9 explained it. She knew something bad had happened.

10 Now, muddying the waters, they want you to
11 believe that Erin said, "I don't remember anything."
12 She has never said that. Not once has she said
13 that. She has consistently over the last seven
14 years said, "I don't remember it all. I remember
15 some of it, not all of it." I want you to read the
16 text messages that day. She is consistent. "I
17 remember a shed. I remember my pants around my
18 ankles. I remember a slap. And I remember being
19 told to stand up. I'm not -- I'm not done."

20 The next morning, she can barely lift her head
21 off the bed, and Jami Hafner comes in there to
22 console her. She crawls into bed with her and Erin
23 is trying to put the pieces together. And she says,
24 "I think we had sex." Jami Hafner told you, "I do
25 not remember exactly what Erin said." Look at the

1 text messages with Jami in the next hours and days.
2 "If you don't remember it, it's rape. If you don't
3 remember it, it should be reported." But they want
4 you to believe that there's some grand conspiracy to
5 cover this up. Read the text messages. Erin never
6 uses the word "rape." Erin consistently says, "I
7 was drunk. Ten shots deep. I don't remember it
8 all." She's the one who's been consistent for seven
9 years.

10 False and defamatory, he has to prove it. It
11 really boils down to, do you believe the plaintiff
12 or do you believe the defendants? There's a third
13 option because they have the burden of proof and
14 that's, do you not know who to believe? You don't
15 know who to believe, the defendants get the benefit
16 of the doubt. They win. You must believe the
17 plaintiff more than the defendants and more than, I
18 don't know who to believe.

19 Let's talk about civil conspiracy. Civil
20 conspiracy is when two or more people get together
21 and form a common scheme. Well, ladies and
22 gentlemen, I've been here all week and I've been
23 working on this litigation since 2018. I can't
24 quite figure out what conspiracy. Maybe y'all are
25 smarter than me.

1 The rape, sexual assault of Erin Wingo, was
2 reported to Clemson anonymously. Clemson -- Clemson
3 suspended the plaintiff. Erin Wingo, CJ Gahagan,
4 David Wingo, they didn't have that authority. They
5 didn't have that ability. It wasn't their decision.
6 And Erin didn't even report it, so when did the
7 conspiracy start exactly? When CJ consoling his
8 best friend around five o'clock on Sunday evening
9 says, hey, let's form this plan and get Drew kicked
10 out? How is it a conspiracy if Erin -- I can't
11 quite figure out. Erin is lying, saying she doesn't
12 remember anything so that she can continue to have a
13 relationship with CJ, but CJ suggests that it was
14 rape if she doesn't remember it, and then they're
15 going to get him kicked -- I -- I can't figure it
16 out. Maybe y'all can. I can't figure it out. But
17 the real piece that's missing is Clemson made the
18 decision. Clemson kicked him out. Clemson
19 suspended him.

20 Conspiracy between Dave Wingo and Erin
21 regarding Phi Delta Theta? David Wingo did what any
22 reasonable father would do after hearing that his
23 daughter had been raped. He put his wife on a plane
24 and he said, "Whatever support you need, I'll get
25 it. Whatever I need to do to make you safe, to feel

1 safe, to get you through this, I'll do." So he told
2 Phi Delta Theta what happened, and he made a claim.
3 It's what any reasonable father would do. That is
4 his privilege to assert for his daughter. It's not
5 a conspiracy. It's a family. It's support. It's
6 admirable.

7 Plaintiffs arguing that as a result of these
8 statements made, that he's been damaged. You heard
9 him. He sat up here and he said, "I did not get to
10 graduate from the most prestigious school in the
11 state; therefore, I've been damaged." Did you hear
12 him answer my question? Weren't you just suspended?
13 Couldn't you reapply to the most prestigious college
14 in the state? "Yeah, well, they put some conditions
15 on me that I didn't like, so I didn't do it." Is
16 that on us or on him?

17 He graduated from college, the College of
18 Charleston. Another very, very good college in this
19 state. Not only did he graduate, he got an MBA.
20 Not only did he get an MBA, he got a very lucrative
21 medical equipment sales position. Makes more money
22 than I do and I'm 22 years in. Not quite sure what
23 damage there was.

24 I don't get to be a dentist. And they brought
25 in an expert to say because Erin Wingo said she was

1 raped, he doesn't get into dental school. Well,
2 ladies and gentlemen, there is absolutely no mention
3 of Erin Wingo, of David Wingo, or CJ Gahagan on that
4 application -- on that dental school application.
5 Absolutely none. Zero, zip, zilch.

6 They couldn't find her if they wanted to.
7 Clemson University's not going to release her name.
8 It's the Clemson University disciplinary action that
9 suspends him. It's reported on that application.
10 It's Clemson University that would be contacted.
11 Clemson University's decision. Erin didn't even
12 report it, but somehow it's our fault?

13 And it's not just that he can't be a dentist,
14 he can't be an orthodontist. Who knows if he
15 would've ever made it to that residency? The most
16 lucrative residency there is. Top three percent of
17 all dental graduates get a residency.

18 Their expert, \$600 an hour, could not even tell
19 you -- could not even tell you how many people got
20 into the dental schools that he applied to. He
21 didn't even go look at the statistics to see if he
22 could've gotten in. He read an article that said
23 57 percent of the people that applied got in.
24 Damages? They have to prove it.

25 Let's talk about reputation and

1 self-publication. They want you to ignore the
2 fact -- they want you to ignore the fact that by the
3 time Erin Wingo woke up on Sunday, October 25th, 34
4 pledge members knew that he had had sex with a girl
5 by the garbage thing at Chipotle. They want you to
6 ignore that. Those 34 brother were most likely at
7 that party. You heard that testimony, that
8 everybody came to the party. The pledge brothers,
9 in particular, they had to clean up. They had to
10 set up. They were there. They saw him there. They
11 saw her there. They saw him leave. They saw him
12 deposit her on the steps. That is circumstantial
13 evidence. How long did it take CJ to put together
14 from the GroupMe? Think about that.

15 Think about Erin trying to put the pieces
16 together, barely able to lift her head off the
17 pillow, being shown a GroupMe knowing that 34 other
18 people knew before she did. She was embarrassed;
19 ashamed; blamed herself. I shouldn't have drank
20 that much. Shouldn't have put myself in that
21 position.

22 The plaintiff took advantage of a drunk girl
23 and bragged about it. He bragged about it. And
24 then when it became an issue, she's lying. She was
25 sober. When it got anonymously reported, she's

1 lying. She was sober. I've been damaged.

2 You're right, Erin told people. She told her
3 close friends and her family for support. Dave
4 Wingo didn't tell anybody. He wanted to protect his
5 daughter, which he has a privilege and a right to
6 do.

7 Now, I want to -- I want to talk just a little
8 bit longer. I'm almost done. Bear with me. I want
9 to talk about CJ for a minute. He's not my client,
10 but one of the -- one of the things the plaintiff
11 has said is that he has been denied this brotherhood
12 nationally with Phi Delta Theta members and that
13 that has caused him damage. This big organization,
14 especially when you're 19 and you have all these
15 brothers that are trying to fit in, trying to
16 pledge, CJ took them on. He stood up for Erin, for
17 every woman that was going to be at that fraternity
18 in the future.

19 And what does he say? "I feel like this should
20 go without saying, but we need to respect girls."
21 Do you think that was easy for him? The easy road
22 would've been to remain silent and support Erin in
23 the background and to say nothing. He didn't choose
24 that. He chose to do the right thing, and often the
25 right thing is the hard thing, the difficult. CJ

1 said what every man should say, and he got
2 blackballed for it. You heard him. His social life
3 suffered. He was the one who was denied the
4 brotherhood. The brotherhood rallied around the
5 rapist, but not CJ. They kicked him out,
6 blackballed him.

7 Here's the most telling thing about that
8 GroupMe message, who responded to it? The plaintiff
9 responded to it. And I'm going to read it to you.
10 It's going to be back there with you. I want y'all
11 to read it. So the response about fucking the girl,
12 fucked a chick by the garbage thing at Chipotle. No
13 response to the GroupMe about respecting women.
14 "Fuck off, dude. Girls are fine. Next time don't
15 let your girl hook up with your pledge brothers."
16 Are you kidding me? But he was damaged.

17 Can you imagine the amount of stress that was
18 on Erin and CJ at this time? I don't know many
19 relationships between young adults that would've
20 survived that. Like any difficult time, especially
21 when you're young and you get feelings hurt and you
22 break up, you lash out. You say things to hurt the
23 other person. CJ owned up to it. Admitted it
24 immediately. "I went for the jugular. I said that
25 I lied to hurt Erin." We've all done it. Does that

1 negate everything he's done? That's for you to
2 decide. You get to decide who to believe. I don't
3 think it does. I think being consistent for seven
4 years of litigation outweighs trying to hurt Erin
5 because he was drunk and under the immense amount of
6 pressure, but that's your decision. I can tell you
7 this, I sure hope my son follows in his footsteps
8 and respects women the way that CJ does.

9 Erin has done nothing other than drink too
10 much. She didn't report it to Clemson. She didn't
11 file criminal charges. She didn't file a civil
12 lawsuit because she didn't want to get in that chair
13 and tell 12 strangers about the worst night of her
14 life. She didn't conspire with anyone, do anything
15 to Drew Pampu. And she sure as heck didn't conspire
16 with her dad. And her father did what any
17 reasonable father would do, he protected his
18 daughter.

19 As soon as I got involved in this case, there's
20 one thing that has always come to my mind and it's a
21 song by Chris Jansen. And it's title "Drunk girl."
22 I just want to read you a few of the lyrics. It's
23 the last thing I want you to think about. "Take a
24 drunk girl home. Let her sleep all alone. Leave
25 her keys on the counter. Your number by the phone.

1 Pick up the life she threw on the floor. Leave the
2 hall lights on. Walk out and lock the door. That's
3 how you know the difference in a boy and a man. You
4 take a drunk girl home." Thank you.

5 MR. MOORE: May it please the Court?

6 THE COURT: Mr. Moore.

7 MR. MOORE: I know what you're thinking,
8 another lawyer up here to talk to us and,
9 unfortunately, that's true, but I want to start off
10 with today is to thank you for being here. You
11 spent the whole week listening to this case and I
12 know it's the last thing you probably wanted to do.
13 You're here because you got subpoena in the mail and
14 you were directed to be here, and you're here
15 because we selected you to help us with this case.
16 But what I'm going to tell you is, I'm speaking on
17 behalf of all the parties involved here, we really
18 appreciate your help in this matter. We're asking
19 you to resolve a situation between these parties so
20 we can put this behind us. And we're asking you to
21 undertake an evaluation of the facts in this case
22 and determine who's responsible and who should take
23 the liability in this particular matter.

24 Now, in a few moments once I shut up, the judge
25 is going to charge you on the law. And one of the

1 things he's going to first charge you is that he's
2 the judge of the law. He's going to give you what
3 the law is that's applicable in this case. I'm
4 going to talk a little bit about that in a second.

5 He's also going to tell you that you are the
6 judges of the facts in this case, and that's what I
7 mentioned when we were here in opening statements.
8 You all are acting as judges at this particular
9 point and you are very important and in what you do
10 here today. You probably have seen when you walk
11 in, every time you come in from this jury room,
12 everybody stands for you. That's because there is
13 an element of respect because of what your job is in
14 this particular matter.

15 Now, what's your job? Well, your job is to
16 take the law that the judge is going to give you and
17 then to apply the facts as you find them to that law
18 to render a decision. So let's talk about what
19 we've got in front of us as far as what you've got
20 to decide. There -- there are two cause of action.
21 And I'll try not to repeat as much as has been
22 talked about earlier because I know you're getting
23 sick of hearing all this stuff. But at this point,
24 it's important to hit the high notes so bear with
25 me.

1 The first causes of action is for defamation.
2 The judge will charge you there's certain elements
3 of defamation that you've got to consider when
4 you're making your decision. First element is, that
5 there is a false statement and it has to be a
6 defamatory statement. Second thing is, it's an
7 unprivileged publication to a third party. In other
8 words, someone, one of the parties, one of the
9 defendants said something to someone else who's not
10 a party in this particular matter about what
11 occurred. Thirdly, it has to be false on the part
12 of the person who made that statement. And
13 fourthly, there has to be some type of damages.
14 Now, let's break that down again. Let's run through
15 that.

16 Number one, a false and defamatory statement.
17 That's one of the things you're going to have to
18 decide here. You've already heard the arguments
19 regarding that as to whether in this situation there
20 was a rape that -- that Drew Pampu made with Erin
21 Wingo. By the way, I'll mix the names up. I've
22 already been caught saying which way I say Wingo or
23 Pampu. So the first issue is, was there a rape? So
24 you got to decide, okay, what do we mean by rape?
25 And Mr. Pampu gave you the definition. It's

1 unsolicited sex. So we know in this situation that
2 there was sex. He's admitted. He bragged about
3 having sex with Erin Wingo. He indicated to you in
4 the text that he sent out, "I fucked a chick."
5 Well, he's admitted that part.

6 The second part has to do with whether it's
7 defamatory or not, and this is what you've to work
8 on. Number one, if it is true that he raped her,
9 then you stop right there. That's all you got to
10 make the decision on. But on the other hand, what
11 you've got to think the determination is whether
12 there is a truth to the matter as to whether it was
13 an unsolicited nonconsensual sex the two of them
14 had. And you'll have to run through the elements to
15 make that decision. Again, I'm going to hit the
16 high points here because I know y'all have heard
17 this ad nauseam.

18 What I want you to do though and this is a
19 little bit different perspective than CJ because
20 obviously he is not there. So it's a matter of what
21 he sees and what he learns before he makes the
22 statement as to whether he can be held at fault.
23 And that, as you'll remember, is the third element
24 fault. And so I want to concentrate on here with
25 regards to CJ is what information he had in order to

1 make the statement regarding what had occurred
2 because what the law provides is in that
3 circumstance what you look at is whether he has
4 undertaken basically an evaluation and a
5 determination as to what occurred. He has to
6 indicate, has to gather information from various
7 sources because he's not there to make that
8 decision.

9 So let's look at those -- that information that
10 he has regarding what occurred. Now, he's already
11 at the fraternity grounds, the compound. Erin, on
12 the other hand, is drinking at a pre-party. And the
13 question is, how much he had and whether she is
14 drunk when she leaves that party. Now, I will tell
15 you that the testimony is a little bit confusing
16 there, but what we see is that she's probably drunk,
17 but she's not just falling on her face drunk. She's
18 probably feeling pretty good. She's kind of chatty.
19 And she's dancing around going from that dorm room
20 over to the party.

21 She then goes to see CJ and that's CJ's really
22 only interaction with her that night, and CJ says,
23 "Go play with your friends," basically. Now, CJ
24 does not see her for the remainder of the night. So
25 the information that we have regarding what occurred

1 between Drew and Erin, CJ does not have that
2 information on that evening.

3 So we have to skip forward to after the sex has
4 occurred and they are going back to the fraternity
5 house, and CJ has this information. Drew Pampu
6 tries to call him. Why is he trying to call?
7 Because he wants CJ to come and pick up Erin because
8 Erin is pretty drunk, and she's on the bad end of a
9 drunk as Andrew Pampu has stated.

10 And she's crying. She's crying for CJ. She's
11 stumbling. So he's got that information as to her
12 situation at that particular point in time. What I
13 want you to see is what he tries to do is when she
14 gets the party, pretty good. She's happy, you know,
15 chatty. When she gets through with the sex, she's
16 not doing so dadgum good. She's -- she's out there.
17 She's crying. She's upset. You know, what's going
18 on? Well, what's happened is, that alcohol she has
19 consumed has then begun to take more and more effect
20 as time goes on.

21 And then the question you'll have to resolve
22 is, did it get to the point where she could not make
23 that decision herself as to whether to have sex. We
24 know she's at the bad end of a drunk after sex. We
25 know before the sex she was doing okay. So somehow

1 in between time, she's gotten to the point where she
2 can't think, she's can't make a decision, she's
3 upset, and she's basically not herself because she's
4 had too much to drink. I would submit to you at
5 that point in time, she cannot give consent. That's
6 a decision you'll have to make as the factfinder.

7 So what does CJ then learn later? Well, the
8 first thing he kind of learns about this is this
9 text that we have from Drew. And, again, y'all are
10 tired of seeing this, but to the effect, bragging
11 about what he did. "I fucked a chick by the garbage
12 thing." Well, number one, it's incorrect. He did
13 it. It was behind basically a garage, but he's made
14 it about as bad as he could to have her having sex
15 with him out beside a garbage can, but that's what
16 CJ learns about. It doesn't name the girl who's
17 involved in the sexual act at that point in time,
18 but what CJ does is he puts two and two together.
19 So you can see he's now going through the process
20 that is required of him by law that he act --
21 basically gather information before he makes a
22 comment.

23 So now he's got this text information, in
24 addition, to, number one, he's gotten a call from
25 Drew Pampu on the evening to come pick up Erin. He

1 also has texts from Erin where she is trying to
2 communicate with CJ. You may recall, CJ had texted
3 her some 20 minutes before trying to find her and
4 he's mad about it.

5 Erin then, when she gets back from having sex,
6 she's upset, she's crying, and she cannot type
7 because she can't text what she needs to say to CJ.
8 You know, he asked her where she is, she says, "On
9 the steps." What steps? Then there's another there
10 where she's begging him to come get her and it's
11 just gobbledygook. And you can see there that is
12 another aspect of, well, she's pretty drunk at that
13 particular point in time.

14 So he's got this information: One, Drew is
15 saying she's pretty drunk. You need to come pick
16 her up. Secondly, to basically back that up, she
17 then tries to text him and she can't do it. She
18 physically cannot do it at that point in time. So
19 the next day, CJ then gets the text. He puts that
20 information about the sex between Drew and Erin
21 together with the fact that about at that same time,
22 Draw and Erin are together and Erin is in bad shape.

23 All right. So then he texts -- then he goes to
24 see Erin about it. And, again, we're taking this
25 particular analysis from CJ's viewpoint. We don't

1 have a lot of information otherwise, and he
2 confronts her about it. What's going on here?
3 Here's the text that we got, and, you know, explain
4 yourself. And she says, "I can't remember most of
5 this. I don't really know what happened last
6 night." All right. Now CJ's given information with
7 regard to, you know, her lack of memory indicating
8 again a large consumption of alcohol and also
9 indicates that she may not have been able to
10 consent.

11 Now, the logical thing to do is for him then to
12 get the other side of the story. Well, there are
13 only two people involved in this. That means he
14 goes to Drew to try to get his version of what
15 occurs. And at that point in time, Drew doesn't
16 really want to talk to him. So all he's got is the
17 information he's got from Erin, the information he
18 got through the text, the information he got from
19 Drew to come pick Erin up.

20 He then goes to Erin's sorority sisters to get
21 some more information about what condition she was
22 in. And when he gathers all this information, he
23 then comes to the conclusion, look, she's -- she had
24 sex with him and she didn't know what she was doing.
25 It was sex without consent, which as I've indicated

1 to constitutes rape based upon what Drew has
2 testified to in Court.

3 So what happened here? We have statements then
4 the day after that by CJ to two people. Two texts
5 that go out where he thinks that Erin has been raped
6 by Drew. What is the basis for that -- those
7 statements? And those are the only statements they
8 have regarding defamation with regard to CJ. The
9 basis for those statements is the fact that he had
10 all this information that we just went over that
11 indicates that -- that -- that Erin was raped. That
12 she did not give consent to have sex with Drew. And
13 under those circumstances, that does not meet the
14 definition of defamation because it's not just a
15 matter of saying, hey, something bad happened and
16 this person caused it.

17 It's a matter of with regards to CJ, and this
18 is why it's important from his perspective, as to
19 what information he had before he then made his
20 statement. If he does so without any basis
21 whatsoever, that's reckless. Well, we know for a
22 fact he had a basis for what he said. So was he
23 negligent with regard to what he said? And the
24 answer to that is no. The standard is called the
25 reasonable man standard. Basically is what would a

1 normal person do under the circumstances to gather
2 information before they make a statement such as
3 this.

4 And in this situation, he gathered as much
5 information as he could. The only aspect I believe
6 he didn't have was Drew's position, and the reason
7 he didn't have Drew's position at that point in time
8 when he was the statement was the fact that Drew
9 wouldn't cooperate. Now, Drew did cooperate later,
10 but it was after he had made those statements.

11 So our positions is, look, when the judge gives
12 you this definition of what defamation is, I want
13 you to listen to the various elements. The third
14 element has to do with fault on the part of the
15 publisher. Was CJ wrong? Was he negligent in
16 submitting this information based upon what he had
17 gathered? And it wasn't a matter of him skipping
18 over anything, but what he had gathered indicated
19 that there was nonconsensual sex, the definition of
20 rape by Andrew Pampu with Erin Wingo. If that is
21 the case, then you have to return a verdict for CJ
22 Gahagan.

23 Now, the other cause of action is civil
24 conspiracy. It also has four elements to it. One,
25 there has to be a combination or agreement between

1 two or more people to commit an unlawful act or
2 by -- or unlawful act by unlawful means. Third
3 element, to gather with commission of an overt act.
4 In other words, somebody has to do something to try
5 to harm somebody and then damages from that
6 activity. So the first element has to do with,
7 there has to be a combination of two or more people.
8 It can't be just something one person does for this
9 particular cause of action.

10 So -- and there are two elements to this civil
11 conspiracy action. One is that CJ combined with
12 Erin have caused harm to Andrew Pampu by having him
13 kicked out of Clemson. Let's look at that. Did
14 Erin -- Andrew Pampu is kicked of out of Clemson,
15 not so much by virtue of what any -- anybody said,
16 particularly Erin Wingo and CJ Gahagan, but by a
17 termination made by Clemson. Clemson is the one
18 that made that decision, so that it is -- there is
19 no combination there showing that these two did
20 something to reach to a damage. So that -- that
21 aspect of civil conspiracy is gone. Doesn't exist.

22 The other aspect has to do with when David
23 Wingo contacted the fraternity with regard to Andrew
24 Pampu. And acting on the behalf of his daughter, he
25 presented to the fraternity what had occurred. And

1 the fraternity, they made the decision to expel
2 Andrew Pampu from the fraternity. There's a good
3 reason for that. They don't like to have fraternity
4 brothers who are taking advantage of girls who are
5 under the influence and in essence rape them at a
6 fraternity party. That doesn't go well at the
7 fraternity. So today the fraternity, number one,
8 made the decision to do that.

9 More importantly from our aspect was that there
10 are a combination of people doing it. This is a
11 situation where David Wingo, acting on behalf of his
12 daughter Erin, as her father contacted this
13 fraternity. There is absolutely no evidence -- no
14 testimony with regard to CJ Gahagan being involved
15 in that. So, again, our position is, you shouldn't
16 give any type of damages or verdict in favor of
17 Mr. Pampu because of what occurred with regard to
18 these allegations of civil conspiracy.

19 Now, they're looking for damages basically
20 because of the defamation that has to do with your
21 reputation and how that might affect you down the
22 road. Regarding to civil conspiracy is an inability
23 to get a job such as a dentist or an orthodontist.

24 Regarding his reputation, consider this:
25 Number one, they didn't bring anybody here

1 individually who received the information regarding
2 the allegations of rape to say, yeah, I think Andrew
3 Pampu is just a horrible person. He's gone down in
4 my estimation as far as his reputation is concerned.
5 And remember, these are by texts. They're not
6 speaking like I am right now where a lot of people
7 can hear me. It's just one-on-one at that point in
8 time and neither one of these people were brought in
9 to show some kind of harm to reputation.

10 Not only that, if there was a harm to his
11 reputation, you've got to consider the fact he's
12 able to get into another college, the College of
13 Charleston. He's able to get through -- all the way
14 through College of Charleston. Remember he is a
15 freshman when this occurred at Clemson, so he's got
16 four years at College of Charleston and he does
17 pretty well. He makes a 3.8 I believe. Something
18 to that effect. That's -- that's a pretty good
19 grade, 3.8 out of 4.

20 So what does he do beyond that? He goes and
21 gets his MBA, masters in business administration
22 from the College of Charleston. So not only has he
23 got an undergraduate degree after this particular
24 event, he's gotten another degree where he's got a
25 masters, an MBA. So he's done pretty well. Not

1 only that, he's gotten a pretty good job since that
2 time. So how is that affecting his particular
3 reputation?

4 Also, how does it affect him with his ability
5 to get a job? You had testimony from Steve Shedlin,
6 a rehabilitation expert, indicating, well, he can't
7 get a job as an orthodontist. Well, first of, you
8 got to be a dentist before you can be an
9 orthodontist. It's very difficult to become an
10 orthodontist, but there's no testimony, even from
11 Steve Shedlin, indicating that he could not get into
12 dental school because of anything that CJ Gahagan or
13 Erin Wingo did. There's just absolutely not
14 anything there. So, again, you should consider that
15 because there's no connection there, there's no
16 causation there to lead to him not to be able to get
17 that job. There's also no indication that he would
18 make less at the job he has now or other jobs he
19 might be able to obtain that he would as a dentist,
20 which is the only thing he's really able to show he
21 didn't get into dental school or as an orthodontist,
22 which there's absolutely no proof of.

23 Now, I promised you I wouldn't take as long
24 because I know you're getting tired, but let me just
25 point out a few general things. This whole case

1 arises out of three students basically starting
2 their freshman year at Clemson. They are now three
3 of their family, for the most part, you know, that
4 brings us to. And when that happens there's a
5 change in basically responsibility as to what
6 they're going to do. They tend to engage in a lot
7 of drinking. They tend to engage in sex. And then
8 when their caught or have problems, they tend to lie
9 about it. But school is an area where they learn to
10 mature and take responsibility.

11 In this situation, if you take a look at the
12 three individuals involved as to whether they have
13 taken responsibility and matured over time and you
14 compare these three as to what has occurred, on the
15 one hand you see CJ Gahagan who is up there and took
16 a bullet for his girlfriend when he felt badly about
17 what had occurred with regard to his fraternity
18 brothers. His fraternity brothers blackballed him
19 because he stood up for her. He took responsibility
20 and they're going to argue, well, he's a liar. He
21 sent a text and said he lied during the hearing with
22 Clemson, but he explained that to you where he had a
23 fight with Erin and he tried to hurt her, you know,
24 reach out and hurt her by saying things that were
25 untrue or the lie was the part where he tried to

1 hurt her. He's taken responsibility even for his
2 bad actions in that situation.

3 You need to compare that with regard to Drew
4 Pampu. Has he taken responsibility for anything
5 that occurred here or has he reached out try to harm
6 people about indicating, no, I have some fault in
7 my -- in my situation. If you look at it from the
8 testimony and the evidence you have here, you see a
9 guy who took advantage of a drunk girl, who then
10 took her out and had nonconsensual sex. And then
11 when he was caught doing it, he tried to reach out
12 and say, no, no, it's somebody else's fault. Never
13 took responsibility for what he did and has not
14 matured enough to where he should've learned, even
15 though he's got all of these degrees to where he's
16 grown up, except to go ahead -- and then sue. Try
17 and make more money off of this where he is the one
18 who generated the harm in the first place.

19 What I'm asking you to do is listen carefully
20 to the judge's charge, apply what facts you find in
21 this particular case, and make a decision as to
22 whether there has actually been defamation to
23 whether there was any civil conspiracy. I submit to
24 you that you should find is that CJ Gahagan nor the
25 Wingos are responsible in this particular matter.

1 I'd ask you to return a verdict for the defendants.
2 Thank you.

3 THE COURT: Ladies and gentlemen, we need take
4 a short break. Our court reporter has been typing
5 for I don't know how long. Do not discuss the case,
6 and we'll bring you out in just a few minutes for
7 one final argument.

8 (At 12:01 p.m., jury left the courtroom.)

9 (From 12:01 to 12:13 p.m., brief recess.)

10 THE COURT: All right. If the jury's ready,
11 bring them in.

12 (At 12:14 p.m., jury entered the courtroom.)

13 THE COURT: All right. Please be seated.

14 THE JURORS: (Complying.)

15 THE COURT: Ms. Lau, you may proceed with
16 rebuttal reply.

17 MS. LAU: May it please the Court?

18 THE COURT: Yes.

19 MS. LAU: Defendants have told you they don't
20 have a burden. It's not true. They have a burden
21 to prove their affirmative defenses of truth and
22 self-publication. When a plaintiff like Mr. Pampu
23 brings a case of defamation, those statements are
24 presumed defamatory until they are rebutted by the
25 defense, so they do carry that burden to show you

1 that their statements were true, and they failed to
2 do that. They failed to carry that burden.

3 The defendants also referred to a handle of
4 Fireball and a bottle to indicate what kind of
5 alcohol Ms. Wingo consumed that night, but as they
6 stated and as you heard, the testimony, it just
7 doesn't show that anyone can definitively say what
8 Ms. Wingo actually drank that night. And you may
9 not realize this, but there's only -- there's only
10 been testimony from three of the four women who were
11 pre-gaming -- Erin, Rachel, Olivia. You may want to
12 ask yourself why the defendant didn't call Haley.

13 Counsel also told you about how lawyers may
14 muddy the waters to get you to believe one way or
15 another, and I -- I would agree to that extent that
16 defense counsel has muddied the waters when they use
17 labels like drunk, sober, intoxicated because those
18 labels mean different things to different people.
19 Those are colloquial terms. They're not scientific
20 terms.

21 So it makes more sense to focus on observable
22 actions. That's how somebody would reasonably know
23 or should've known that somebody is not okay to
24 consent. And the testimony just does not show --
25 the evidence does not show that that was the case

1 before and during the encounter.

2 Defense has also raised a message where
3 Mr. Pampu describes a mistake that he made referring
4 to the night. And I believe you've heard his
5 testimony that the mistake he was referring to was
6 the realization that the sexual encounter was
7 becoming an issue between CJ and Erin. He did not
8 realize just how it would impact their relationship.

9 Now, counsel has put you through the events as
10 described by Ms. Wingo as to what she says she
11 remembers and has tried to put her spin on how could
12 a sober person do that? But it's undisputed Erin
13 was interested in Drew and was attracted to him,
14 declaring to five individuals she wanted to give him
15 a birthday kiss. It's not so strange that after
16 being rebuffed by CJ, Erin would decide to engage in
17 a sexual act with someone she's attracted to.

18 And I think we can also agree with defense
19 counsel that Erin was highly emotional after the
20 encounter. Drew testified to that. Olivia
21 testified to that, Rachel did, Ben did, and so did
22 Jon. But what makes sense is Erin cared about CJ
23 and knew he would be mad at her about this
24 encounter. That doesn't mean she was incapacitated
25 at the time of the encounter.

1 The GroupMe chat and the text message that was
2 raised and a comment was made that, well, isn't it
3 interesting that Mr. Pampu didn't volunteer that
4 text in this litigation, that they had to somehow go
5 to Rode Island or get this text from someone in
6 Rhode Island from named Jon Stoddart, but I need to
7 clarify something for you. The defendant did not
8 need to do that. I know because I've been his
9 counsel during the course of this litigation. That
10 message came from Mr. Pampu through discovery.

11 MS. PORTER: Objection, Your Honor.

12 THE COURT: Yeah, let's stay out of any ---

13 MS. LAU: Counsel has also mentioned testimony
14 about Jami Hafner where she testified to you saying
15 she did not remember what Erin exactly said, but
16 that's what she said as to her memory present day,
17 seven years later. Understandable. You may not
18 remember everything you said seven years ago.
19 That's why we asked her if her statements seven
20 years ago were, in fact, accurate and she said they
21 were. And when she provided the statement in
22 December of 2015, two months after the encounter,
23 she said Erin told her she had sex with Drew.

24 You've heard from defendants that Erin was just
25 trying to put the pieces together of the night, and

1 then came to the realization that she was raped.
2 But as you've heard from Dr. Pope, that's not how
3 fragmentary blackouts work. The memories are not
4 formed to begin with. There's nothing to recall
5 later.

6 There's also been discussion from both sets of
7 defense counsel that it's really Clemson that kicked
8 Drew out of school, not Erin and CJ. But as we've
9 shown through evidence and the testimony and the
10 text messages, the fraud on Clemson with their
11 statements, this perpetrator, but for the
12 statements, Clemson wouldn't have kicked him out.

13 There's also been an argument, well, he was
14 just suspended. He could've reapplied, and that's
15 on him for not doing that. Not on defendants. But
16 what you may not realize is when someone is
17 suspended and then they have to wait out the
18 suspension to reapply, that's a gap that stays on
19 your record and that gap makes you even more
20 unlikely to transfer or get into other programs
21 because it's a noticeable gap that you're going to
22 have to explain. That explanation from defendants
23 only increases his damages if he waited -- if he'd
24 waited. And haven't they already done enough damage
25 so far?

1 Defendants have also said, well, dental schools
2 didn't deny Mr. Pampu admission because of
3 defendants. They denied him admission because of a
4 self-report about the removal from Clemson, so it's
5 Clemson's fault. But, again, his removal from
6 Clemson and his denial of admission from dental
7 schools, that's what we call a flow of damages that
8 started with statements from the defendants and they
9 are responsible for all the intended damages that
10 flow.

11 You've also heard from CJ's counsel trying to
12 explain away the message once again, reminding you
13 that he said he was just angry. He wanted to go for
14 the jugular with Erin. He didn't mean what he said.
15 But then you have to ask yourself, even if you
16 believe that, if he could lie to hurt someone he
17 deeply cared about, then he could certainly lie to
18 hurt Drew.

19 Counsel for Ms. Wingo explained why Erin didn't
20 go to the police, why she didn't involve herself in
21 a court of law about this encounter, but you can't
22 have it both ways. You can't circumvent proper
23 channels and take it upon yourself to smear someone
24 else's reputation, ruin his future by accusing him
25 of a crime of moral turpitude, especially when you

1 know that is not what happened.

2 CJ, he's claiming his rape statements were
3 relied upon information that he gathered. The
4 information he gathered was the lack of memory from
5 Ms. Wingo and a text that he saw after 1:00 a.m.
6 after the sexual encounter where he could not
7 understand. So what was he supposed to do. Well,
8 how about not making statements to others about
9 something you didn't observe based on statements by
10 someone who says she doesn't have a memory.

11 I want to be clear whatever conspiracy claim is
12 based on, there's two conspiracy -- there's two
13 plans essentially, the plan between Ms. Wingo and
14 Mr. Gahagan to get Drew kicked out of school, and
15 there's the other plan by Ms. Wingo and her father
16 to get him removed from the fraternity.

17 And, finally, you heard a reference to maturity
18 level. I believe that was made in reference to
19 perhaps some kind of justification for why Ms. Wingo
20 and Mr. Gahagan made the statements they did that
21 were clearly false against Mr. Pampu. But the
22 evidence shows those are calculated statements made
23 to over 20 people several times each. I believe we
24 heard from Ms. Wingo sometimes upwards of 20 to 100
25 times to a single person.

1 The law doesn't give them a pass. And to
2 borrow a phrase from defense counsel, please use
3 your common sense and apply that law that the judge
4 will instruct you on to return a verdict for the
5 plaintiff for defamation and civil conspiracy and
6 award damages, actual damages, and punitive as to
7 prevent this kind of behavior our society does not
8 condone. Thank you.

9 THE COURT: All right. Ladies and gentlemen,
10 unfortunately now comes one of the more drier parts
11 and that is the law. It's a very important part
12 though too, so that why I'm going to come down here.

13 All right. As I told you in the beginning,
14 some of the stuff you will -- I told you in the
15 beginning that I want to make sure is all important
16 so that's why I wanted to come down here. And I
17 told you that each of us, me versus you, have two
18 distinct jobs in this case. Mine is to rule over
19 the case, preside over the case, to rule on
20 evidence, objections that are made, and finally
21 charge you on the law, determine what the law is.
22 Your job is to determine what the facts of the case
23 are. If there is anything that I did that made you
24 think I had an opinion on the facts or a reference
25 to anything that made you think I had an opinion,

1 you should disregard that because that would mean
2 I'm trying to do your job. Your job is to determine
3 what the facts are. If you come in here and you
4 think you knew what the law is based on TV or
5 whatever or maybe a previous matter that you've been
6 involved in, then you're to disregard that if it
7 contradicts what I'm telling you know. You've taken
8 an oath that says you will apply the law that I am
9 charging you with now.

10 Now, what are you to determine your facts? How
11 do you make that determination? Well, you are to
12 determine only the evidence that has been presented
13 in this case. Nothing else. The evidence and the
14 evidence is by way of testimony from the witness
15 stand, exhibits that will be taken back to the jury
16 room with you, any stipulation of counsel that may
17 have been presented throughout. All of those are
18 what you're to make your determination on and you're
19 to give it the weight and value that you feel is
20 appropriate or come up with those facts.

21 Now, in this case, and I'm going to go over a
22 little more detail in a few minutes, but in this
23 case you have two distinct and separate causes of
24 action what we call them or claims. You have one
25 for defamation and you have another for civil

1 conspiracy. And as to each of those causes of
2 action, you have three separate defendants in this
3 case. You have Erin Wingo, David Wingo, and CJ
4 Gahagan. And the jury verdict, which I'll go over
5 with you in just a minute, kind of gives you a
6 roadmap of how to do that, but you are to consider
7 each of those causes of action separately and you're
8 to consider those cautions of action to each
9 defendant separately and make your evaluation on
10 each one of those. And your decision on one of them
11 does not carry over to the next. It's to be
12 considered independently as you go through. And it
13 will make a little better sense when I show you the
14 verdict form and I go through that in just a minute.
15 And you must decide in this case the plaintiff has
16 the burden of proof on these claims. And you must
17 decide has the plaintiff met his burden on each of
18 those causes of action as to each of those
19 defendants.

20 Now, what is the burden of proof? The burden
21 of proof is kind of a fancy legal word called
22 preponderance of the evidence, and that means
23 greater weight of evidence or more likely than not.
24 Now, I don't know if any of you have ever been
25 involved in a criminal matter or either by watching

1 on TV or may be being involved in a jury or maybe
2 you've been involved in a criminal matter. The only
3 reason I point that out is because that burden is
4 much higher than what we're talking about here.
5 That is beyond a reasonable doubt and that has
6 nothing to do with what we're talking about here.
7 What we're talking about here is a civil matter and
8 the plaintiff in this matter has the burden of proof
9 by more likely than not.

10 Now, in addition to that, the defendant has
11 asserted certain affirmative defenses what we call
12 and we'll go over those in a few minutes and they
13 have the burden, the same burden, on those
14 affirmative defenses. They must prove that those
15 defenses -- they have the burden of proof on those
16 defenses by a preponderance of the evidence, as
17 well. It's the same burden.

18 There is a -- there's one difference that I
19 need to explain to you and that is in this case the
20 plaintiff is seeking punitive damages. And I'll
21 define that in a few minutes. And that is a higher
22 standard than what we're talking about here. In
23 order to award punitive damages, the plaintiff has
24 the burden of clear and convincing, which is a
25 little bit -- it's not beyond a reasonable doubt

1 level, but it's above the preponderance of the
2 evidence. And, again, I will go over punitive
3 damages, but I wanted to let you know at this point,
4 those are the burdens that each party has as we go
5 through this matter.

6 Now, there's two types of evidence that parties
7 can rely on in a case and that's direct evidence and
8 circumstantial evidence. Direct evidence is when a
9 a person who claims to have actual knowledge of a
10 fact, such as an eyewitness, and it is evidence
11 which immediately establishes that fact that they're
12 trying to prove.

13 Circumstantial evidence may be a chain of facts
14 that proves a particular point. It's a little bit
15 different there. The burden is the same and the
16 plaintiff and the defendants, the parties, they can
17 rely on direct, circumstantial, or a combination of
18 the two. The burden is still the same.

19 I always kind of have a simple little
20 illustration to show you the difference between
21 those. Direct evidence would be, for instance, if
22 you pulled in your driveway and it starts pouring
23 down rain. Well, you look out the window and you
24 see the rain falling. You have direct evidence that
25 it's raining. Well, on the other hand, you pull in

1 your driveway. The driveway is dry. You see clouds
2 up above. You go in your house and you come out
3 five minutes later and everything is soaking wet.
4 Well, you don't have direct evidence of seeing it
5 rain, but you have a series of facts that kind of
6 support, hey, you know, that's circumstantial
7 evidence that it rained. So they can rely on both.
8 The parties can rely on circumstantial and direct
9 evidence, and -- but still you can assume the
10 direct, you can assume the circumstantial, but you
11 still have to give it the same burden and you're to
12 give all of it the weight and the value which you
13 feel is appropriate.

14 Now, let's talk about credibility of witnesses
15 and what you must be consider as a witness.
16 Credibility merely means believability, and that's
17 something that you have to consider as to whether
18 you believed a witness or not. You may accept all
19 the witnesses' testimony and reject several
20 witnesses, or you may accept several witnesses and
21 reject one witness. You may accept a part of a
22 witnesses' testimony and reject the remaining part.
23 You may accept all the witnesses' testimony or may
24 reject all of it. Again, it's the weight and value
25 that you -- that you feel is appropriate. You can

1 consider whether that witness had a particular bias,
2 had a particular interest in the outcome, how they
3 looked on the stand. All of those can be considered
4 by you in making your determination.

5 Now, let's talk about experts. There were
6 several individuals that were qualified as expert
7 witnesses. Now, as I told you when those people
8 testify, that a person can't normally testify to
9 anything beyond their own observations and things
10 that they've heard. They can't give their opinion.
11 That's what call a lay witness.

12 The exception to that rule is somebody that's
13 determined to be an expert. An expert may be
14 qualified because of their experience, their
15 training, their education, their work. They may be
16 qualified in a certain area. Okay. And then,
17 therefore, they can give their opinion as to the
18 area in which they have been determined to be an
19 expert. But an expert witness's testimony is to be
20 given no greater weight than any other witness.
21 It's given the weight and the value that you feel
22 like is appropriate. You should consider an expert
23 opinion given by a witness like any other, the
24 weight it deserves. And if you decide the witnesses
25 opinion is not based on sufficient education or

1 experience or you decide the reasons given in
2 support of that opinion are not sound or that the
3 opinion is outweighed by other evidence, then you
4 can disregard that expert's opinion. You do not
5 have to accept an expert's opinion even though it is
6 uncontradicted. Again, the phrase I keep using,
7 it's the weight and value that you feel is
8 appropriate.

9 And there was also referenced to deposition
10 testimony. And, again, deposition, as you kind of
11 saw, that's where somebody is previously put under
12 oath and asked questions in connection with his
13 lawsuit, and then that is transcribed and there are
14 those little booklets and that's a transcript of the
15 deposition. And that can be been presented in
16 several ways. One was is a particular witness may
17 not have been here, and the other way is it was used
18 for witnesses that were here to ask them questions
19 about what they previously said.

20 Now, that -- those deposition testimony
21 transcripts and presentation of depositions are to
22 be used the same way, considered by you the same way
23 as if somebody was sitting here in the witness
24 stand. They were placed under oath and is to be
25 considered the same way as all the other evidence.

1 All right. Those are kind of the general rules
2 that you apply in coming up with your decision.
3 Now, I'm going to give you specifically elements
4 that relate to this particular claim. And, again,
5 we have two. It's kind of like -- this is how I'm
6 going to break it down. We have two separate claims
7 here. We have defamation and we have civil
8 conspiracy.

9 As to the defamation, the defendants in this
10 matter have asserted affirmative defenses, so then I
11 will go over what those defenses are and how -- what
12 their burden is on that. And then, finally, as to
13 defamation, I will talk to you about damages. We
14 have two separate damages. We have actual damages
15 and we have punitive damages, and I will define
16 those, and then we'll go into the civil conspiracy
17 claim.

18 All right. Defamation. To recover for
19 defamation, the plaintiff must establish by the
20 preponderance of the evidence several elements, that
21 a false and defamatory statement was made by the
22 defendants concerning the plaintiff. Number two,
23 that an unprivileged publication by the defendant to
24 a third party. Three, a fault in publishing the
25 statement. And, four, the actionability of the

1 statement irrespective of special harm or the
2 existence of special harm that the plaintiff caused
3 by the publication, and I'll explain that in just a
4 minute.

5 Communication is defamatory if it tends to harm
6 the reputation of another as to lower him in the
7 estimation of the community or to detour third
8 persons from associating or dealing with him. In
9 determining the defamatory character of the
10 language, the meaning of which is clear or otherwise
11 determined, the social station of the parties in the
12 community, the current standards of moral and social
13 conduct prevalent therein, and the business,
14 profession, or calling of the parties are important
15 factors. An imputation may be defamatory as applied
16 to one person and given time and place, although it
17 would not have been derogatory of another person at
18 a different time or a different place. To determine
19 whether the words were defamatory, you should ask
20 yourselves whether, taken as a whole, the words tend
21 to diminish the respectability of the plaintiff and
22 to expose him to disgrace ill repute.

23 The defamatory statement must be false. One
24 who publishes a defamatory statement of fact is not
25 subject to liability or defamation if the statement

1 is true. To create liability for defamation, there
2 must be publication of matter that is both
3 defamatory and false. There could be no recovery in
4 defamation for a statement of fact that is true,
5 although the statement is made for good purpose --
6 for no good purpose, is inspired by ill will toward
7 the person about whom it is published, and is made
8 solely for the purpose of harming him. The truth of
9 the matter published is an absolute defense.

10 Whether a statement is defamatory or not is a
11 question for you the jury to determine. Statements
12 are to be given their ordinary and popular meaning.

13 Now, let break that down a little bit and we
14 had talked about defamation and that includes two
15 things. You may have heard these terms around you
16 have under defamation, you have libel and slander.
17 And they are kind of two -- libel is when the
18 publication of defamatory materials by written or
19 printed words by its embodiment in physical form or
20 by any other form of communication that has the
21 potentially harmful qualities, characteristics of
22 written or printed words. So, basically, libel is a
23 written defamation.

24 Slander, on the other hand, is a spoken
25 defamation. Slander consists of the publication of

1 defamatory matter by spoken words, transitory
2 gestures, or by any form of communication other than
3 those considered under libel.

4 Now, to recover for defamation, and again,
5 that's where libel and slander. Again, that's for
6 you to consider. Generally to recover defamation,
7 the plaintiff needs to show that the actions of the
8 defendant were negligent. The plaintiff need not
9 show intent or actual malice. Negligence is the
10 doing of what a reasonable and prudent person would
11 do under the similar circumstance, or the failure to
12 do what such a person would've done under the
13 circumstances.

14 Under this negligent standard, the standard of
15 conduct is that of the reasonable person under like
16 circumstances. Insofar as the truth or falsity of a
17 defamatory statement is concerned. The question of
18 negligence has sometimes been expressed in terms of
19 the defendant's state of mind by asking whether he
20 had reasonable grounds for believing that the
21 communication is true. Putting the question in
22 terms of conduct is to ask whether the defendant
23 acted reasonably in checking on the truth or falsity
24 or defamatory character of the communication before
25 publishing it.

1 Okay. There's the elements of defamation both
2 with libel and slander. Now, in this case the
3 defendants have asserted certain affirmative
4 defenses and they have the burden of proving this.
5 And I'll go over this with you now. Again, same
6 burden, by a preponderance of the evidence.

7 The defendants claim the words published were
8 true. Truth is an affirmative defense. The
9 defendant must prove this defense by the greater
10 weight of the evidence. A sufficient defense is
11 made out where the evidence establishes the
12 statements were substantially true. It's not
13 necessary to establish the literal truth of the
14 precise statements made. Slight inaccuracies of
15 expression are immaterial provided the defamatory
16 charge is true in substance. The defendants not
17 need not justify every word of the statement so long
18 as the statement's substance or "gist" is proved
19 true. The statements must be viewed in their
20 entirety. Variances in immaterial particulars may
21 be disregarded. The test is whether the statements
22 as made would have a different effect on the mind of
23 a third party than the truth would have produced.

24 You must determine from the evidence presented
25 what the truth was and compare that with the

1 statements which you find were made by the
2 defendants, considering the statements according to
3 the ordinary use -- ordinary meaning of the language
4 used.

5 There can be no recovery in defamation for a
6 statement of fact that is true, although the
7 statement is made for no good purpose or ill will.

8 If you find there was no substantial difference
9 between the statements and the truth, then the
10 defendant has established the defense of truth. If
11 you find the statements differed in substantial
12 respects from the truth, then the defense of truth
13 has not been made out.

14 If you find the defendants have proved this
15 defense, then your verdict must be for the
16 defendants on that -- on that particular portion.
17 The truth of a statement is a complete or absolute
18 defense.

19 There's also a -- the defendants have asserted
20 another affirmative defense called self-publication.
21 The alleged defamatory statement must be published
22 by the defendant. As a general rule, where a person
23 communicates a defamatory statement only to the
24 person defamed and the defamed person then repeats
25 the statement to others, publication of the

1 statement by the person defamed or self-publication
2 will not support a defamation action against the
3 originator of the statement. If the plaintiff
4 repeats to a third party, the defendant is not
5 responsible for any damages caused by plaintiff
6 communicating the statement. If the plaintiff
7 himself communicated or by his acts caused the
8 communication of a defamatory statement to third
9 person, the plaintiff cannot recover because there
10 is no publication which the defendant was liable.
11 If plaintiff consistent to or authorized the
12 communication of the defamatory statement, he cannot
13 recover for any injuries sustained by reason of the
14 communication. The plaintiff would not be able to
15 recover for any damages caused by self-publication
16 if you find there was self-publication, but this
17 does not prohibit him from recovering for other
18 statement which you find were defamatory and were
19 not involved in self-publication.

20 Now, also defamation is what was called
21 "actionable per se." Defamation can be actionable
22 per se if it involves written or printed words which
23 tends to degrade a person. This is, to reduce his
24 character or reputation in the estimation of his
25 friends or acquaintances, or the public.

1 Actionable per se is when the defendant's
2 alleged defamatory statements charges him with the
3 commission of a crime of moral turpitude. I tell
4 you that rape and sexual assault are considered
5 crimes of moral turpitude.

6 Now, those are the elements that you must
7 address in coming whether the plaintiff has met
8 their burden of defamation and the affirmative
9 defenses asserted by the defendants.

10 Now, let's me talk about the damages. In the
11 event that you find that the plaintiff has met their
12 burden and you have considered damages and the
13 affirmative defenses do not apply. The very essence
14 of an action for defamation is that the a plaintiff
15 has suffered damages as a result of the injurious
16 effect of the defamation upon his reputation.
17 Actual proof of damages is not required if the
18 defamation is actionable per se, which is the
19 charge -- again, charging somebody of a crime of
20 moral turpitude.

21 If defamation is actionable per se, then the
22 law presumes the defendant acted with common law
23 actual malice and that the plaintiff suffered
24 general damages. Such damages -- such defamation is
25 actionable without proof of special damages. Words

1 actionable per se carry with them the presumption
2 that actual damage to reputation and character
3 directly and proximately resulted therefrom. Is it
4 not necessary to allege or prove any actual or
5 special damages. Where a plaintiff is entitled to
6 recover actual damages for the injury the statement
7 caused him, these damages include: Injury to
8 reputation and standing in the community;
9 embarrassment; personal humiliation; mental anguish
10 and suffering; wounded feelings caused by injury to
11 reputation.

12 A plaintiff who proves he is entitled to
13 special damages may recover special damages any
14 expenses or loss of value that can be attributed to
15 the defamatory statements. Special damages are
16 tangible losses or injury to the plaintiff's
17 property, business, occupation, or profession, which
18 are capable of being assessed monetarily and which
19 result in injuries to the plaintiff's reputation.

20 And, again, as to damages, the plaintiff has
21 the burden of proving that the damages -- special
22 damages, but in a manner which is, in fact,
23 defamation per se, there's a presumption of damages
24 as I just discussed.

25 All right. The plaintiff has also in this

1 matter asserted punitive -- a claim for punitive
2 damages on the cause of action for defamation. So
3 to recover punitive damages, the plaintiff must
4 prove by clear and convincing evidence. This is a
5 little higher standard than what we talked about.
6 If a statement was said or written with actual
7 malice, that is, that the defendant either realized
8 the statement was false or had serious reservations
9 about its truth. While implied malice will support
10 an award of actual damages, actual must be shown to
11 recover for punitive damages.

12 All right. In other words, there's a -- in a
13 defamation per se, when somebody's charged with a
14 crime of moral turpitude, there is a presumption of
15 actual malice to support that claim if you find that
16 that is what occurred. But when you're talking
17 about punitive damages, there's not that inference
18 and they must show by clear and convincing evidence
19 to entitle them to punitive damages.

20 Now, what is punitive damages? Actual damages
21 are damages were actually suffered by a particular
22 individual. Punitive damages is a totally separate
23 matter. Punitive damages are imposed as punishment.
24 They're not intended to compensate a party.
25 Punitive damages are allowed in the interest of

1 society in the nature of punishment and as a warning
2 and example to deter the wrongdoer and others from
3 committing like offenses in the future. Moreover,
4 they serve to vindicate a private right by requiring
5 the wrongdoer to pay money to the injured party.
6 Punitive damages serve at least three important
7 purposes: Punishment of the defendants' reckless,
8 willful, wanton, or malicious conduct; deterrence of
9 similar future conduct by the defendants; and
10 compensation for the reckless or willful invasion of
11 the plaintiff's private rights. The paramount
12 purpose for awarding punitive damages is not to
13 compensate the plaintiff, but to punish and set an
14 example for others.

15 Before you can award punitive damages, you must
16 first find that the plaintiff is entitled to actual
17 or nominal damages. So if you get to punitive, you
18 must have also found actual damages. And there's no
19 formula or standard that can be used as a measure
20 for assessing punitive damages. However, there's
21 certain factors which you may consider: You may
22 consider the character of the defendants' acts; you
23 may consider nature and extent of the harm to
24 plaintiff which defendant caused; you can consider
25 defendants' degree of culpability; punishment that

1 should be imposed; the duration of the conduct; the
2 defendants' awareness or concealment; existence of
3 similar conduct in the past; the likelihood that
4 such an award of punitive damages will deter
5 defendants or others from like conduct;
6 whether award-- you could consider whether the award
7 is reasonably related to the harm and likely to
8 result in such conduct; and, finally, you can
9 consider the defendants' wealth or his or her
10 ability to pay. Financial condition of the
11 defendants is a factor for you to consider, but it's
12 not the only factor. You must also consider the
13 other factors which I have just listed.

14 Now, I've used the term "clear and convincing"
15 so let me define this. Clear and convincing
16 evidence is that degree of proof which will produce
17 in your belief as to the allegations sought to be
18 established. Such a measure of proof is
19 intermediate, more than a mere preponderance, but
20 less than required for beyond a reasonable doubt.
21 It does not mean clear and unequivocal. It just
22 means clear and convincing. Something firmly
23 convinces you of the facts to be proven.

24 All right. Now let me talk to you about civil
25 conspiracy. This is the second claim which is

1 plaintiff has asserted in which they have the burden
2 of proof on. And a plaintiff asserting a civil
3 conspiracy claim must establish four elements: The
4 combination or agreement of two or more persons; to
5 commit an unlawful act or a lawful act of an
6 unlawful means; together with the commission of an
7 overt act in furtherance of the agreement; and
8 damages resulting to the plaintiff. So those are
9 your four elements for civil conspiracy, which
10 you'll be considering separately from the defamation
11 claim.

12 The conspiracy may be inferred from the nature
13 of the acts, relationship of the parties, and the
14 interest of alleged conspirators and other
15 circumstances. Civil conspiracy is an act which is
16 by its very nature covert and clandestine and
17 usually not susceptible of proof by direct evidence.
18 Concert of action, amounting to a conspiracy, may be
19 shown by circumstantial as well as direct evidence.
20 In order to establish a civil conspiracy, direct or
21 circumstantial evidence must be produced from which
22 one may reasonably infer the joint assent of the
23 mind of two or more parties to the prosecution of
24 the unlawful enterprise. A conspiracy is actionable
25 only if overt acts pursuant to a common design

1 proximately causes damages to the party bringing the
2 action.

3 Now, under civil conspiracy, the damages must
4 be proven. It's not like defamation where you have
5 the presumption of certain damage. In this one, the
6 plaintiff has the burden of proving the damages, and
7 that is, the injured party may recover the damages
8 that flow from the conspiracy. The plaintiff's
9 entitled to recover only such damages as naturally
10 and proximately result from the wrongful act or acts
11 done in pursuance of the conspiracy and which
12 directly result from it. The elements of actual
13 damage that may be awarded are any damage or injury
14 done to person resulting from the conspiracy.

15 Future damages need not be proved to a
16 mathematical certainty and often must be
17 approximated. Any future damages must be the result
18 of the defendants' action.

19 As a general rule, the evidence should allow
20 the Court or jury to determine the amount of damages
21 with reasonable certainty and accuracy. Neither the
22 existence, causation nor amount of damages can be
23 left to conjecture, guess, or speculation. Damages
24 must be proved with a reasonable degree of
25 certainty. The evidence presented by the plaintiff

1 must enable you, the jury, to determine what amount
2 is fair, just, and reasonable. The plaintiff bears
3 the burden of proving by a preponderance of the
4 evidence that he entitled to actual damages as
5 discussed.

6 All right. At this time, I'm going to -- I've
7 got -- I think I've got copies for each one of you.
8 These are the verdict forms. Just pass those down.

9 MS. LAU: Your Honor, if I may, I know there
10 was a section that we all ---

11 THE COURT: Well, we'll go over that after we
12 release the jury.

13 MS. LAU: It has to do with the jury
14 instructions though.

15 THE COURT: All right. Do we need to send them
16 out then?

17 MS. LAU: Or a sidebar. Probably a sidebar is
18 all it takes.

19 THE COURT: All right. Hold on. Turn them
20 over. I may have messed up in here.

21 (Sidebar discussion.)

22 THE COURT: All right. You can look at them.
23 And I think -- you will only have one back there in
24 the jury room. You, as the foreperson, you'll end
25 up with the one that you need, but I thought

1 explaining this, it would be easier if everybody was
2 looking at what your decision was going to be.

3 First of all, the top part is the caption. That's
4 how -- this is the verdict form. It says, "Please
5 answer each of the questions. Each answer must be a
6 unanimous decision of the jury." And it says, "We
7 the jury unanimously find." Then you're going to go
8 through each of these questions separately. And we
9 have claim (a) as to the cause of action for
10 defamation. Please answer the question below as to
11 each defendant. The first question you're going to
12 answer: "As to defendant Erin Wingo, we the jury
13 unanimously find for," and then you're going check
14 to either A or B under this one. If you find the
15 plaintiff has met his burden in establishing
16 defamation against Erin Wingo, you would check for
17 the plaintiff. If you find that the plaintiff has
18 not met his burden or if you find that the defendant
19 has met their burden as to any of the affirmative
20 defenses, you would check for the defendant.

21 Now, if you check for the plaintiff, your first
22 analysis would be, amount of actual damages. And if
23 you find that the plaintiff is entitled to actual
24 damages, you would write that amount in that blank.
25 Okay. And if you find actual damages, then you can

1 consider whether the plaintiff has met his burden by
2 clear and convincing evidence that he is entitled to
3 punitive damages, then write that amount in that box
4 there.

5 Then once you've completed that analysis as to
6 Erin Wingo, you would go to question two and that is
7 as to defendant David Wingo, we the jury unanimously
8 find, and you'd check either A or B. Again, if you
9 find the plaintiff has met his burden as to
10 defamation as to David Wingo, then you would check
11 for the plaintiff and you would consider actual
12 damages. If you find actual damages or punitive
13 damages, you'd find the plaintiff has not met his
14 burden as to David Wingo, or you find the defendants
15 met their burden of affirmative defenses, then you
16 would check B. So you're going to check A or B on
17 number one or number two.

18 Then you'll go to the next one. It's on page
19 two, number three, as to Colin J Gahagan. And you
20 would do the same analysis there, you would check A
21 or B based on what you find with whether the burden
22 to prove has been met. So that takes care of the
23 defamation claim.

24 Now, I want to also, which you will see,
25 punitive damages only applies to the defamation

1 claim. You will not make that analysis when you get
2 to the civil conspiracy.

3 As to cause of the action, then we have B here.
4 As to the cause of action for civil conspiracy, you
5 will make an analysis for the plaintiff -- I mean,
6 as to Erin Wingo. Again, if the plaintiff -- you
7 feel the plaintiff met this burden on the civil
8 conspiracy as to Erin Wingo, you would check the
9 plaintiff and then you would consider actual
10 damages. If you find, again, the plaintiff has not
11 met his burden on that one, then you would check for
12 the defendant. You do -- then you would go through
13 the same analysis for David Wingo, and you'd do the
14 same analysis for Colin J Gahagan.

15 So you basically have six question to answer.
16 You'll answer three under A and three under B. So
17 once you have completed your analysis, you've
18 answered all of those questions, then, Mr. Foreman,
19 you will sign and date. Okay. And you'll let the
20 bailiff know that you've reached a verdict.

21 Now, let me kind of go over a couple other
22 things and we're almost through. So at this point,
23 like I said, you'll only need one of those so if you
24 could pass all of your forms to the end of the row.

25 Okay. A couple of things here. Again, your

1 answer to each of these questions must be unanimous.
2 That means all 12 of you must decide what the --
3 what your verdict on those questions should be. And
4 your answer should be based on the evidence
5 presented here at trial. It should not based on any
6 sympathy, any passion, any prejudice, any emotion,
7 anything outside of the record. But now at some
8 point, you may have to ask questions, okay, and
9 that's your role again as the foreperson is to
10 write -- if you have a question, you'll write it on
11 a piece of paper, date and sign, and you'll give
12 that to the bailiff. The bailiff will bring it to
13 me.

14 Now, at that point, there's several things. I
15 can respond either writing it back and sending it
16 back to you, or it may be that I have to bring you
17 back out and give you additional instructions and
18 answer that question. I will tell you, we cannot
19 answer any factual questions. We cannot provide you
20 with any additional evidence. A lot of times jurors
21 will say, well, there was a reference to a
22 such-in-such report. Can we get that report? All
23 the evidence that you are to consider has been
24 presented. This is what the parties have decided
25 the evidence is that's going to be presented. So we

1 can't give you any additional evidence. Any other
2 questions, again, I will respond to your questions.

3 Now, I'm going to talk to my alternates. You
4 know, y'all have worked just as hard as the rest of
5 them, but unfortunately, you're not able to
6 deliberate with the jury. But I don't want you to
7 think that that means that your role is not as
8 important. We're in the middle of a basketball
9 tournament right now, and I think -- I always like
10 equate alternates like, for instance, you know,
11 those starting five, that starting center that's
12 playing on basketball team in the tournament, I
13 mean, they're sometimes the most important person on
14 the -- in the whole arena and nobody knows that
15 person on the bench is. But the moment that center
16 goes down, that person on the bench is the most
17 important person. And that's why your role is
18 important in this, is because if something had
19 happened to one of the jurors, especially when a
20 couple of days, you know, like with Covid, it's
21 happened a lot lately and you would've had to step
22 in or we'd not have been able to complete the trial.
23 Just the fact that I'm having to kick you out at
24 this point, I don't want you to think that your role
25 in this has not been extremely important and crucial

1 to this matter, and you still get your lunch.

2 So and speaking of lunch, your lunch should be
3 here and I think it's subs or sandwiches or
4 something like that and you can decide.

5 Now, I know there was a reference to the room
6 being hot -- really hot yesterday. If it is still
7 hot, we can maybe move you to another jury room,
8 because I'm sure it does get hot back there. If
9 that's a problem, let us know.

10 And what you can do is, I'm going to send you
11 back in here in just a second, but you can't
12 deliberate yet because I need make sure -- I think
13 there's obviously one issue we're going to have to
14 address. If I need bring you back, I will bring you
15 back and I will correct whatever my mistake. You
16 know, if I need make a correction or maybe add
17 something that I left out, then I will do that.

18 Now, it's up to you -- y'all to decide. Lunch
19 is here. If y'all want to let's eat our lunch
20 before we start talking about it or if y'all want to
21 eat and y'all want start talking while you're
22 eating. It's totally up to you. But the signal for
23 you to begin deliberations or for you to make that
24 decision is the bailiff will bring you the verdict
25 form, will bring you all the evidence, and will ask

1 the alternates to step out at that point. So at
2 this point though, I'm going to ask that you step
3 back in your jury room, but do not begin
4 deliberations until you get the signal to do so.

5 (At 1:08 p.m., jury left the courtroom.)

6 THE COURT: All right. I sort of cut you off.
7 Usually, the way I handle this, if there's some
8 corrections or additions to make, let's talk about
9 it on the record and then if we need bring the jury
10 out, so I'm sorry if I cut you off. Okay. You had
11 an issue with -- with something.

12 MS. LAU: Your Honor, we just -- when we had a
13 discussed the jury charges, we had asked for the
14 last sentence of middle paragraph on page five to be
15 stricken where that sentence was, "the degree of
16 fault the plaintiff must establish depends upon a
17 status as a public or private figure," and you did
18 not take that out.

19 THE COURT: Let me find out you are.

20 MR. GRANTLAND: On page five.

21 THE COURT: Okay. I'm there.

22 MS. LAU: But we didn't hear you charge the
23 jury with the sentence before that which is, "a
24 defamatory communication is presumed to be false
25 under the common law," as well as the second

1 sentence after that. "The plaintiff does not have
2 the burden of proving falsity," and then the third
3 sentence, "however, the truth can be asserted as an
4 affirmative defense, the burden of which is on the
5 defendant."

6 THE COURT: I think the reason I kind of did
7 it, I thought that was kind of coverer when I talked
8 about the affirmative defense truth.

9 MS. LAU: Okay. I mean, yeah, the presumption
10 of falsity, I didn't know if they understood that
11 that was presumption.

12 MR. MOORE: Judge, my memory is that you
13 covered, like you said, regarding your discussion of
14 the affirmative defense.

15 THE COURT: And I think because that was
16 actually -- it's talked -- what it does is, you have
17 the definition of defamation, and then it goes into
18 and I talk about the falsity, and then it's talking
19 about the affirmative defense. And, I'm sorry, I
20 didn't mention this before. When I was looking back
21 through the final thing, we talking about that in
22 the affirmative defense so that's why I kind of -- I
23 think it's covered under there, but anything else
24 from the plaintiff as far as the charge?

25 MS. LAU: No, Your Honor.

1 THE COURT: Anything from the defendant?

2 MR. GRANTLAND: No, Your Honor.

3 MR. MOORE: No.

4 THE COURT: All right. Make sure all exhibits
5 are -- I think y'all went through and made sure they
6 are all properly redacted.

7 (Brief recess.)

8 THE COURT: Y'all are in agreement that's fine.

9 (From 1:16 to 3:19 p.m., jury deliberated.)

10 THE COURT: We have a question: "Please
11 provide us a formal definition of conspire." Mark
12 that, please. I don't know that my charge actually
13 had that in it, but it had the definition of civil
14 conspiracy. And what I have -- I guess my charge on
15 civil conspiracy covered those. What I normally do
16 when I get these types of questions from the jury
17 and they're asking for a definition like this, I
18 usually just print that portion of my charge and
19 just send it back to them.

20 MR. MOORE: What are you sending back to them?

21 THE COURT: In other words, the charge for
22 civil conspiracy. They want to know the definition
23 of conspire and I think that's pretty much covered,
24 or I can bring them out and charge them.

25 MR. MOORE: Was that word even used in your

1 charge?

2 THE COURT: Well, it's civil conspiracy. Just
3 talking about conspiracy and what conspiracy is.

4 MR. MOORE: The four elements and that type of
5 thing?

6 THE COURT: Yeah. I can either send that
7 portion back or bring them back out and just read
8 the civil conspiracy. I guess what I could do is
9 ask them -- respond back and say would the elements
10 of civil conspiracy?

11 MR. MOORE: Or just send them back that portion
12 of your charge and ask then if that's sufficient.

13 THE COURT: Y'all have a problem with that?

14 MS. PORTER: Are we just talking about the
15 plaintiff asserting a claim under one, two, three,
16 four?

17 THE COURT: I can print it off. I need to do
18 my version because there was couple of misspelled
19 words I just changed. Do I send it to your e-mail?

20 THE CLERK: Yes, sir. How many do you want me
21 to print?

22 THE COURT: Just print four copies. Hold on.
23 A plaintiff asserting ---

24 THE CLERK: Yes, sir.

25 THE COURT: There is an extra D in there. What

1 are y'all's thoughts?

2 MR. GRANTLAND: Are you talking about printing
3 off the civil conspiracy charge and sending it back?

4 THE COURT: I'll let you look that. Is that
5 okay y'all?

6 MS. PORTER: Yes.

7 THE COURT: Okay. So y'all have looked at the
8 civil conspiracy charge, and I'm going to say here
9 is the charge on civil conspiracy and let me know if
10 you need anything else.

11 (From 3:17 to 5:19, deliberations continued.)

12 THE COURT: Before we bring the jury out, I
13 think this matter has been a very difficult and
14 y'all have lived with this since 2015. Now is not
15 to time to give up your composure. So I expect
16 everybody to keep up their composure. You know,
17 whatever the results, talk to your lawyers. Is the
18 plaintiff ready for the jury?

19 MS. LAU: Yes, Your Honor.

20 THE COURT: Is the defense ready?

21 MR. MOORE: Yes, Your Honor.

22 THE COURT: All right. Bring the jury out.

23 (At 5:20 p.m., jury entered the courtroom.)

24 THE COURT: All right. Mr. Foreman, I
25 understand you reached a verdict.

1 THE FOREMAN: We have, Your Honor.

2 THE COURT: If you could hand that to the
3 bailiff, please.

4 THE FOREMAN: (Complying.)

5 THE COURT: All right. This is the State of
6 South Carolina, County of Pickens, *Andrew Pampu v.*
7 *Erin Wingo, David Wingo Colin J Gahagan*, Civil
8 Action 2017-CP-39-00709. As to the cause of action
9 for defamation, please answer the question below as
10 to each defendant. As to defendant Erin Wingo, we
11 the jury unanimously find for, checked plaintiff,
12 actual damages 700,000, punitive 450,000.

13 As to defendant David Wingo, we the jury
14 unanimously find for plaintiff, actual damages
15 \$230,000, punitive zero.

16 As to defendant Colin J Gahagan, we the jury
17 unanimously find for checked (a), the plaintiff,
18 actual damages 700000, punitive damages 220,000.

19 As to the cause of action for civil conspiracy,
20 please answer the following questions to defendant
21 Erin Wingo, we the jury unanimously find for the
22 plaintiff, actual damages \$2 million.

23 As to defendant David Wingo, we the jury
24 unanimously find for David Wingo.

25 As to defendant Colin J Gahagan, we the jury

1 unanimously find for plaintiff, actual damages
2 \$1 million, signed Michael J. Meece, foreman.

3 Ladies and gentlemen, if this was your verdict
4 and it's still your verdict, please raise your right
5 hand.

6 THE JURORS: (Indicated.)

7 THE COURT: All right. Thank you. All right.
8 Ladies and gentlemen, thank you for -- anything from
9 the jury from the plaintiff before I release them?

10 MS. LAU: No, Your Honor.

11 THE COURT: Anything from defense? And I will
12 discuss -- this is to the jury and I'll come back
13 out. Ladies and gentlemen, thank you for your
14 service. This week, I know it's been a long week
15 and started bright and early Monday morning and gone
16 until 5:30 on Friday. So thank you for your
17 service. There's some things I need to go over with
18 the parties. If anybody has any questions of me,
19 you're welcome to stay around. I'll be glad to talk
20 to you, but on the other hand you're free to go as
21 well. There's a few things I need to go over with
22 the attorneys. So thank you and your released from
23 your jury services.

24 (At 5:24 p.m., jury was excused from further
25 service.)

1 THE COURT: All right. Anything from the
2 plaintiff at this time?

3 MS. LAU: No, Your Honor.

4 THE COURT: And anything from the defendant?
5 I'll give you ten days.

6 MS. PORTER: Thank you, Your Honor.

7 THE COURT: Including election of remedies.
8 That doesn't have to be as well now I don't believe
9 either.

10 MS. PORTER: We'd like ten days on of all of
11 it, Your Honor.

12 THE COURT: Yeah, I'll give you ten days to
13 file any motions. And just, like I said, file them
14 and make sure you send me a copy. So anything else?

15 MR. MOORE: I think that'll do it.

16 THE COURT: All right. Good luck to everyone.

17 (At 5:25 p.m., proceedings concluded.)

18 - - -
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Pickens County, South Carolina, on the 21st day of March, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 6, 2022

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	2017-CP-39-00709
	)	
	)	
	)	
	)	
ANDREW PAMPU,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ERIN WINGO, ET AL,	)	
DEFENDANTS.	)	
_____	)	

May 4, 2022
Via WebEx

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE.

A P P E A R A N C E S:

KIMBERLY LAU, ESQ.
JAMES FIGLIOZZI, ESQ.
Attorney for the Plaintiff

SUSAN PORTER, ESQ.
JOHN M. GRANTLAND, ESQ.
DAVID L. MOORE, ESQ.
Attorney for the Defendants

Proceedings Recorded by WebEx
Transcribed by Penny M. Johnson

I N D E X

(No witnesses were called.)

E X H I B I T S

(No exhibits were submitted.)

P R O C E E D I N G S

THE COURT: These are motions by Wingo and Gahagan. I'll hear from Wingo first and then I'll hear from Gahagan and then we'll hear from the Plaintiff's side.

MS. PORTER: Your Honor, a lot of our motions are kind of companion motions with Mr. Gahagan. Would you like to do it one issue at a time or do you want us to go through all of them and then Mr. Gahagan go through all of them, then the Plaintiffs respond? How do you want to --

THE COURT: Let's go through them. I have reviewed each of the motions, so -- I don't know, whatever you want to do. How about that? I'll leave it up to you.

MS. PORTER: Well, I want to defer to David Moore then.

THE COURT: Okay. Do y'all want to go one issue at a time?

MR. MOORE: I think that's the easiest way, Judge.

THE COURT: All right. We'll do one issue at a time.

(Audio difficulties with Mr. Moore.)

UNIDENTIFIED MALE: Can y'all hear us now?

THE COURT: I hear somebody.

UNIDENTIFIED MALE: I'm going to get out of y'all's way and make room for David.

THE COURT: See, David, you just need a youngster.

UNIDENTIFIED MALE: I'm just here for moral support.

MR. MOORE: No, he's giving me technical support since

1 I can't apparently handle this computer.

2 Now, can everybody hear me?

3 THE COURT: Everybody's good.

4 MR. MOORE: Judge, my understanding is what we're going
5 to do is go motion by motion. I'll start off and then Susan
6 will then argue if she has to argue, and then Kimberly will
7 argue.

8 Am I understanding that correctly?

9 THE COURT: That's correct, issue by issue.

10 MR. MOORE: Yeah.

11 THE COURT: Okay.

12 MR. MOORE: The first motion that I have has to do with
13 collateral estoppel. As you are aware, this matter involves
14 a hearing that occurred before the OCES for Clemson
15 University where Mr. Pampu was accused of having engaged in
16 nonconsensual sex with Erin Wingo. During the course of
17 that particular hearing, obviously, the testimony was taken
18 and a finding was made that he did, in fact, engage in
19 nonconsensual sex.

20 Our position is that that ruling has the effect of
21 collateral estoppel with regard to this particular case. It
22 involves the same factual scenario, the same parties in that
23 Mr. Pampu was a party and would be used against him. It
24 involves Clemson University OCES, which we contend is a
25 state agency. And there were critical findings with regard

1 to that hearing with regard to what Mr. Pampu did and,
2 specifically, with regard to the fact that it was found that
3 he had nonconsensual sex with regard to Erin Wingo.

4 The finding of nonconsensual sex is pertinent to the
5 issue regarding defamation where if it's nonconsensual sex,
6 then any allegations or statements regarding there being a
7 rape would actually be true and that would be, obviously, a
8 complete defense.

9 The issue that it boils down to if we get down to it is
10 whether OCES is a state agency or not. If it is a state
11 agency, we believe then that collateral estoppel is
12 applicable. And, quite frankly, there ought to be a ruling
13 in favor of all the Defendants at that point in time.
14 Plaintiff has taken the position that it is not a state
15 agency and has cited the statute set forth in, I think it's
16 Title 23.

17 If we look at Title 23, though, you'll see that it does
18 define agency. It does not -- the statute that they are
19 looking at does not specifically make a reference to a
20 school or university, but, instead, says a state board,
21 commissioned department or officer other than the
22 legislature or the courts. Obviously, Clemson University is
23 not a part of the legislature and it's not a part of the
24 Court system, so our position is it is an agency.

25 I would note for the Court that Chapter 23, which is

1 where 123-3-10 comes in does have definitions at 123-10 and
2 where they're talking about regulations, it does make
3 mention of college, technical colleges, schools and other
4 educational institutions when it's talking about
5 regulations. Now, if it's going to apply to schools in that
6 part of the particular title and chapter, then it's also
7 going to have to apply under the administrative procedures
8 act, which is set forth in Article 3.

9 So our position is that it's very clear that OCES is an
10 agency, a state agency. It is carrying out a state function
11 in that it is carrying out what was set forth in 59-105-40,
12 which, basically, has to do with setting up a system for
13 handling cases such as this. It is a contested hearing,
14 which is what they look at a lot of times whether you have
15 an agency or not in that that particular statute provides
16 that you have a hearing. You present evidence. There are
17 procedures that have to be followed.

18 And under those circumstances, because it is a state
19 agency undertaking a state action for the benefit of the
20 state, which has to do with sexual activity occurring on
21 campus, including rapes, and the fact that there is a
22 contested hearing where witnesses are presented and there's
23 testimony taken and a decision made that collateral estoppel
24 does apply in this particular situation and that the ruling
25 should have been in our favor with regard to that particular

1 issue.

2 THE COURT: All right.

3 Ms. Porter, do you want to add something? Or Mr.
4 Grantland?

5 MS. PORTER: It's Susan Porter on behalf of the
6 Defendant Wingos, Your Honor. We would join in this motion
7 with Mr. Moore. I won't reiterate what he said, but simply
8 add to it.

9 You know, one of the things that the Plaintiff contends
10 is that OCES in and of itself is not a state agency. But
11 OCES is a part of Clemson University and you can't bifurcate
12 the two. If Clemson University is considered a state
13 agency, then, therefore, so is OCES. So we would just add
14 that to his argument.

15 As well as the purpose of collateral estoppel is so
16 that you don't have the same facts and circumstances being
17 adjudicated in two different venues with the risk of two
18 inconsistent results. And that's exactly what has happened
19 here today. This jury was asked to make the same
20 determination that Clemson University's administrative
21 hearing board was asked to determine. Which it did make a
22 finding that my client, Erin Wingo, was incapacitated due to
23 alcohol and unable to consent to sexual conduct with Andrew
24 Pampu.

25 That hearing -- that decision, that finding was then

1 appealed twice and then the subject of a federal lawsuit,
2 which was subsequently settled and enforced by Judge
3 Coggins. In that settlement agreement that was enforced,
4 the Plaintiff agreed to be bound by that initial finding,
5 that Ms. Wingo was incapacitated due to alcohol and unable
6 to consent and that he should have known.

7 Now, in this particular case, that information was
8 excluded from the jury, but it was presented to the jury and
9 they were asked to determine if she was incapacitated and
10 unable to consent as a part of the defamation claim. What
11 has resulted is exactly what collateral estoppel is designed
12 to prevent, two inconsistent results.

13 The question now is what is said from here on out and
14 what is actionable from here on out? It is still true that
15 the Plaintiff was found responsible for sexual misconduct by
16 a preponderance of the evidence at the University level,
17 which was, again, reenforced by the federal court
18 settlement. But it was also found now by a jury that by my
19 client repeating that, she has defamed him. So this is
20 exactly why the collateral estoppel should have been awarded
21 in the beginning and that this case should have never
22 reached a jury.

23 I also want to add that under South Carolina law, which
24 has been upheld by the Fourth Circuit, these types of
25 hearings have been qualified as quasi-judicial proceedings

1 -- well, let me back that up. Private arbitrations have
2 been qualified as quasi-judicial proceedings. And that's in
3 Corbin vs. Washington Fire & Marine Insurance Company. It
4 can be found at 398 F.2d 543, and it's a Fourth Circuit
5 Court of Appeals from 1968.

6 There, the court reasoned unqualified privilege does
7 not depend on the rigid requirement of a strictly
8 legislative or judicial proceeding. Its limits are fixed on
9 public policy. Again, reiterating to this Court that
10 collateral estoppel is rooted in public policy so that you
11 can't get one result in one legal venue and then go to a
12 second legal venue for a second result on the same facts and
13 issues.

14 So, therefore, we would just ask -- that's exactly
15 what's happened here. The Plaintiff didn't like the result
16 in the first quasi-judicial setting and so came to have it
17 overturned in the second, which is now we have inconsistent
18 results on those two venues. And as such, it should be
19 reversed or overruled at a minimum and the Plaintiff barred
20 from bringing it back.

21 THE COURT: Mr. Pampu.

22 MS. LAU: You mean Ms. Lau, Your Honor?

23 THE COURT: Yes.

24 MS. LAU: Okay. Thank you, Your Honor.

25 This issue of collateral estoppel has been argued

1 several times before by the Defendants and has been
2 unsuccessful each of those times. This was already squarely
3 addressed by Judge Verdin. The issue of whether -- it's
4 really a misreading of the three statutes that Defendants'
5 counsel has mentioned here. In the three independent
6 statutes, each have their own definitions that applied to
7 those independent statutes and they're all different. All
8 these statutes were put into place for very different
9 reasons.

10 So, really, the key issue is not just whether OCES is
11 an agency, but whether it's an agency authorized by law to
12 decide contested cases under Article 3. And, simply, there
13 is no case that has held that. The legislature never
14 intended that. The statute itself doesn't mention a school,
15 tribunal, such as Clemson University as coming under the
16 authority or having the authority by law to decide contested
17 cases.

18 I mean, there's a reason. It's because you can only
19 really have collateral estoppel effect if there was a full
20 and fair opportunity to litigate previously. And Defendants
21 have wanted to argue that that was the case with the Clemson
22 tribunal, but for obvious reasons, that did not occur.
23 There was no right to counsel. There was no
24 cross-examination. There were numerous procedural
25 deficiencies.

1 More importantly, again, if you just rely on the plain
2 language of the statute, this is not a Clemson University
3 school tribunal process. It just doesn't have the ability,
4 the capability to provide that full and fair opportunity to
5 litigate and it's not mentioned anywhere in Article 3. So
6 any reliance on cases that describe private arbitration,
7 such as the Corbin case, that's really irrelevant here
8 because in arbitration, you do get that full and fair
9 opportunity to litigate. You have the opportunity to
10 cross-examine. You have legal counsel involved on both
11 sides.

12 So there's really -- you can't hold a private
13 arbitration at the same level as a school tribunal that's
14 run by administrators and students. That's just very
15 different. There's no right to counsel. The argument that
16 OCES was meant to be an agency is based on this very missed
17 application of three independent South Carolina statutes
18 that were never intended to be read together nor do they
19 reference each other. So, therefore, there's no collateral
20 estoppel effect here from the Clemson decision on this case
21 or the claims. Thank you.

22 THE COURT: All right.

23 The second issue, Mr. Moore.

24 MR. MOORE: Judge, I would point out, first off, on the
25 campus sexual assault information act provides for a hearing

1 such as what we're talking about and possible sanctions.
2 Specifically, under 59-105-40, it says that the system being
3 set up has to provide for possible sanctions following the
4 final determination of an institutional disciplinary
5 procedure regarding a sexual assault. So there is a
6 provision for this type of hearing.

7 It goes on to say -- it sets forth some procedures that
8 are to be followed. They have the same opportunity to have
9 support persons or legal counsel. If the institution policy
10 provides for the presence of outside legal counsel, and it
11 did in this case, and they were to be informed of the
12 results of the hearing, which was done. They took testimony
13 as you would in a typical hearing or in a court setting. So
14 there is a provision for a contested case under South
15 Carolina law.

16 Now, then the question becomes okay, does that actually
17 constitute a state agency? And they rely upon Title 1, I
18 think, it's Chapter 23 and 1-23-310, which has the
19 definition of agency. Under that same chapter, they make
20 reference to the University, colleges, technical schools, et
21 cetera.

22 So it's clear when you read these statutory provisions
23 together, which we're required to do under statutory
24 interpretation, that, in fact, we have a state agency
25 because it's acting on behalf of Clemson University, which

1 is part of the state government. The state agency has had a
2 contested hearing and that it made a finding. That finding
3 then establishes a collateral estoppel that the Plaintiff,
4 Mr. Pampu, cannot undo.

5 So this argument that they didn't have a full and fair
6 opportunity is just not true. They did have a full and fair
7 opportunity to participate in this hearing and, in fact,
8 did. There are different statutes out there which deal with
9 what constitutes an agency, but you'll notice from the Tort
10 Claims Act that, clearly, a state university is considered
11 an agency under that statute.

12 If you use the statutory interpretation principle, you
13 have to read these things together so you reach a consistent
14 result with regard to how you treat these various entities.
15 Clemson University is an agency under the Tort claims Act.
16 The universities are referenced in this particular chapter
17 that they're relying upon. And if we read these all
18 together, then it's going to be clear that it is an agency.
19 If it's an agency, then collateral estoppel applies here and
20 this shouldn't have gone forward. We should get a Defense
21 judgment in this case.

22 THE COURT: Okay.

23 How about the second issue? What was your second
24 issue?

25 MS. LAU: Your Honor, if I may just speak very briefly

1 in response to that argument?

2 THE COURT: Yes.

3 Was that a separate second issue or you were just --

4 MR. MOORE: That was just my response to her.

5 THE COURT: All right. Very briefly because I've got
6 another hearing. I've got everybody's brief, so go ahead
7 quickly.

8 MS. LAU: Thank you.

9 So I just want to point out that the section that Mr.
10 Moore is referring to where a university is defined as an
11 agency under the same title, that is an entirely different
12 article that's being referenced there. In fact, the article
13 that is at issue here, Article 3, says specifically that
14 these terms are defined as used in this article. That's a
15 quote from the statute itself.

16 So the Defendants are trying to pick and choose from
17 separate sections of different articles to try to put
18 together this Frankenstein statutory meaning here and that's
19 just simply not appropriate. That's what we wanted to say.

20 Thank you.

21 THE COURT: Mr. Moore, item two.

22 MR. MOORE: The second issue concerns the exclusion of
23 evidence --

24 THE COURT: Before you get started, I don't think I
25 ever put on the record the caption or anything like that.

1 Since this is being recorded, I want to make sure it's
2 clear. This is Pickens County case of Andrew Pampu vs. Erin
3 Wingo, David Wingo and Colin J. Gahagan, civil action number
4 2017-CP-39-00709. These are post-trial motions that had
5 previously been filed in this matter within the ten days and
6 had been scheduled with all parties.

7 Go ahead.

8 MR. MOORE: Second issue that we're concerned with has
9 to do with the exclusion of evidence regarding the Title IX
10 hearing. Mr. Pampu asserted two causes of action in this
11 case. One for defamation and one for civil conspiracy.
12 There's actually two aspects of the civil conspiracy, only
13 one of which applies to Mr. Gahagan, which is what I'm going
14 to address now.

15 That particular theory was that Mr. Gahagan and Ms.
16 Wingo combined to come up with a plan of action, basically,
17 to then somehow or another persuade Clemson University to
18 kick Mr. Pampu out of Clemson University. We were precluded
19 from presenting evidence as to what happened during the
20 course of the Title IX hearing even though that evidence
21 would be crucial with regard to addressing those allegations
22 inasmuch as their theory is that we misused the Title IX
23 process to, basically, get Mr. Pampu kicked out of school.
24 Without the ability to present that testimony to show
25 exactly how he was, ultimately, expelled from school, we

1 were prevented from presenting out case in full.

2 On the other hand, Plaintiffs were allowed to present
3 evidence from C.J. Gahagan, which related to his supposed
4 lying during the course of that hearing and we were not
5 allowed to then go forward and present evidence to show what
6 exactly had been testified to during the course of that
7 hearing.

8 So it was made to look like -- because we did not have
9 all the evidence made available to us made to look like they
10 were in cahoots with one another, that they were trying and
11 performed an act whereby he was kicked out of school when,
12 in fact, this evidence would have shown that there was a
13 process, a hearing through the Title IX process that he was
14 allowed to present evidence, there was evidence presented
15 against him and then Clemson University made the decision
16 that he should be suspended and then, ultimately, expelled
17 from school.

18 Our position is that, obviously, that should have been
19 allowed in and it is very important that that be allowed in
20 in order to properly defend on the civil conspiracy cause of
21 action.

22 THE COURT: Ms. Porter? Mr. Grantland?

23 MS. PORTER: Your Honor, again, we would join in that
24 motion that the exclusion of the Title IX process, really,
25 if you look at civil conspiracy and what the elements are,

1 an overt act is required, it's element number three, and
2 that was reaffirmed as element number three in the Paradis
3 case.

4 The overt acts are not the text messages that were
5 entered into evidence between the Defendant Erin Wingo and
6 Defendant C.J. Gahagan. Those text messages simply discuss
7 feelings, thoughts, their opinions of the Plaintiff and
8 their anger and frustration with the Plaintiff. The overt
9 act would have been and should have been the process or
10 their conduct during the Title IX Process. You know,
11 excluding that process and any evidence thereof from the
12 investigation to the hearing to the appeals really gutted
13 their civil conspiracy case.

14 And it prejudiced our clients because the meat of
15 Clemson's decision, what they based their decision on was
16 not allowed to be introduced into evidence. We did proffer
17 that testimony from Alesia Smith and those documents. And
18 those documents would have shown that there was a
19 substantial amount of evidence that was considered by the
20 administrative hearing board before making those decisions.

21 Additionally, it would have shown that the appellate
22 process, those individuals which the decision was appealed
23 to had all of that evidence and those records and
24 investigative reports and testimony at the hearing before
25 them, which was reviewed and relied upon in affirming that

1 finding.

2 So you've taken -- you know, what you've allowed in at
3 this point is the Plaintiff to be able to say, you know, Ms.
4 Wingo accused me of rape and then Clemson kicked me out, but
5 nothing in between and that's just highly, highly
6 prejudicial and not the complete picture. And it really
7 prevented us from being able to defend in a couple of
8 respects, specifically, with the overt act for civil
9 conspiracy.

10 Moving on to defamation. Defamation, there are
11 privileged statements that can be made in circumstances of
12 quasi-judicial public policy type situations. And where a
13 defamatory statement is made in good faith and with proper
14 motives, a qualified or conditional privilege exist. And if
15 the party making the statement correctly and reasonably
16 believes that the same important interest of his -- that an
17 important of his or hers is threatened, then that's
18 privilege. That statement is privilege.

19 In this particular circumstance, the evidence showed
20 text messages authored by my client, Erin Wingo. None of
21 the text messages authored by my client ever mentioned the
22 word rape until after she is brought into Clemson
23 University's OCES office and confronted with the anonymous
24 information presented to them, the report that was made, and
25 discussed her options, the process and, again, reiterated

1 the definition of consent as established in the student code
2 of conduct book, which is similarly stated in Title IX
3 litigation in the anti-harassment definitions. All of that
4 was excluded as evidence to be presented to the jury.

5 So we've got a situation where all of the defamatory
6 statements complained of by the Plaintiff were made by my
7 client after one, being educated by Clemson University on
8 the definition of consent, the definition of sexual
9 misconduct and the definition of rape pursuant to the
10 anti-harassment policy, all of which were encompassed in the
11 Clemson student code of conduct, all of which she was
12 reeducated on at that first meeting with OCES.

13 So being unable to present evidence of this education
14 that she received, we were unable to explain to the jury and
15 to defend our client that she made these statements in good
16 faith with proper motives and because there was an important
17 interest of her own that was being threatened and that was
18 her interest in obtaining an education free of sexual
19 harassment.

20 So that's -- we believe based on that, that we would
21 ask for a new trial.

22 THE COURT: Ms. Pampu -- I'm sorry, Ms. Lau.

23 MS. LAU: That's okay, Your Honor. Thank you.

24 So the Defendants continue to misunderstand Plaintiff's
25 claims. Our defamation claims relate to statements made

1 outside the process to 18 to 20 individuals outside of that
2 process. So, you know, no finding was even made yet, so
3 they can't even rely on that to save them.

4 That said, a civil conspiracy claim related to efforts
5 to get Plaintiff kicked out of Clemson and, frankly,
6 excluding the Title IX documents don't provide a viable
7 defense to the civil conspiracy claim because the
8 Defendants' false statements led to that improper finding.

9 So whether there's a stamp of approval by Clemson or
10 not doesn't change the fact that there were false statements
11 provided through that process. Just because we're not
12 arguing that we're collecting damages for those false
13 statements doesn't make the fact that the false statements
14 untrue. That's what occurred. In other words, the Title IX
15 decision is wrong because it's supported by Defendants'
16 lies.

17 So to say that, you know, they should have been allowed
18 to have this Title IX document included in this trial
19 because somehow it would provide a justification for the
20 (inaudible) of the school doesn't save them because the
21 issue is that they -- the decision was based on the lies and
22 false statements by the Defendants to begin with. So the
23 Title IX finding would not be entitled to be presented.
24 They've argued this again. We just discussed this. They've
25 argued it several times.

1 So the decision to exclude those documents was the
2 right decision because it would have led to jury confusion.
3 It would have led the jury to assume the truth of the Title
4 IX findings or give improper deference to it. It would have
5 led to prejudice, which would have outweighed any possible
6 probative value of the Title IX documents and it would have
7 invaded the jury's decisionmaking.

8 Thank you.

9 THE COURT: Any brief rebuttal, Mr. Moore?

10 MR. MOORE: Yes, sir.

11 Judge, this process, the Title IX process was not
12 started by C.J. Gahagan and, quite frankly, by Erin Wingo
13 either. It was started by an investigation undertaken by
14 Clemson University. The initial complaint came from another
15 individual who learned of the event and reported it to
16 Clemson and Clemson then subsequently investigated. C.J.
17 Gahagan was simply a witness to the Title IX proceeding and
18 was not someone who initiated or had in any way actually
19 participated in moving it forward other than serving as a
20 witness. So the statement that false statements led to the
21 process is just incorrect.

22 Now, they then say well, we want -- what they said
23 during the course of that process were just lies, so they
24 shouldn't be allowed to get away with that and guilty of
25 civil conspiracy because of it. However, that runs afoul of

1 our rule with regard to intrinsic fraud, which says that if
2 there is something stated during the course of a hearing or
3 a trial, then that has to be taken care of by the evidence
4 presented during the course of that trial, such as
5 cross-examination. He had the opportunity to do that.

6 If it's extrinsic fraud, such as somebody intervening
7 with regard to the jury process or something like that,
8 which didn't occur here, then that might work, but we don't
9 have extrinsic fraud in this case. This is intrinsic fraud
10 at its worse, so they don't have any evidence that shows
11 that the process was misused by C.J. Gahagan or, quite
12 frankly, by Erin Wingo.

13 So they've got to show several things. They've got to
14 be in a conspiracy with one another and joined together and
15 then they have to act on that conspiracy. And the lack of
16 evidence regarding this Title IX hearing precludes us from
17 showing this particular information which would indicate
18 that the civil conspiracy cause of action just doesn't hold
19 water.

20 THE COURT: Ms. Porter, anything else?

21 MS. PORTER: Just briefly, Your Honor. She argues that
22 the whole Title IX decision was wrong because of these lies,
23 but the problem is that would be for a jury to determine,
24 whether their stories were consistent and their credibility
25 was consistent at the Title IX hearing before those

1 individuals. That's the evidence that was excluded from
2 them. So they got the finding without -- well, they didn't
3 get the finding, they got the result without any of the
4 substance, which is why it was extremely prejudicial to our
5 ability to defend our clients.

6 And the prejudice, it needs to be evaluated both ways,
7 not just the prejudice that it would have affected on the
8 Plaintiff, but the prejudice that would have been affected
9 on our clients' ability to defend themselves.

10 THE COURT: Mr. Moore, your item three.

11 MR. MOORE: The third issue has to do with the absence
12 of any evidence of negligence by C.J. Gahagan in determining
13 the existence of defamation on his part. And Your Honor
14 properly charged on this issue to the jury. And based on
15 what the law provides is that a publisher of a defamatory
16 statement is liable if, number one, he knows the statement
17 is false and then intentionally publishes the statement; or
18 two, that he acts in reckless disregard as to whether the
19 statement is true or false; or, three, that he negligently
20 fails to ascertain if the statement is true or false.

21 Now, in this case with regard to C.J. Gahagan, any
22 statements he made would not be intentional because he
23 wasn't there when the act occurred. So he has to obtain
24 information about what occurred before he could make any
25 statement. It was not reckless because he made a concerted

1 effort to make a determination as to what occurred.

2 He received a call from Mr. Pampu on the evening of the
3 event saying that he needed to come and get Erin because she
4 was not in real good shape, leading him to believe that she
5 was either drunk or incoherent or whatever. That was
6 further confirmed by virtue of the fact that Erin Wingo then
7 tried to send him some texts and they were, basically,
8 gobbly-gook. You couldn't understand what she was saying
9 for the most part. So his belief that she was in bad shape
10 as far as drinking is concerned was confirmed.

11 He then went and confronted her about that and she,
12 obviously, said she had too much to drink, but in the
13 meantime, he had found out that Mr. Pampu had engaged in sex
14 with an unknown person. He put two and two together and
15 figured out well, he's had sex with Erin Wingo and he talked
16 to Erin Wingo about that and he was told she couldn't
17 remember what happened. She had, at best, a vague memory as
18 to what occurred. He then talked to some of her sorority
19 sisters, who also said that she was in pretty bad shape by
20 the end of the night.

21 He tried to talk to Mr. Pampu about it, but Drew Pampu
22 refused to talk to him at that particular point in time.
23 And the only two defamatory statements they have are texts
24 that he sent out after Mr. Pampu refused to talk to him.
25 Obviously, Mr. Pampu did talk to him later, but these

1 statements were sent out before that occurred.

2 So our position is this, it's not an intentional act
3 because he wasn't there. It couldn't be intentional on his
4 part, didn't know one way or the other. It's not a reckless
5 act on his part because he sat there and made a concerted
6 effort to try to find out what happened. And you can see
7 the steps he took to take those steps. It's not a negligent
8 act because there wasn't a whole lot more he could have done
9 at that particular point in time. The only person who would
10 have given him other information was Drew Pampu and he
11 refused to talk to him at that juncture. On
12 cross-examination, Drew Pampu admitted that he could not
13 have done much of anything else.

14 Under those circumstances, with regard to our laws with
15 regard to defamation, he's not even negligent with regard to
16 what he said because he had gathered as much information as
17 best he could to determine what had occurred before he made
18 any statements whatsoever.

19 THE COURT: Ms. Porter.

20 MS. PORTER: Your Honor, I don't think this has
21 anything to do with us.

22 THE COURT: Yeah, it's just strictly Mr. Gahagan.

23 Ms. Lau?

24 MS. LAU: Thank you, Your Honor. The evidence that was
25 presented at trial was more than sufficient to establish

1 that Mr. Gahagan intentionally knew that his statements that
2 Mr. Pampu raped Ms. Wingo was not true. And that can be
3 born out of his own observations at the party where she was
4 not stumbling or slurring her words, yet, he rushed to tell
5 people that she was raped because she was incapacitated.

6 He then admitted that Mr. Pampu did not commit a crime.
7 That was admitted in text messages. He also admitted a year
8 later after the hearing that he lied. He lied at the
9 Clemson tribunal, in the process and the sex was consensual
10 and that Erin lied, too.

11 So he can give a lot of excuses as to why some of these
12 statements are true now, weren't true then or were true then
13 and not true now, you know, frankly, I think this was well
14 within the jury's decision to decide who they wanted to
15 believe and what they wanted to believe based on the
16 evidence. But we certainly established the evidence was
17 sufficient, that the statements of falsity were -- you know,
18 it was intentional. It was intentional. He knew that a
19 rape did not actually occur. He knew a crime had not
20 occurred, yet, he still accused Mr. Pampu of criminal
21 conduct to several individuals.

22 MR. MOORE: Judge, in response --

23 I'm sorry, Kimberly, were you done?

24 In response, number one, the evidence shows that she
25 may not have been slurring her words or stumbling when she

1 initially got to the party, but the overwhelming evidence,
2 even from Drew Pampu, is that she certainly was slurring her
3 words and stumbling when she came back after they had
4 engaged in sex. So that's just incorrect.

5 Secondly, it's interesting to me that they accused him
6 of lying during the course of the hearing about what
7 occurred, but don't say, number one, what he supposedly lied
8 about and, secondly, say that the defamation does not
9 involve what occurred during the Title IX hearing.

10 And yet, here they are using this information regarding
11 what occurred during the Title IX hearing to justify their
12 position that it was an intentional act of defamation by
13 him. The only acts they can rely upon are acts that
14 occurred before he had a chance to talk to Drew Pampu
15 because Drew Pampu would not allow him to talk to him and
16 Drew Pampu is the only one who contradicted what he had
17 found.

18 THE COURT: All right. Fourth issue, next issue.

19 MR. MOORE: The next issue has to do with punitive
20 damages. And, Judge, I'm not real sure this is actually a
21 post-trial-type motion as opposed -- I think this is
22 something that the Court is supposed to do irrespective of
23 motions. But either way, this is in reliance upon Section
24 15-32-520, I think I put (f), I think it's (e) of the code.
25 And they set forth 11 factors that you are supposed to

1 consider in determining whether it was appropriate to assess
2 punitive damages. And the punitive damages only go to the
3 defamation cause of action, not to the civil conspiracy
4 cause of action.

5 The first factor has to do with C.J. Gahagan's degree
6 of culpability. And I, quite frankly, just argued that with
7 regard to there certainly is no evidence of intentional act
8 on his part, no evidence of reckless acts on his part. And
9 our position is no evidence of any negligent acts on his
10 part. With regard to punitive damages, you have to show
11 either an intentional act or a reckless act and there's been
12 no proof of that whatsoever.

13 The second factor has to do with the severity of the
14 harm caused by C.J. Gahagan. And remember, what they're
15 accusing him of has to do with two texts he had sent out
16 shortly after the event occurred. These weren't repeated to
17 anybody else and it only went to two individuals. Neither
18 one of those individuals testified at the trial. Neither of
19 them indicated whether they believed it or not or whether it
20 had any impact on them one way or the other.

21 Third factor has to do with the extent to which Mr.
22 Pampu's conduct contributed to the harm. Our position is
23 this started primarily because he sent a text out indicating
24 that he had had sex with someone out beside a dumpster. And
25 without that information, C.J. Gahagan cannot determine if

1 Erin Wingo is involved in this particular matter. So it is
2 his statement that gets the ball rolling on this particular
3 matter one way or the other. Of course, he's not apologetic
4 for what he has done. He, basically, tries to cover his
5 tracks throughout this, but, certainly, that is his
6 responsibility with regard to that statement.

7 The fourth factor is the duration of the conduct. And
8 as indicated, he sent two texts out on the same day, so the
9 duration is very short.

10 The fifth has to do with the existence of any past
11 conduct. There is none.

12 The sixth factor is the profitability of the conduct to
13 C.J. Gahagan. There was no profitability there.

14 The seventh was with regard to his ability to pay.
15 There is no information, no evidence whatsoever regarding
16 his ability to pay. The burden is on the Plaintiff to show
17 that.

18 The eighth factor has to do with the likelihood that
19 the award would deter others, and I would agree it would.

20 The ninth factor has to do with whether there are any
21 other awards of punitive damages against C.J. Gahagan in any
22 other jurisdictions. There are not.

23 The tenth has to do with any criminal penalties imposed
24 upon him. There were none.

25 And then, finally, the amount of any civil fines

1 assessed against him. There were none.

2 So if you go through all those factors, they clearly
3 show that none of those factors have been addressed at all
4 with regard to C.J. Gahagan. The only thing that may be
5 negative is the fact that this large verdict is going to
6 have an impact upon others who see it. And I would agree
7 with that. But the ten other factors all go in his favor.

8 There has to be clear and convincing evidence of
9 intentional or reckless acts on the part of the Defendant to
10 impose punitive damages and there just simply is no clear
11 and convincing evidence of any of these factors. So we take
12 the position that punitive damages should not have been
13 assessed.

14 THE COURT: Ms. Porter.

15 MS. PORTER: Thank you, Your Honor. And I will go
16 through those same factors with regard to Ms. Wingo in just
17 a moment. We have included this in our tenth point, which
18 is our motion for a new trial nisi remittitur, in which you
19 have wide discretionary power to reduce the amount of the
20 verdict in which a judgment is excessive in the
21 alternative -- in an alternative to a new trial, which I'll
22 address at the appropriate time.

23 Like, you know, one of the things regarding the
24 punitive damages here and why we think these, along with the
25 other award of damages, is excessive is because there's

1 truly no causal link between the damages and our clients'
2 statements. And I think that needs to be, at least, stated
3 when considering the punitive aspect of this case.

4 You know, the primary position the Plaintiff has taken
5 is that but for these statements, he would have gotten into
6 dental school. Yet, during the trial, there was no
7 representative from any dental school which represented that
8 but for our clients' statements, he would have gotten in.
9 There was no report from any expert who spoke with a dental
10 school that said that. They simply assumed that based on
11 the one question on the application.

12 And looking at that one question on the dental school
13 application, my client nor Mr. Gahagan nor David Wingo's
14 names were associated with the answer to that question nor
15 was any of their statements mentioned in the substance of
16 that answer to that question. Instead, it was all the
17 administrative findings regarding Clemson University and the
18 phrasing that the Plaintiff chose to include. And keep in
19 mind, that finding was sexual misconduct.

20 So the causal link was not there, which, again, goes
21 back now to the punitive aspect of this. My client, again,
22 never mentions the word rape until after it is an
23 investigation by OCES -- well, a report to OCES of the
24 nonconsensual sex was made. She was brought it and it's
25 after that meeting that the first mention of rape is

1 discussed by my client.

2 So the conduct that's complained of is related to and
3 during this Title IX process, the investigation, the appeals
4 and then the subsequent litigation, this civil lawsuit as
5 well as the federal lawsuit. Initially, my client was sued
6 in that federal lawsuit, but quickly dismissed. So the
7 conduct that's being complained of, again, relates to this
8 process that began after the anonymous report. And it has
9 not continued.

10 The conduct that's complained of, it's comments to
11 close friends and family. These are discussions where my
12 client was honest about discussing with others what occurred
13 that evening on October 24th and then the process that she
14 was going through regarding the Title IX time at Clemson and
15 subsequently in her processing through this.

16 So the duration of conduct is short and specific to the
17 process and to friends and family who are supporting her.
18 There was no testimony from any of these individuals of how
19 it affected Mr. Gahagan [sic] or his reputation at Clemson.
20 In fact, many of these individuals no longer even live in
21 the State of South Carolina or North Carolina where the
22 Plaintiff now resides. Or how it has affected his
23 reputation throughout the community.

24 Erin Wingo, we contend, if you look at whether there
25 was an awareness -- well, to the degree of her culpability,

1 we don't think she's culpable because she made these
2 statements, again, in the course of the Title IX process and
3 in the subsequent litigation.

4 To the degree that her conduct contributed to harm,
5 factor number three, you know, her conduct was cooperating
6 with the investigations and litigation and then getting
7 support from close friends and family.

8 Now, the Plaintiff argues in their memorandum, well,
9 she's not close friends with them anymore. That's
10 irrelevant. At the time that these statements were made,
11 they were two important people in her life for a tragic
12 situation that she was dealing with. And so the extent --
13 she didn't go out and take out a billboard saying that the
14 Plaintiff raped her. She didn't do that. She didn't have
15 any fault in causing the harm to this Plaintiff. The
16 anonymous report started this investigation. She simply
17 cooperated.

18 There was no concealment. All of that -- she
19 participated in the investigation. She didn't try to
20 conceal anything. She provided the information as
21 requested.

22 There is no past conduct similar in nature nor has
23 there been any post-conduct similar of this nature. Will
24 this award deter Erin and others from the conduct? Yeah.
25 As a matter of fact, this has a chilling effect on any

1 victim of sexual assault or misconduct or harassment because
2 if you come forward, you are likely to be sued for
3 defamation and, potentially, financially ruined. So,
4 absolutely, does this punitive award have effect? Yeah.
5 Maybe not the effect that the statute intended, but it
6 certainly has a chilling effect on all victims of sexual
7 assault.

8 It is not reasonably related to the harm that likely
9 would result from such conduct because I don't believe
10 there's any harm that's been proven by clear and convincing
11 evidence. There was no evidence at trial of the harm that
12 was presented because there's no causal link between the
13 Defendant not getting into dental school and my client's
14 specific statements to her close friends and family.

15 And then there was no evidence of her ability to pay.
16 The only evidence that was presented is that she's a law
17 student.

18 Other factors to consider, Your Honor, are the comments
19 and conduct of the Plaintiff during the immediate hours
20 after the event. He published some pretty defamatory
21 statements himself to 34 fraternity brothers.

22 Now, the argument can be made that she was at a party
23 extremely intoxicated in front of over a hundred people.
24 The Plaintiff testified that there were around a hundred
25 people at this party, all of whom who had an opportunity to

1 observe her. All of whom, then, from this text message to
2 34 fraternity brothers dispersing the information out into
3 the Clemson community could ascertain for themselves whether
4 or not they felt like that was an inappropriate sexual
5 conduct between the two based on her state of intoxication.

6 So the Plaintiff is the one who told two individuals
7 immediately thereafter, which then caused it to subsequently
8 be published to 34 individuals. And we know, at least, one
9 of those brothers, Ben Zboray, told Rachel Corbin, all of
10 which came out in testimony during the trial. So, you know,
11 his own conduct should be considered to any harm to his
12 reputation in the Clemson community during this process.
13 And for such, we just -- you know, the Erin we know
14 certainly didn't profit from this in any way, shape or
15 ability.

16 Again, the last factor, as David went over, there's no
17 evidence that those have affected the Plaintiff based on my
18 client's conduct either. We just think that the punitive
19 damages, one, they did not prove by clear and convincing
20 evidence and were based solely on passion and prejudice and
21 should be reversed.

22 Thank you.

23 THE COURT: Ms. Lau.

24 MS. LAU: Thank you, Your Honor.

25 So I just want to clarify first, you know, it sounds

1 like Defendants are arguing two different issues about
2 different aspects of the damages. So I do want to take it
3 in turn. I believe we started out with Mr. Moore's argument
4 on punitive damages. Ms. Porter, while she addressed
5 punitive damages, started out discussing whether the damages
6 award itself was excessive.

7 So I want to first start with the punitives damages and
8 the elements there, the factors. The eleven factors that
9 were cited, you know, they're non-exhaustive, right?
10 There's no requirement to meet all of them or a minimum
11 number of them to satisfy a punitive damages award. But we
12 certainly do satisfy several of them and several important
13 ones with respect to both sets of Defendants. The degree of
14 culpability, you know, knowing that the sexual encounter was
15 consensual at the time that the statement was made is
16 culpable conduct when determining whether punitive damages
17 is allowable here. And that, certainly, applies as to Ms.
18 Wingo.

19 And then as to Mr. Gahagan, you know, the Court is
20 allowed and the jury is allowed to look at acts to infer the
21 intent at the time. And some of those acts or statements
22 that were made include some of the documentary evidence that
23 was properly before the jury, such as the, I lied at the
24 hearing test. I lied, you're innocent, you know, Erin lied,
25 too. You know, these are statements that can't walk back.

1 So it definitely shows a degree of culpability for both sets
2 of Defendants.

3 As far as the severity of the harm, well, there
4 certainly was reputational harm here. You know, this is --
5 it's also clear that it affected Mr. Pampu. When he
6 testified, he provided more than enough testimony to that
7 end, not only being alienated from his circles on campus,
8 but, also, specifically as to the fraternity, as to his
9 network of the brotherhood beyond that specific chapter,
10 being unable to utilize those contacts for any kind of
11 future benefit. You know, the reputation and the harm there
12 certainly spiraled from the statements that the Defendants
13 had both made.

14 Now, with respect to the extent to which Plaintiff's
15 own conduct contributed to the harm, the Defendants
16 continually try to misconstrue Mr. Pampu's private
17 conversations with two of his pledge brothers about the
18 sexual encounter he had with Ms. Wingo that night. He, A,
19 didn't brag about it to the larger fraternity; but, B, never
20 once did he say I raped her or I engaged in, you know, a
21 sexual encounter with Ms. Wingo while she was incapacitated,
22 right? So none of that happened here, so I don't see how
23 that factor weighs in either of the Defendant's favor.

24 Now, as far as the duration of the conduct and the
25 Defendants' awareness, they want to say that this was only

1 for a short period of time, but the reality is that the
2 statements that were made by the Defendants and,
3 specifically, with Ms. Wingo continued on for, at least, two
4 years. It started in 2015, which is when the incident
5 happened, continued on until the litigation was filed here
6 in this court, which was 2017. That's not a short period of
7 time. That is a long period of time. And there's a lot of
8 damage that could have been done and was done. In fact, 18
9 to 20 different individuals had been told by then. This is
10 not a situation where somebody told one of their or two of
11 their closest friends and family, 18 to 20 people. I think
12 the numbers speak for themselves.

13 As far as the profitability aspect, well, short -- you
14 know, maybe financial profit didn't happen here for either
15 Defendant, but, certainly, other kinds of goals were met
16 here to satisfy the Defendants' needs. Having gotten rid of
17 Mr. Pampu from the campus, I mean, gotten rid of the cause
18 and reputational harm to him, ostracizing him from the
19 campus community as well as a fraternity, making it
20 impossible for him to pursue his career and educational
21 goals as he initially intended and was well on his way. So
22 those are other ways the Defendants profited off of their
23 conduct.

24 As far as the ability to pay, well, no asset discovery
25 has been conducted yet, so that remains to be seen.

1 And then as far as the deterrence factor, you know,
2 Defendants are arguing that there might be this chilling
3 effect on any sexual assault victim because of a verdict
4 like this. The reality is that it would not have a chilling
5 effect for true victims. The whole lawsuit is based on
6 someone who was not an actual true victim of sexual assault.
7 The jury agreed after hearing the evidence, so, certainly,
8 there would not be a chilling effect on a true sexual
9 assault victim, just those who claim they are when the
10 evidence shows they are not.

11 As far as the second issue that's been raised by the
12 Defendant Wingos regarding just the excessiveness of the
13 verdict, our argument is that while they may not be happy
14 with the damages award, it's not excessive or shockingly
15 disproportionate under the law. Your Honor had charged the
16 jury with nonspeculative and future damages charges, two
17 separate charges that both sets of Defendants agreed to have
18 included in this trial.

19 Clearly, the Court believes that the jury had well
20 within its capability the power and ability to come to this
21 decision, to arrive at their award given these charges,
22 given the evidence that they've been provided at trial. So
23 any argument that the decision or the verdict is now
24 excessive, I mean, clearly, there's a waiver argument here
25 for not objecting to having those charges even included to

1 begin with. In fact, you know, Defendant Wingos, they cited
2 the exact verbatim charges when they provided this to the
3 Court, the pattern jury instruction. They wanted these in.

4 So I just think that it's a stretch to say now that the
5 jury could not have come to these damages awards given those
6 instructions and charges. And the amount of damages is
7 really based on the common knowledge and jury's life
8 experience of what orthodontists would make. And that's
9 clear that it would be mid to upper level six figure
10 salaries. So I think that, you know, it was well within the
11 jury's province to decide that.

12 Now, there was an issue raised by Defendant Wingos that
13 well, you know, whether Mr. Pampu would have gotten into
14 dental school was speculative, right? That that may or may
15 not have happened. But, frankly, the Defendants have failed
16 to get a counter expert to rebut Steve Shedlin's testimony,
17 our expert's testimony on that issue. They could have done
18 so, but they failed to do that, so the jury properly heard
19 evidence from our expert on the issue of whether or not
20 there was a basis for some of these future damages. So any
21 argument that the damages award are excessive or shockingly
22 disproportionate is just -- it's not based on any facts or
23 law here.

24 And, finally, just to return quickly on the punitive
25 damages award, courts in South Carolina have allowed

1 punitive damages awards four times the amount of actual
2 damages. Here you have quite the opposite. You have
3 punitive damages only assessed to the defamation cause of
4 action. And the defamation cause of action, you've got a
5 much, much lower punitive damages awarded as compared with
6 the actual damages for the defamation claims as to each
7 Defendant. So I think any argument that the punitive
8 damages are excessive is really belied by the numbers
9 themselves.

10 Thank you.

11 THE COURT: Mr. Moore.

12 MR. MOORE: Judge, in responding to that last argument,
13 really, we're arguing about whether punitive damages should
14 be awarded at all. And I think we need to be reminded that
15 punitive damages only apply with regard to the defamation
16 cause of action not to the civil cause of action.

17 In this situation, what they're pointing to is a
18 statement made by C.J. when he was upset with regard to what
19 Erin Wingo had done to him after a party and he was under
20 the influence. And that statement went towards the civil
21 conspiracy cause of action because it had to do with what
22 was said during the course of the Title IX hearing.
23 Plaintiff has argued that defamation statements only have to
24 do with statements made outside of the Title IX hearing. So
25 that particular statement doesn't really have any impact

1 upon the punitive damages one way or the other.

2 In this situation, C.J. Gahagan's degree of
3 culpability, quite frankly, doesn't exist, but even if you
4 consider it to exist, there is no evidence, number one, that
5 he did it intentionally because he didn't know anything
6 about it; and, secondly, there's no indication that he did
7 it recklessly. He didn't know what had occurred other than
8 what people had told him. And he had been told by Erin
9 Wingo that she had not given consent to have sex with Mr.
10 Pampu. So under those circumstances, we don't feel that
11 punitive damages are appropriate.

12 THE COURT: Ms. Porter, anything you want to add?

13 MS. PORTER: Yes, sir. I really truly did not intend
14 to argue our eighth claim at this time, but it kind of
15 coincided with the punitive. So in response to Ms. Lau's
16 argument of excessive damages. Do you want me to address
17 that now or do you want me to go after David finishes?

18 THE COURT: Let's go after David finishes, the next
19 round, okay?

20 MS. PORTER: Okay.

21 MR. MOORE: The next issue I have listed is there was
22 an absence of any evidence of any combination by Erin Wingo
23 or C.J. Gahagan to engage in a civil conspiracy to cause
24 harm to Mr. Wingo. We had some texts that the Plaintiff is
25 relying upon indicating that they were upset with him, they

1 didn't like him, that type of thing, but there's no
2 indication that they were going to go ahead and engage in
3 some kind of conspiracy to move forward in the Title IX
4 hearing to try to get him kicked out of Clemson University.

5 In fact -- this goes back to one of the initial
6 arguments we had. There's no evidence there because we were
7 not allowed to present evidence regarding what occurred
8 during the Title IX hearing, so there is no evidence of
9 actually any act that has occurred by either Erin Wingo or
10 C.J. Gahagan which could make up the civil conspiracy.

11 So not only do you not have a situation where they have
12 agreed to cause harm, but there is no corresponding act
13 where they actually went ahead and caused harm. The
14 evidence if it had been presented would show that Clemson
15 University is the one that made the decision to have him
16 kicked out of school.

17 THE COURT: All right. Ms. Porter.

18 MR. GRANTLAND: Your Honor, this is John Grantland for
19 the Wingo Defendants. You heard this very thoroughly, I
20 think, at the directed verdict stage and you looked very
21 carefully at the Paradis vs. Charleston County School Board,
22 which I think controls. I mean, there has to be an
23 agreement to commit an unlawful act or a lawful act by
24 unlawful means together with the commission of an overt act
25 in furtherance of the agreement.

1 Just to reiterate what Mr. Moore has said, there's no
2 evidence of an agreement, period. No evidence of any
3 agreement between Erin and C.J. No evidence in any form
4 that they conspired to unlawfully defame Mr. Pampu or
5 unlawfully have him kicked out of school. Neither reported
6 the allegation to Clemson. Neither requested a report be
7 made. And there's no evidence that they agreed to commit an
8 unlawful act or a lawful act by unlawful means.

9 THE COURT: And if I remember correctly, I thought very
10 carefully not even sending this one to the jury.

11 MR. GRANTLAND: Right. Right. Erin acted and spoke on
12 her own. Mr. Gahagan acted and spoke on his own. There was
13 no overt act by them. I mean, there was no overt act
14 because there was no agreement. If there's no agreement,
15 there's no conspiracy. I mean, this should not have gone to
16 the jury with all due respect.

17 THE COURT: Ms. Lau.

18 MS. LAU: Thank you, Your Honor.

19 So, again, here, you know, while the Defendants want to
20 interpret the text messages between the two sets of
21 Defendants as something else, the text messages are
22 important because they do show -- they don't have to state
23 definitively we agree in those words, this is our goal, but
24 it can be completely inferred by the statements made by Ms.
25 Wingo and Mr. Gahagan that they had a common agreement that

1 Mr. Pampu should get kicked out of the University.

2 We've cited to those examples of the text messages, so
3 I won't rehash them here, but, certainly, we get enough of
4 an understanding combined with their testimony at trial that
5 there was a common agreement here, common goal that he
6 should be kicked out of the University and of the
7 fraternity.

8 So at this -- the fact that also Mr. Gahagan had a
9 close relationship with Ms. Wingo, you know, attended
10 therapy sessions with her and spoke with Plaintiff multiple
11 times to gather information to share with her, all of this
12 evidence was before the jury so that they could properly
13 determine that there was a common goal here, that they were
14 working together. They did want to damage the Plaintiff.
15 They wanted to get rid of him. They didn't want him on
16 campus anymore. So the evidence in our view was very clear.

17 Thank you.

18 THE COURT: Any brief response?

19 MR. GRANTLAND: Very brief.

20 Judge, the statements they're relying upon as set forth
21 in their brief, but you'll notice the statements they're
22 relying upon are actually opinions as to what should occur
23 rather than indication of any agreement that had been
24 reached by Erin Wingo or C.J. Gahagan.

25 And then second, there was no overt act and there was,

1 certainly, no evidence of the Clemson investigation, which
2 would have also shown there was no overt act, Your Honor.

3 This is very clear. This cause of action should not
4 have gone to the jury.

5 THE COURT: All right. Mr. Moore, your next item.

6 MR. MOORE: The next item has to do with election of
7 remedies. As the Court is aware, there were, in essence,
8 two verdicts here. One for defamation and one for civil
9 conspiracy. This has to do with whether they should be able
10 to collect twice for the same type of damages that have
11 incurred.

12 With regard to the defamation cause of action, they are
13 trying to recover damages for the injury to his reputation,
14 mental distress, things of that nature.

15 With regard to the civil conspiracy cause of action,
16 they are also trying to recover for those same general
17 damages. They also tried to recover for the specific
18 damages where he lost the ability to get into dental school
19 and, ultimately, become an orthodontist.

20 They presented an expert witness who is an expert in,
21 basically, rehabilitation. And they tried to use him as an
22 expert witness with regard to economic loss and Your Honor
23 ruled that he could not testify to that because it was not
24 within his area of expertise.

25 What he was trying to say was okay, he has a work-life

1 expectancy of so and so. When we add up all these figures
2 together as to what he might have made as an orthodontist,
3 which there was no evidence of, that he would have this
4 cumulative amount. That would have to be reduced down by
5 what he would make in any other profession he might enter
6 into and then all that had to be reduced down to present
7 value. He wasn't able to do that. There was no evidence
8 whatsoever with regard to what damages he might have
9 suffered if he was kept out of dental school because of
10 something either of these Defendants did.

11 In the absence of that testimony, the jury is not
12 allowed to speculate as to what might have occurred and to
13 speculate as to how much an orthodontist might make in South
14 Carolina or wherever he might live. They're not allowed to
15 speculate as to what his work life expectancy is and it is
16 different from what his life expectancy might be. They're
17 not allowed to speculate as to what the offset might be and
18 there was no evidence regarding that.

19 And yet, what they're arguing is well, the damages are
20 different with regard to defamation and civil conspiracy
21 because he could have recovered under civil conspiracy for
22 his inability to get into dental school.

23 Our position is there was no evidence regarding what he
24 might have lost with regard to his inability to get into
25 dental school and, therefore, the only damages he could get

1 from civil conspiracy are the exact same damages he's going
2 to get with regard to defamation, which are with regard to
3 his reputation, mental distress and that type of general
4 damage. They're the same. The jury could not have
5 distinguished between those various type of damages. So,
6 therefore, they ought to be required to determine which
7 cause of action they're going to go with, either defamation
8 or civil conspiracy, but, certainly, not both.

9 THE COURT: All right. Ms. Porter.

10 MR. GRANTLAND: Your Honor, this is John Grantland. I
11 mean, the case law on this issue is very clear. Harper vs.
12 Ethridge is one of the seminal cases, 290 S.C. 112, a Court
13 of Appeals, 1986. There can be no double recovery for a
14 single wrong. And if the verdict is allowed to stand as it
15 is, the Plaintiff will have a double recovery against both
16 the Wingos and Mr. Gahagan.

17 I mean, no question the Plaintiff sought general
18 damages for harm to his reputation, embarrassment and mental
19 distress for the defamation case. The civil conspiracy
20 case, he sought the same damages. As David pointed out, he
21 attempted to prove special damages, but he was not allowed
22 to do so because the expert was not qualified to give an
23 opinion on economic losses. So any numbers that the jury
24 came up with, if they were based on this expert, I agree
25 with Mr. Moore, they were all speculation.

1 At the end of the day, Mr. Pampu had general damages
2 from the conspiracy claim and the defamation claim, which
3 were the same. The harm from the defamation was the same as
4 the harm from the conspiracy and the Plaintiff has to elect
5 one. He can't have both.

6 THE COURT: Ms. Lau.

7 MS. LAU: Thank you, Your Honor.

8 So with respect to the election of remedies argument,
9 you know, the damages very clearly laid out to the jury as a
10 result of two separate harms based on different sets of
11 facts. And the civil conspiracy being based on the
12 agreement to have Plaintiff removed from Clemson University,
13 his career damages, which is why we had an expert witness,
14 Steve Shedlin, testify as to the fact that he would make
15 significantly more than he would have made if he continued
16 on as a salesman with a base salary of \$70,000 a year.

17 So when you look at it like that and you compute out
18 what that three million dollar damages award would be over
19 the next 42 years of his working life up to social security,
20 retirement age, that's only \$70,000 more per year that he
21 would be making.

22 They, certainly, had enough there from the testimony of
23 Mr. Shedlin to determine that there were career damages that
24 he would have made significantly more based on being an
25 orthodontist versus being a salesman and this was directly

1 resulting from the Defendants' civil conspiracy to have him
2 kicked out of the University. That would not have happened
3 had they not provided false statements to the University.

4 Regarding our defamation claim, that, again, was based
5 on very different statements and different acts. Different
6 statements made to 18 to 20 people outside the Title IX
7 process. That led to reputational harm. That also provided
8 a basis for the jury to award punitive damages as a
9 deterrent effect to stop future individuals from doing this
10 kind of -- making false statements to harm somebody, per se
11 defamatory statements, which is what we're talking about
12 here.

13 So it's really -- there's, certainly, a basis for the
14 two sets of award -- damages awards because they relate to
15 different sets of harm and different sets of facts. There's
16 no election of remedies required.

17 THE COURT: Mr. Moore.

18 MR. MOORE: Very briefly. The general damages under
19 either of these causes of action is the same. His
20 reputation is going to be harmed if he gets kicked out of
21 Clemson. His reputation is going to be harmed if he's
22 defamed. It's the same damage that he has before. He has
23 the mental distress from it. He has the -- if you want to
24 call it loss of enjoyment of life, that type of thing. They
25 all combine together at the same time. They're not two

1 separate damages occurring at two separate times, but it's
2 the same and it's obviously going to cause a lot of jury
3 confusion unless they can separate that out and they
4 couldn't.

5 In this situation, they argue the special damages or
6 whatever with regard to his inability to be a dentist or an
7 orthodontist simply has not been proven. So we take the
8 position they need to make a decision as to whether they
9 want general damages from defamation or general damages from
10 the civil conspiracy.

11 MR. GRANTLAND: And, Your Honor, the number 42, I don't
12 think was ever said -- 42 years was ever said during the
13 course of the trial nor was the word social security ever
14 said. So this is all relatively new information from Ms.
15 Lau with all due respect to her.

16 And, again, the special damages based on making
17 significantly more money in the future, I mean, that's
18 speculation in and of itself. I mean, to say someone is
19 going to make significantly more money, that's totally
20 speculative.

21 So I just concur with Mr. Moore that he clearly made
22 his case for general damages and he must elect one or the
23 other, but he shouldn't -- to have both would be a double
24 recovery.

25 THE COURT: And Mr. Moore, I believe your final --

1 MR. MOORE: It's the 13th juror argument, Your Honor.

2 From C.J. Gahagan's standpoint, you have two verdicts
3 here, I guess. One for \$920,000, which constitutes \$700,000
4 actual damages and \$220,000 punitive damages with regard to
5 defamation. And then he has a one million dollar verdict
6 with regard to the civil conspiracy cause of action. In
7 essence, very close to two million dollars for a guy who
8 just graduated from college and is just starting off in real
9 life.

10 The injuries that they are trying to recover for with
11 regard to C.J. Gahagan have to do with two texts which were
12 sent out shortly after this event occurred to individuals
13 who did not testify. There's no indication that those texts
14 were spread out to other people, which is what you're
15 concerned with with regard to the per se damages where
16 somebody makes a statement that can be heard by any number
17 of people. That is not the case here. We have only two
18 people he might have corresponded with with regard to this
19 that there is any evidence of.

20 So the two million dollar, almost two million dollar
21 verdict, combined verdict in this situation is way out of
22 joint with regard to that. There's no evidence that either
23 one of these guys was impacted with regard to their thought
24 or concerns about Mr. Pampu.

25 So those two minor texts, the verdict of close to two

1 million dollars is just way out of hand in our mind,
2 particularly since there is no indication that Mr. Pampu
3 could not succeed in life. He transferred to the College of
4 Charleston. He graduated high in his class there. He went
5 and got an MBA, graduated high in his class there. He's got
6 a very good job, sales job at this point in time and
7 probably can expect to do very well in the future. There's
8 no indication that anything Mr. Gahagan did really has
9 impacted Mr. Pampu to any great extent.

10 THE COURT: Ms. Porter, I can't remember if this is one
11 of your arguments or not.

12 MS. PORTER: It is, Your Honor. It really goes hand in
13 hand with my excessive verdict argument, so do you want to
14 take those together or separate?

15 THE COURT: Yeah, why don't we just come back to you on
16 those and have Ms. Lau respond to Mr. Moore here.

17 MS. LAU: Thank you, Your Honor.

18 It seems to be some confusion again on what's being
19 argued as far as which part of the damages, which aspect and
20 which cause of action. I hear Mr. Moore's argument and it
21 seems like the issue is with the two million dollar damage
22 award with the civil conspiracy, which is the larger award
23 here.

24 That's going, again, to future damages, damages on his
25 career, damages for his future. There was testimony

1 provided by an expert, provided by Mr. Pampu, provided a
2 basis for the jury as well as a jury's own life experience
3 and background to understand that what orthodontist make.
4 They all live in the real world. They know what
5 orthodontist make. They know it's significantly more. To
6 be able to make that award.

7 Besides that, there's no evidence of jury confusion
8 here for the 13th juror doctrine to apply. It would only be
9 applied if justice was not served by the verdict and there's
10 just no evidence of that. There is, instead, evidence that
11 the jury had to rely on to make the damages determination
12 that it did.

13 Now, there's discussion of these two people that Mr.
14 Gahagan had spoken with. I believe that's referring to
15 facts related to the defamation cause of action. So I'm not
16 sure what that -- what the basis is there as far as, you
17 know, why that award would be excessive. That's clearly
18 within the jury's province to decide what actual damages
19 would be assessed to someone's reputation and reputational
20 harm and what punitive damages would be appropriate as a
21 deterrent effect.

22 Thank you.

23 THE COURT: Any response, Mr. Moore?

24 MR. MOORE: Judge, we've already argued about punitive
25 damages, I'm not going to do that again. My argument is

1 just the cumulative verdict against C.J. Gahagan is based
2 upon some very minor acts, which do not indicate they had
3 much of an impact upon Mr. Pampu. And the 13th Juror
4 Doctrine allows you in your discretion to make a
5 determination that the evidence with two texts don't justify
6 a verdict of close to two million dollars, combined verdict
7 of two million dollars.

8 And based upon that, we feel like we ought to get a new
9 trial based upon the excessive verdict.

10 THE COURT: And that's the extent of your issues that
11 you raised in your motion?

12 MR. MOORE: Yes, sir.

13 THE COURT: Ms. Porter, just for planning purposes, how
14 many do you have additional now?

15 MS. PORTER: I think we have four.

16 THE COURT: Okay.

17 MS. PORTER: Issue number one, we've already addressed.
18 Issue number two is Dave Wingo's letter to Phi Delta Theta.
19 I'll let Mr. Grantland address that.

20 THE COURT: Okay.

21 MR. GRANTLAND: Your Honor, may it please the Court.
22 We've made a motion for new trial based on, with all due
23 respect, error in submitting Mr. Wingo's redacted letter to
24 the jury.

25 As the Court may recall, before trial, we moved to

1 exclude Dave Wingo's demand letter to Phi Delta Phi because,
2 two reasons, it was settlement discussions and it was
3 privileged because his letter was based on the Clemson Title
4 IX finding and a claim he was making with Phi Delta Phi.
5 Mr. Wingo wrote a letter to Phi Delta Phi fraternity April
6 of 2016 to let them know about the Clemson Title IX
7 investigation. He made a settlement demand on behalf of
8 Erin. We wanted to exclude it all under Rule 408 as
9 settlement discussions and because it's privileged.

10 I mean, the case law is pretty clear, Conwell vs. Spur
11 Oil Company, which is cited in our brief, along with
12 Duckworth vs. First National Bank, a communication made in
13 good faith on any subject matter in which a person
14 communicating has an interest or in reference to which he
15 has a duty is privileged and, therefore, a party may not
16 recover for it.

17 We believe with all due respect that the only reason
18 this jury found that Dave Wingo defamed Mr. Pampu was this
19 redacted letter. It was a privileged communication that
20 should have otherwise been barred by 408.

21 We wanted it -- as the Court may remember, we wanted it
22 all out. We didn't think it should come in. The Plaintiff
23 wanted to redact portions of the letter dealing with the
24 Title IX investigation, but everything else to come in,
25 basically, to admit it to show Mr. Wingo's statements about

1 the Plaintiff. We argued that it would be unfair,
2 misleading, prejudicial to redact portions of the letter,
3 but to allow in other parts of the letter. We even argued
4 as a fallback, if you're going to let the letter in, let the
5 whole letter in so the jury can see the entire letter, not
6 just piecemeal.

7 The Court allowed the Plaintiff to redact what they
8 wanted out of the letter, which was the absolute worse
9 scenario for Mr. Wingo. The result was the jury got a
10 misleading letter, which was otherwise privileged where Dave
11 Wingo is defaming the Plaintiff without any basis. I mean,
12 if you compare the redacted with the actual letter that was
13 -- that Mr. Wingo wrote, I mean, the redacted letter reads
14 like it's a slanderous rant with no basis. And the result
15 was unfair and highly prejudicial to Mr. Wingo.

16 The redactions included Clemson's investigation and
17 findings, the Plaintiff's retaliation against Erin and C.J.,
18 and the fraternity's retaliation against Erin and C.J. One
19 sentence encapsulates why this letter either should have
20 been excluded or the whole letter should have come in. At
21 the bottom of Page 4 of the letter, the jury read this:
22 Drew remains in his fraternity, which based on his conduct
23 will reenforce his belief that he did nothing wrong,
24 increasing the likelihood that he will do something harmful
25 again. I mean, that sounds like a rant with no basis. But

1 the first sentence was deleted. And the first part of the
2 sentence was deleted. The letter read: Even after being
3 found responsible, Drew remains in his fraternity.

4 The jury did not know that Mr. Pampu was found
5 responsible by Clemson. They just assumed that Mr. Wingo
6 thought he was responsible. The jury did not know the whole
7 basis of the letter was to let Phi Delta Theta know about
8 the Clemson decision.

9 The demand paragraph at the very end of the letter was
10 incomplete. The only thing left in the demand letter -- or
11 the demand paragraph was Mr. Wingo's request that Mr.
12 Pampu's membership be revoked and he be barred from the
13 house. He cc'd the Clemson decision, which was also
14 redacted. He relied on the Clemson decision in writing the
15 letter, but the jury had no idea about it.

16 I mean, with all due respect, we've talked about the
17 Clemson investigation, the Plaintiff's convinced the Court
18 that anything about the Clemson decision would mislead the
19 jury and prejudice Mr. Pampu, but by leaving the Clemson
20 decision out of this letter, the jury was mislead. They
21 were misled into thinking that Mr. Wingo slandered the
22 Plaintiff with no basis. I mean, the redacted inaccurate
23 letter was the reason for the defamation verdict against Mr.
24 Wingo because the truth, the Clemson decision was deleted.

25 None of it should have come or all of it should have

1 come in, but as submitted, again, we believe with all due
2 respect to the Court that it was error to allow this
3 redacted letter in front of the jury, error that prejudiced
4 Dave Wingo and entitles him to a new trial.

5 Thank you, Your Honor.

6 THE COURT: Ms. Lau.

7 MS. LAU: Thank you, Your Honor.

8 Simply put, there was no prejudice caused by the
9 introduction of portions of the Phi Delta Theta letter.
10 South Carolina Rule of Evidence 408 does not apply to those
11 sections. The Defendants cannot -- specifically, Defendant
12 Dave Wingo cannot argue that the Clemson decision on the one
13 hand is a basis of settlement discussions and, therefore,
14 privileged, and then add additional statements not found in
15 the Clemson decision to defame someone and then claim
16 immunity from suit by settlement privilege.

17 And by the way, you know, we don't agree that the
18 settlement privilege would have applied at all simply for
19 the fact that Phi Delta Theta was never a party to this
20 lawsuit. So the cases that Defendants have relied on, in
21 Fezmeir (ph) and Commerce Center of Greenville, the party
22 there was seeking to admit settlement communications between
23 the parties in the matter there. That's not what happened
24 here. This is not a case involving Phi Delta Theta. It has
25 nothing to do with Phi Delta Theta being sued.

1 So they can't have it all ways. And I think what the
2 Court tried to do was strike a balance here because the
3 Clemson decision and the related documents were not allowed
4 in this trial, properly so, and so any reliance on those
5 Clemson decisions was stricken from and redacted from this
6 Phi Delta Theta letter. Moreover, the Defendants basis for
7 striking settlement discussions was supposedly the Clemson
8 decision. So any information or statements beyond that
9 cannot be part of that privilege. They cannot claim cover
10 under that settlement privilege.

11 Thank you.

12 THE COURT: Mr. Moore, anything in response -- I'm
13 sorry, Mr. Grantland.

14 MR. GRANTLAND: Your Honor, it's ironic that Ms. Lau
15 says there's no prejudice to Mr. Wingo for allowing this
16 redacted letter in. He got a verdict against him for
17 defamation. He didn't text anyone. He didn't testify at
18 Clemson. This was the only statement Mr. Wingo made and it
19 was taken out of context and redacted. So yes, there was
20 significant prejudice against Mr. Wingo for allowing in the
21 statement redacted the way they wanted it to be redacted.

22 Finally, just on the point of whether it's privileged,
23 and the case law is very clear: A communication is
24 privileged if it's made in good faith, the party has an
25 interest in making the statement, the statement is limited

1 in scope to this purpose, the statement was made on a proper
2 occasion and publication in a proper manner and to proper
3 parties. He wrote this letter to the Phi Delta Theta
4 fraternity and no one else. I mean, he certainly meets the
5 requirements of the Commonwealth vs. Spur Oil and Duckworth
6 vs. First National Bank case regarding privilege.

7 Thank you, Your Honor.

8 THE COURT: Next issue.

9 MR. GRANTLAND: Your Honor, if I can address the civil
10 conspiracy verdict. As the Court's very familiar with the
11 Paradis case, Paradis says that each conspirator is liable
12 for all damages resulting from a wrongful act of any
13 co-conspirator in exercising a joint enterprise.

14 THE COURT: Didn't we talk about this already?

15 MR. GRANTLAND: Not the fact that the verdict was
16 inconsistent.

17 THE COURT: Okay. I got your briefs.

18 MR. GRANTLAND: Yeah, the jury found Erin Wingo for two
19 million dollars, C.J. Gahagan for one million. You know,
20 the Paradis case, each conspirator is liable for all
21 damages. There can only be one damages award for conspiracy
22 and the verdicts are obviously inconsistent. I mean, when
23 two verdicts are irreconcilably inconsistent, a new trial
24 should be granted in both cases. And award one conspirator
25 two million and one conspirator one million for the same

1 conspiracy, the verdicts are irreconcilably inconsistent and
2 must be vacated.

3 THE COURT: Ms. Lau.

4 MS. LAU: Thank you, Your Honor.

5 MR. GRANTLAND: You can't have separate levels under
6 Paradis.

7 MS. LAU: Your Honor, the Paradis case simply does not
8 stand for the proposition that Defendant Wingos would have
9 you believe. It does not require that the same damages
10 award be awarded for each co-conspirator, that is not
11 anywhere found in the Paradis decision. It's not even
12 discussed.

13 The argument is whether the liability and verdict
14 liability should be consistent. In fact, all the cases that
15 Defendants have cited and relied on, including Prego,
16 including Paradis, that was really the issue. And the
17 liability -- verdict on liability is consistent here. They
18 were found responsible. Both co-conspirators were found
19 responsible.

20 It's a matter simply of apportionment, which is
21 allowed. Whether there is apportionment relative to the
22 culpability of each co-conspirator. And the allowance of
23 apportionment is not unusual where such an approximation of
24 the damages done by each defendant may reasonably be made,
25 that's Warrick vs. Selvy.

1 So here, you know, that's what we have is only a
2 difference in the verdict of the amount of the damages, not
3 a difference in the verdict from the liability. And that's
4 the confusion here by the Defendants.

5 They've also made an argument in their brief that they
6 believe this cause of action, civil conspiracy, should not
7 even be a cause of action at all in the State of South
8 Carolina based on concurrence opinion. I think that that's
9 obviously not really the issue here. I certainly don't
10 think that's a relevant topic for us to argue for purposes
11 of the jury's proper decision.

12 Thank you.

13 MR. GRANTLAND: Your Honor, if I can just quote Paradis
14 in response to my --

15 THE COURT: I can read Paradis.

16 Next issue.

17 MS. PORTER: Your Honor, on our point number four,
18 Title IX statements made by the Defendant as part of the
19 Title IX investigation and process were absolutely
20 privileged from defamation.

21 Just briefly, I think we've covered this a little bit
22 already, but, you know, Crowell v. Herring, which is 301
23 S.C. 424, it's a Court of Appeals case from 1990 where any
24 utterance arising out of the judicial proceeding and having
25 any reasonable relation to it is privileged. Now, this has

1 been extended beyond judicial proceedings and the
2 quasi-judicial proceedings. This Rule reflects the
3 prevailing common law view that public interest and the
4 freedom of expression by participants in judicial and
5 quasi-judicial proceedings uninhibited by any risks of the
6 resulting suits for defamation outweighs the interest of the
7 individual and the protection of his reputation from a
8 defamatory impairment in the judicial or quasi-judicial
9 forum.

10 Specifically, again, I'm citing the Corbin vs.
11 Washington Fire and Marine Insurance Company case, 398 F.2d
12 543, where, again, they reasoned that the privilege does not
13 depend on the rigid requirement of strict legislation or
14 judicial proceedings. Its limits are fixed on public
15 policy --

16 THE COURT: And we have kind of gone through the
17 privilege and I've got the case law here, so -- I mean, I've
18 got your brief.

19 MS. PORTER: Well, just briefly, then, to relate it to
20 the facts regarding the comments here. Again, Ms. Lau wants
21 to portray that there were 15 to 20 individuals that my
22 client spoke to about the facts of the events of October
23 24th, 25th. And that's true. She did speak to numerous
24 family members, first cousins, aunts and uncles and parents.
25 There are a limited number of close friend with whom she

1 discussed this. And the discussions revolved around the
2 Title IX process, investigation and subsequent litigation.
3 What's going on? How are you doing? How is it going? It
4 was defamatory in nature in that it was set out to harm Mr.
5 Pampu.

6 She didn't take out a billboard. She didn't go to
7 social media and discuss this. She went to close friends, a
8 few, I think there were five, and then the rest were family
9 members. And, specifically, it was the Thanksgiving after
10 this occurred, after the investigation had begun and a
11 pending hearing was happening. She went to Thanksgiving
12 with her extended family and wanted them to know what was
13 going on so that her demeanor would not be questioned. That
14 was her testimony on the stand.

15 So it's not -- the characterization is not reflective
16 of the testimony during the trial. And those are people
17 that she discussed this with that are reasonable relation to
18 not only the Title IX process, but the subsequent litigation
19 and I'll leave it at that. But we believe that those
20 communications are privileged and we would ask for a new
21 trial based thereupon.

22 THE COURT: Ms. Lau, anything you need to add to your
23 privilege argument previously?

24 MS. LAU: The only two points, Your Honor. You know,
25 the Court has already determined that the discipline process

1 is not judicial or quasi-judicial, so the absolute privilege
2 would not apply even if they want to come under the cloak of
3 the timing of when the process began and when the statements
4 started to get made.

5 And secondly, you know, even if it were --there was
6 more than enough evidence and testimony, documentary and
7 testimonial evidence that indicates statements were made
8 with actual malice, knowledge that the statements were false
9 when they were made. The morning after texts indicate that
10 there was more than enough knowledge that this was a
11 consensual encounter. Statements made to other witnesses
12 who we received testimony at trial. This was certainly
13 information that evidence showed actual malice. There is no
14 absolutely privilege here.

15 Those are the only two arguments I would add. Thank
16 you.

17 THE COURT: Ms. Porter, next argument?

18 MS. PORTER: Your Honor, our eighth, ninth and tenth
19 points really all go together. Do you just want to take
20 them --

21 THE COURT: Yeah.

22 MS. PORTER: Our eighth point is the excessive verdict,
23 shockingly disproportionate. When an award is so shockingly
24 disproportionate to the injuries as to indicate that the
25 jury was moved by passion, prejudice or other consideration

1 not in evidence, it's the duty of the trial judge to set
2 aside the verdict absolutely and grant a new trial. And
3 that's what we're asking you to do here today.

4 The Plaintiff sought damages for harm to reputation,
5 embarrassment and mental distress and based these defamatory
6 comments, alleged defamatory comments by our client as the
7 basis of that harm. But with regards to the defamation and
8 the civil conspiracy, they focused in on the damage to his
9 loss of income and future income because he could not get
10 into dental school.

11 The testimony from the Plaintiff was that he finished
12 college without any break in his education, so he finished
13 Clemson that Freshman year in the spring of 2016 and began
14 in the College of Charleston in the fall of 2016. He went
15 straight through and even obtained his Masters in Business
16 Administration from the College of Charleston. So there's
17 no damage to a loss of educational opportunity.

18 He did testify that if you have a break in the
19 educational aspect, that would hurt your chances of getting
20 into dental school. There was no break, so that didn't
21 affect the dental school.

22 Not only that, he was able to secure a lucrative job
23 selling high end medical devices, such as MRI machines and
24 CT machines and was -- and there was testimony that fresh
25 out of school, he was making the 75th percentile of incomes

1 in the nation. The expert went on to testify that he was a
2 bright guy who was well educated, who had a skill set and
3 intangibles to be very successful.

4 There was no evidence presented linking the rejections
5 from dental school to any statements made by Erin Wingo or
6 Dave Wingo. None. Zip, zilch. And none by C.J. Gahagan.
7 The answer to the application referred to the Clemson
8 University decision.

9 There was no evidence from an economist about salary
10 disparagement between an orthodontist and a medical sales
11 rep. There was no testimony from an economist about offset
12 or work life expectancy or discounting to present day value.
13 The only evidence provided by the Plaintiff was that he
14 wanted to become an orthodontist and he felt like that he
15 wasn't able to do that because Erin said he raped her. And
16 that's just not true with respect to the damages. That's
17 not enough to prove the causal link.

18 There's a lot been said about well, the jurors bring in
19 their specific life experiences into that room and everybody
20 knows what an orthodontist makes. Well, I've got a couple
21 of friends who are orthodontists. I've got a couple of
22 friends who are pediatric dentist, which is one step below
23 orthodontics. I see their lifestyle. I see the cars they
24 drive, the houses they own, where their children go to
25 school and I can make some assumption. I can speculate that

1 they make seven figures, but I have not asked one of them
2 what their salary is.

3 There was not one orthodontist, not one pediatric
4 dentist on that jury. There was no one dentist on that
5 jury. To say that that jury had specific knowledge of what
6 orthodontist make on an annual basis is just -- it's
7 speculative and misleading. There's no evidence of what an
8 orthodontist would have made.

9 In addition, I have friends that sell medical devices.
10 And they, based on my observations of where they live, the
11 cars they drive, where they --

12 THE COURT: I get your point.

13 MS. PORTER: So all of these damages are completely
14 speculative. And we're looking at a total award of 5.3
15 million dollars without any evidence of the harm that was
16 created by the Defendant.

17 Now, they want to talk about reputational harm and that
18 they jury looked at that. The evidence that was presented
19 at trial is quite contrary to what Ms. Lau has argued in
20 this hearing. The evidence presented at trial is that the
21 fraternity blackballed C.J. Gahagan, that the fraternity
22 rallied behind the Plaintiff and supported him throughout
23 the Title IX process and his continuation at Clemson
24 University. And nobody from the College of Charleston or
25 the community in Charleston knew of or presented any

1 testimony that they were aware of this event that Drew was a
2 part of. So the harm was at Clemson University and the harm
3 that has been suggested in this hearing, there's no evidence
4 in the record of that harm, but to the contrary that he was
5 supported and lifted up by his fraternity.

6 So the verdict is just simply not based on evidence
7 that was presented at trial. Therefore, we would ask that
8 the award be set aside and a new trial granted.

9 THE COURT: Is that all yours together?

10 MS. PORTER: It really is. I mean, it's the same
11 supporting facts for the -- you know, the evidence doesn't
12 justify the verdict, so we ask that you step in as the 13th
13 juror and hang the jury because they clearly relied upon
14 information that was not presented at trial.

15 In the alternative, we would just ask that you reduce
16 the amount of damages, at a bare minimum reduce the verdicts
17 based on present day value and research yourself what
18 orthodontist make. Because the research I've done on Google
19 is not in the seven figures. So I don't know where Ms. Lau
20 is coming up with her figures, but it's all speculation. So
21 we would ask that you reduce the reward based on the
22 arguments we've made.

23 THE COURT: Ms. Lau.

24 MS. LAU: Thank you, Your Honor.

25 There is no basis to reduce the verdict here. In fact,

1 just to start from the end of Ms. Porter's argument on
2 reducing the damages to present day value, certainly, that
3 charge was specifically -- was related to loss earning
4 capacity was taken out and not even provided as a basis to
5 the jury. Instead, they were entitled to decide on future
6 damages and charged with speculative damages.

7 I will remind the Court that while we were arguing on
8 jury charges and which charges each respective wanted that
9 Mr. Grantland had argued to remove the line from the future
10 damages charge that says any future damages that you award
11 must be reduced to their present day value. He asked you to
12 remove it.

13 So any argument now to the contrary that the decision,
14 the verdict and the award is improper because that wasn't
15 maybe considered is not only speculative, but, also, if it
16 is a result, it's a result specifically because the
17 Defendants asked to remove that charge from the jury's
18 consideration.

19 That said, the evidence is clear. Ms. Wingo knew this
20 was a consensual encounter. Mr. Gahagan knew that she was
21 not incapacitated that night. They both said otherwise not
22 only to other individuals outside the Title IX process, but
23 also to get him kicked out of Clemson University and they
24 were successful. It led to the decision by Clemson. And
25 the Defendants, not Clemson are responsible for all of the

1 damages that flow from their harmful and conspiratorial act.

2 So they cannot point the finger at Clemson and say, you
3 know what, it was Clemson, not us, Clemson did it any future
4 damages is on Clemson, that ignores their vital initiating
5 part in that flow of damages. They worked together to
6 actively deprive another individual, namely, the Plaintiff
7 future opportunities that he was working toward. That
8 testimony was received by the jury, what he was completely
9 positioned to do, which was get into dental school. He had
10 good DATs, had the good grades. He couldn't get in. He had
11 this finding on his record caused by the Defendants. Any
12 damages awarded here took into account all of that.

13 And any issue that the Defendants now -- you know, they
14 take issue with our damages expert, Mr. Shedlin and his
15 testimony and whether it was enough and whether it was
16 sufficient. But, frankly, if they had such a problem, they
17 should have had a counter expert. They very well could have
18 had one. They only put two witnesses up in their entire
19 case. We had eight. They could have put an expert up to
20 talk about damages and put up their own economist if they
21 were so concerned about a jury coming to an improper
22 conclusion about what damages to award here if a decision
23 out of their favor occurred, which it did.

24 So, frankly and finally, again, I just want to say I
25 can't stress enough the damages award in the millions counts

1 for over his lifetime. This is a young man in his early
2 20s. Of course, the amount in the millions sounds like a
3 lot at first blush, but when you break it down, Your Honor,
4 it is not a lot over each year. Again, the jury does not
5 need to come to mathematical certainty in order to determine
6 future damages. That's within the pattern jury
7 instructions, that's certainly granted in case law and is
8 not an area that the Court may interfere in.

9 Thank you.

10 MR. MOORE: Judge, may I say something?

11 THE COURT: Final word.

12 MR. MOORE: Yes, sir.

13 THE COURT: And then I'll give the final word to Ms.
14 Porter.

15 MR. MOORE: The argument regarding the Defendants ought
16 to have put up their own economic expert is burden shifting.
17 They don't have the obligation of proving to the jury --

18 THE COURT: I know that.

19 MR. MOORE: Okay. But that's what she's arguing as if
20 we have to come up and prove something where they failed to
21 prove it in the first place.

22 THE COURT: Ms. Porter, Mr. Grantland, any final word
23 from y'all?

24 MS. PORTER: Just very briefly, Your Honor. Really,
25 loss of economic damages and future damages are, basically,

1 one in the same in this particular context. And future
2 damages were charged.

3 Second of all, we objected to future damages or loss of
4 economic charges being charged to the jury. We didn't agree
5 to that, but we did -- anyway, we objected to that.

6 And, lastly, it's interesting to me that Ms. Lau
7 actually said that the finding of Title IX proceedings was
8 the reason that he didn't get into dental school. That's
9 what we're arguing and why we should have a new trial
10 because the Title IX proceedings were excluded from the
11 evidence, but that's absolutely why. If he didn't get into
12 dental school, that's why, because of the Title IX result,
13 not what my client said, not what C.J. Gahagan said.

14 Thank you.

15 THE COURT: And I thank y'all for all of your work. I
16 know y'all worked hard on getting these briefs here. Just
17 to kind of let y'all know my time, I'm going to take a look
18 at this and let y'all know. I will be out of pocket next
19 week, so it will not be something that I will be able to get
20 to y'all next week. I'm just letting y'all know that on
21 scheduling.

22 Thank you, everybody.
23
24
25

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

December 10, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

In the Matter Of:
PAMPU vs WINGO

2017-CP-39-00709

ANDREW PAMPU

January 16, 2020



ESQUIRE
DEPOSITION SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

1 A. Pampu

2 Q. When did you retain counsel?

3 A. I'm not sure the exact date.

4 Q. Was it after you told your parents?

5 A. Chronologically that would make
6 sense, yes.

7 Q. Was it before you left for
8 Christmas break?

9 MS. LAU: Objection.

10 A. No, it was not.

11 Q. So it was after you returned but
12 before the hearing?

13 A. That is correct.

14 Q. Did you have an attorney with you
15 at the hearing?

16 A. I did.

17 Q. And who was that?

18 A. His name was David Aylor.

19 Q. How do you spell his last name?

20 A. Ayler is A-y-l-e-r or l-o-r I
21 believe it is.

22 Q. And does he practice in South
23 Carolina?

24 A. From my understanding, he does.

25 Q. Do you know where he's located? Is

1 A. Pampu

2 Q. So you appealed and you appealed
3 timely; is that correct?

4 A. Yes, ma'am.

5 Q. And if you'll look, which is Page 4
6 of Exhibit 8, is that your first appeal? It
7 begins with "My name is Andrew Pampu and I
8 wish to appeal my administrative hearing."

9 A. Yes, ma'am, that looks correct.

10 Q. If you'll go to the third paragraph
11 -- I'm sorry. Excuse me. The third page.

12 A. Of that appeal?

13 Q. Of that appeal, under number 4, the
14 third paragraph in Section C. That last
15 paragraph about halfway down you state, "I
16 truly hope that a person doesn't just rubber
17 stamp a denial of my claim and demands for
18 justice and equality within the
19 investigation, but they probably will."

20 And then this is the sentence I'm
21 interested in. "At that point I'll have no
22 choice but to file a federal lawsuit against
23 the university I love."

24 At this point have you already
25 begun plans to file a federal lawsuit against

1 A. Pampu

2 A. Yes, that is correct.

3 Q. And this is basically the same
4 language used in the appeal previously but
5 with references to the administrative hearing
6 transcript; is that correct?

7 A. Yeah. It was in response to just
8 the non-mentioned information, the
9 testimonies that were not included, pretty
10 essential evidence.

11 Q. So it's basically the same
12 information in the previous appeal with the
13 added references to the transcripts?

14 A. Yes.

15 Q. Except you took out that language
16 about suing Clemson federally; is that
17 correct?

18 A. It looks correct.

19 Q. And then the last page of this
20 exhibit is a letter dated May 27, 2016, which
21 is another denial of that appeal; is that
22 correct?

23 A. Yes, that is correct.

24 Q. So the administrative hearing panel
25 found by a preponderance of the evidence that

1 A. Pampu
2 you were in violation of the code of conduct,
3 which was upheld by the vice president and --
4 the vice president of OCS and by the
5 president of Clemson; is that correct?

6 A. That is correct.

7 Q. And that letter came in May of
8 2016?

9 A. That is correct.

10 Q. May 27. So at this time when do
11 you file the federal lawsuit against Clemson?

12 A. I don't know the exact date.

13 Q. Shortly thereafter?

14 A. I don't know the exact date.

15 Q. Was it the same month?

16 A. I don't know the exact date.

17 Q. Did you also file a lawsuit against
18 Erin shortly thereafter?

19 A. I don't know the exact date.

20 Q. And did you also file a lawsuit
21 against C.J. Gahagan shortly thereafter?

22 A. I don't know the exact date.

23 Q. You don't know the dates that you
24 filed lawsuits?

25 A. No, ma'am, I don't recall.

1 A. Pampu

2 Q. When are those applications due?

3 A. The dates vary for the due dates
4 for each college, each university. I know it
5 opens pretty sure at the beginning of June.

6 Q. The enrollment period is in the
7 beginning of June for the following fall?

8 A. Yes, ma'am. You can start
9 submitting your applications at that point.

10 Q. So they don't take applications
11 until June to begin in August?

12 A. No. There's a whole year process.
13 You apply for the following year. So the
14 next term.

15 Q. So this beginning June you'll apply
16 for the fall of 21?

17 A. Yes, ma'am.

18 Q. Got it. Has your federal lawsuit
19 with Clemson been resolved?

20 A. The details of that currently is
21 that it has been settled.

22 Q. Now that that lawsuit has been
23 settled, is the administrative hearing
24 determination still intact?

25 A. I'm not sure what you mean by that.

Letter from Dave Frock to Pampu Concerning Violation

**See Duplicate Exhibit* found at
ROA pages 345-347**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Administrative Hearing Appeal made by Pampu

**See Duplicate Exhibit* found at
ROA pages 349-352**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Administrative Hearing Appeal to President Clements

**See Duplicate Exhibit* found at
ROA pages 356-358**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Administrative Hearing Appeal Response by Max Allen

**See Duplicate Exhibit* found at
ROA page 360**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.