

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-00013

Maureen T. Coffey, ... Respondent,

v.

Community Services Associates, Inc. and

George F. Breed, Jr. Appellants.

**RECORD ON APPEAL
VOLUME II**

Mark S. Barrow, Esquire
William R. Calhoun, Jr., Esquire
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR APPELLANT
COMMUNITY SERVICES ASSOC.,
INC.**

Weston Adams, III, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211
(803) 779-2300

**ATTORNEY FOR APPELLANT
GEORGE F. BREED, JR.**

Robert V. Mathison, Jr., Esquire
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29928
(843) 785-6503

C. Mitchell Brown, Esquire
Nelson, Mullins, Riley,
Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 255-9595
**ATTORNEYS FOR
RESPONDENT**

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1 from a number of people, known as the Ocean Gate.

2 A The Ocean Gate, correct. Yes, sir.

3 Q Do you know how far it is from the Ocean Gate all the

4 way down Sea Pines Drive to South Beach?

5 A That's a distance, but I could not -- it's -- it's a

6 good distance.

7 Q It's a number of miles. Is that right?

8 A Yes, sir.

9 Q And do you know where -- did you know where Mr.

10 Coffey's mother lived on the 19th of May, when you went

11 to work?

12 A Yes, sir.

13 Q And that's close to the very, very south. Is that

14 not right?

15 A Correct. Almost at South Beach Marina. Yes, sir.

16 Q And the address is actually 4 Gadwall, correct?

17 A Correct.

18 Q When you were patrolling, if I understand correctly,

19 it was just you and Corporal Fryman. Is that right?

20 A That was on the road that night, correct. Yes, sir.

21 Q And were you both working the area from the gate, all

22 the way down to South Beach?

23 A Yes, sir. If I'm not mistaken, I think, Fryman was

24 actually in the club course area.

25 Q But he was really over closer to the Greenwood Gate.

1 Is that right?

2 A Yes, he was a distance away from me, yes, sir.

3 Q Did you, from time to time, while you were

4 patrolling, actually get out of your patrol car?

5 A Absolutely.

6 Q Do you know whether that was a protocol that was

7 required by Mr. Breed or by the administration at Sea

8 Pines Security?

9 A One of the things that was taught to me early when I

10 was training to be a patrol officer, the other officers

11 would always tell me you're not going to catch anybody in

12 a vehicle. So I -- I did a lot of patrolling on foot in

13 Sea Pines.

14 Q At the time that this event occurred, Mr. Jolin, did

15 you like your job?

16 A I loved my job there, yes, sir.

17 Q Did you believe that you were proficient in your job?

18 A I do believe so, yes, sir.

19 Q Did you have a good relationship with Mr. Breed?

20 A Yes, sir.

21 Q Tell me, if he did, what he had expressed to you

22 about your capabilities as an officer.

23 A Are we pertaining to this --

24 Q Before the event of May 20th.

25 A Okay. I've -- Mr. Breed has always told me that --

1 that -- that I was doing a -- a very good job for him,
2 and pretty much the -- the -- the community. I mean, I
3 -- I never had any complaints. Never -- never been
4 written up. Never been suspended. So, I mean, that's --
5 that there, it means a lot.

6 Q During the period that you testified in the Spring of
7 2008, you said, I believe, that there were, you know, an
8 increased number of burglaries and house-breaking and
9 peeping Toms. Was that unusual or usual?

10 A No. Usually, every -- every -- every summer at
11 about, you know, we're in a tourist area, that's when the
12 crime usually starts occurring more -- more breaking and
13 enterings and things along that nature, yes, sir.

14 Q So as the tourists come back, the crime statistics go
15 up. Is that right?

16 A In my experience, sir, yes.

17 Q So it wasn't unusual from your standpoint to see more
18 of the --

19 MR. HALIO: Your Honor, I'm going to Object to the
20 leading questions. That's been going on for a little
21 while.

22 THE COURT: Okay. Let's not lead, Mr. Mathison.

23 BY MR. MATHISON:

24 Q Did you have any reason to believe, Mr. Jolin, that
25 the person who was actually doing these breaking and

1 enterings in the Spring of 2008 was Otis Coffey?

2 A I -- we -- could you re-ask the question?

3 Q Did you have any reason to believe, in the Spring of
4 2008, before the events that took place in the early
5 morning of May 20th, that the person that was causing the
6 problems with the incidents in Sea Pines with Otis
7 Coffey?

8 A Me personally, no. I -- I didn't have anything that
9 led me to believe Otis Coffey. But once again, some of
10 the other officers, certain incidents like things -- when
11 jewelry did become missing or cash, they would always
12 say, well, that's Otis Coffey. But whenever it became
13 things like the electronics, the TV, the bigger items, of
14 course, that -- that was somebody else. But for me, no,
15 I -- I couldn't say that it was Otis Coffey. No, sir.

16 Q Did you ever see Otis Coffey or meet him before the
17 night in question?

18 A I wouldn't really say meet, but working up at the
19 security gate, I have -- you know, especially night
20 shift; I think it was 11:00 to 5:00, 11:00 p.m. to 5:00
21 a.m. in the morning, we had to login all the guest passes
22 and things that entered the community, and I've logged in
23 his pass a few times.

24 Q So you encountered him when he comes in to get a pass
25 or goes through the gate?

1 A Or that goes through the gate at night time. If you
2 have a guest pass, we -- we had to log those in.

3 Q On May 20th, did you, at one point shortly after
4 midnight, exit your patrol car?

5 A Absolutely. Yes, sir.

6 Q Where were you when you did that?

7 A I was parked on South Beach Lane, at Sprout Pine.

8 Q Do you know approximately how far that is from Ann
9 Coffey's house?

10 A A half mile.

11 Q Approximately?

12 A Approximately, maybe.

13 Q So you were pretty close to the bottom of that spine
14 that runs down the eastern side of Sea Pines. Isn't that
15 right?

16 A About, yeah.

17 Q From north to south.

18 A I think that more maybe kind of like up the middle or
19 Sprout Pine -- where Sprout Pine comes -- comes into
20 play, but I'm not really sure.

21 Q Okay. Tell the Court what you saw when you were on
22 foot, outside your vehicle, on the early morning of May
23 20th.

24 A I -- when I stepped out of the vehicle, I was not out
25 there very long. I actually had my glasses off in -- in

1 my hand, rubbing my eyes, when I heard what appeared to
2 be a bicycle approaching. It would have been coming from
3 the south to the north. And I put my -- my glasses back
4 on. And when I looked up, I did see a -- there's --
5 there's one house, and it had a little dim light on a
6 post marking their driveway. And I did see a black male
7 on a bicycle approaching me. And at that point, I -- I
8 tried to make contact with that -- that -- I said, I'm
9 *Sergeant Jolin with Sea Pines Security.*

10 At that time, he made a -- made a quick right-hand
11 turn down the beach access that was right there. I
12 immediately started chase after the -- the individual.
13 At the same time, we had microphone on our radios, and I
14 called into dispatch saying that I was 1080 on foot,
15 which is a -- you're chasing somebody on foot. And --

16 Q Stop right there. If I understand correctly, you
17 encountered him while you were walking to the north.

18 A I was -- no, I was actually -- my car was more north
19 than I was. I was behind -- towards behind my vehicle,
20 actually walking towards the south.

21 Q Okay. And he came up going north?

22 A He came up coming from the south to the north.
23 That's correct.

24 Q And when he encountered you, did he turn inland or
25 did he turn toward the beach?

1 A He turned right towards the beach.
2 Q And did he go down the beach access?
3 A He did, yes, sir.
4 Q And did you give chase?
5 A I did. I almost had him. I went out to jump to grab
6 a hold of whoever it was, but then they made a quick left
7 behind a residence. And that's where -- where I lost
8 them.
9 Q And generally, when you lost him, the quick left put
10 him going north again.
11 A Back north.
12 MR. HALIO: Your Honor, could we get -- stop the
13 leading questions here?
14 THE COURT: Okay.
15 MR. HALIO: Object.
16 BY MR. MATHISON:
17 Q Did, generally, his turning left amount to going
18 north?
19 A Yes.
20 Q When you were on the dispatch, who was listening to
21 it?
22 A It was Corporal Steve New -- Newell.
23 Q He was the dispatcher?
24 A He was the dispatcher that day, yes.
25 Q Do you know whether the dispatched calls, meaning

1 your call and his, are automatically recorded?

2 A All calls are recorded. All radio traffic is -- is
3 recorded.

4 Q Did you, upon encountering this black male on a
5 bicycle, see his face?

6 A No, sir.

7 Q How did you determine he was black, as opposed to
8 something else?

9 A I -- I -- I could tell from -- from the light. I
10 knew that it was a black -- black male.

11 Q But you couldn't see the facial features?

12 A I could not see the facial features, no, sir.

13 Q Tell me what happened after the suspect went north
14 and eluded your grasp.

15 A When I lost the -- the suspect, I immediately called
16 dispatch to have them notify the Beaufort County
17 Sheriff's Office. And I immediately had Corporal Fryman
18 at the time, he's a sergeant now, head down to the
19 Gadwall area to -- to set up a perimeter, in which --

20 Q Why did you have Corporal Fryman go to Gadwall?

21 A It was just kind of a -- a hunch. I would say, I
22 just, you know, maybe from hearing Otis Coffey all the
23 time. I saw the black male. That's -- that's where --
24 where I sent Otis, Otis Coffey. I mean, that's where I
25 sent Corporal Fryman.

1 Q Okay. Did you do that before or after you talked to
2 George Breed?

3 A That would have been before I talked to Mr. Breed.

4 Q How did you come to talk to George Breed on the early
5 morning of 2000 -- May 20, 2008?

6 A Corporal Newell notified me that -- he came over the
7 radio and said that -- that 6 was notified. And 6 is Mr.
8 Breed's call number, and that's when I knew that Newell
9 contacted Mr. Breed and I knew that Mr. Breed would want
10 to hear from me. So I then called him at that time.

11 Q What did you and Mr. Breed discuss?

12 A When Mr. Breed answered the phone, I told him -- I
13 said, I'm not -- I told him I'm not a hundred percent,
14 but I was -- I was about 80 percent that -- that -- that
15 it was possibly Otis Coffey that I saw that night.

16 Q You told him that you were possibly 80 percent what?

17 A Positive that it would have been Otis Coffey.

18 Q Okay. What made you think that it was Otis Coffey if
19 you couldn't see his face?

20 A It's kind of -- his build. On top of that, it was
21 Corporal Fryman, who I sent down to that area. He said
22 that he seen a male subject coming on foot, down -- it
23 would have been South Sea Pines Drive, made a left on --
24 onto Gadwall, and right up the steps to Number 4.

25 Q And so, the person that you were chasing would have

1 had to have stopped going north.

2 MR. HALIO: Objection to leading.

3 Q Would the person you were chasing have had to stop
4 going north, and turn around to get to Gadwall?

5 A Yes, sir.

6 Q Would he have had to get off the bicycle?

7 A Yes, sir.

8 Q What did Mr. Breed indicate you should do?

9 A When I was on the phone with Mr. Breed, he -- he
10 stated -- I do believe he also said that, well, make sure
11 you send somebody to the Gad -- Gadwall area. And I
12 stated that I already did; Corporal Fryman was there.
13 And he stated that -- I think I told him that Beaufort
14 County, because Beaufort County, the sheriff's office,
15 was arriving at approximately that time that I was on the
16 phone with Mr. Breed. And he stated that he wanted us to
17 make contact with Otis, to have him meet him the next day
18 in his office. I think it was at noon.

19 Q Mr. Breed told you to have someone make contact with
20 Otis and tell him to come?

21 A Well, we was already going to go down, me and the
22 sheriff's department, I was already going to go down to
23 the Otis -- or to the Coffey residence to see if Otis
24 would -- would talk to us in reference to the incident
25 that -- that had taken place. But Mr. Breed had asked

1 that we speak with Otis to have him meet with him the
2 next day around noon time.

3 I notified the Beaufort County deputy, I think his
4 name was Murphy, of the same. And he just kind of
5 laughed and said that he would do it.

6 Q Okay. Did you, in fact, go to Gadwall yourself?

7 A I was there, yes, sir.

8 Q And what did you witness once you got to Gadwall?

9 A When I got to -- to Gadwall, of course, we met up
10 with Fryman at one point as -- as well. I can't really
11 remember. And Fryman stated that he couldn't -- he'd
12 know -- he knew that it was a male subject, but couldn't
13 tell whether he was white, orange, black, or gray. I
14 forget what other terms that he used, but. And then we
15 made contact at the -- at the -- with Ms. Coffey, at the
16 residence.

17 Q Did you have that conversation with Mr. Fryman on a
18 radio, or did you have it in person?

19 A I do believe that it was both; that it was on the
20 radio, and that it was in person, as well. And then once
21 again up at the security office.

22 Q So that, theoretically, would have been recorded, as
23 well. Is that right?

24 A Up at the security office, yes, sir.

25 Q When you got to Gadwall, after having talked to

1 Corporal Fryman, what did you see?

2 A I'm sorry. Say that question again.

3 Q When you got to Gadwall, after having talked to
4 Corporal Fryman, what did you see?

5 A That is when we made contact with -- with Ms. Coffey,
6 and then --

7 Q Who was there, other than you and Corporal Fryman?

8 A It was Deputy Murphy with the Beaufort County
9 Sheriff's office, and I think two -- two other deputies,
10 as well.

11 Q What ensued? What did Murphy say, and what did Ms.
12 Coffey say?

13 A When we was at the door, I do believe it was Murphy
14 who explained the situation with Ms. Coffey. Ms. Coffey
15 stated that Otis was not there. And I don't remember a
16 lot of the conversation. It's been -- but then, that's
17 when Murphy also asked -- or told Ms. Coffey that Mr.
18 Breed would like to see Otis Coffey the next morning at,
19 I think, it was noon, to have a meeting with him.

20 Q Did Ann Coffey slam the door on the officers?

21 A Not that I knew. The only thing was said that she --
22 once the deputy started saying -- telling about the
23 incident that took place that night, she did say that Sea
24 Pines Security was always trying to -- to get Otis
25 Coffey.

1 Q Did you discuss with the officers what you thought
2 you should do?

3 A I discussed after we'd left the residence, that we
4 was back at our cars, I did talk with Detective Murphy.
5 And -- and he stated that --

6 MR. HALIO: Objection to what Detective Murphy might
7 have said. It's hearsay.

8 MR. MATHISON: He's under subpoena, your Honor.
9 He's right out there in the hallway.

10 THE COURT: Okay. Again, it's still hearsay. You
11 can't testify to it.

12 BY MR. MATHISON:

13 Q What did you do after talking to Detective Murphy?

14 A I completed an incident report for suspicious
15 activities.

16 Q Okay. I'm going to hand you this document and ask
17 you if you can identify it for me, please.

18 A Yes, sir. This is the incident report that was
19 completed that night.

20 Q And in the top left corner, what did you indicate the
21 incident was about?

22 A Suspicious activity.

23 Q Is that a crime?

24 A No, sir.

25 Q And on the front page, who did you indicate was the

1 person you suspected of the suspicious activity?

2 A Otis Coffey.

3 Q You put his name on the front page. Is that right?

4 A Yes, sir.

5 Q And then you wrote a narrative on the second page,

6 which is called the supplemental, or second page of the

7 report. Is that correct?

8 A Yes, sir.

9 Q Did you include a positive identification of Otis

10 Coffey in that narrative?

11 A No, sir.

12 Q Why not?

13 A I didn't have any positive identification that it was

14 Otis Coffey. The purpose of doing the case number report

15 for suspicious activity was to try to get the detective

16 involved in enough information to possibly speak to Otis

17 Coffey.

18 Q When you say, *get the detective involved in enough*

19 *information to speak to Otis Coffey*, what do you mean?

20 A Just -- we've had reports in the South Beach Lane

21 area, multiple reports, of a black male subject. Raised

22 suspicion to me of what I saw that night. And the time

23 frame that -- that, you know, Fryman saw the individual,

24 I thought the -- that this may give the detective enough

25 information to either say, you know, to speak with him to

1 find out whether he was involved, or rule him out, or --
2 Q Gave somebody an excuse to go talk to him, right?
3 A Yes, sir.
4 Q What time was it when you filled out that report?
5 A Probably -- the end time. Maybe around 2:00. 2:00
6 a.m. that morning.
7 Q Did you ask Corporal Fryman to also file a report?
8 A I asked Corporal Fryman to do a supplemental report,
9 a statement of what he observed on Gadwall.
10 Q Well, was he eager to do so?
11 A No, sir. Not at first, no, sir.
12 Q Did you and he do your reports together?
13 A No, sir.
14 Q Do you know why Corporal Fryman was not eager to do a
15 report?
16 A No, sir.
17 Q Did he ultimately do one, which he gave you the next
18 morning?
19 A Yes. It wasn't the next morning. He -- he left the
20 security office and returned with a -- with a statement,
21 and handed it to me that -- that night, that went in that
22 night with this case number report.
23 Q And was his report attached to yours as the third
24 page of it?
25 A Absolutely.

1 Q Did Corporal Fryman state what he said to you, that
2 he could not tell whether the person entering the house
3 was black, white, orange, or whatnot?

4 A No, sir.

5 Q What did he say?

6 A On -- on his statement he says that he saw a black
7 male on -- on Gadwall, going up to -- to Number 4.

8 Q Do you know what caused him to change his view of
9 what he'd seen?

10 A No, sir.

11 Q Did you?

12 A No, sir.

13 Q What did you do with the incident report after you
14 completed it?

15 A After I completed it, like I said earlier, we have a
16 -- a box that we place our patrol logs and any incident
17 reports. But before I turned it in, we make three
18 copies. Maybe -- I made four copies, because one -- one
19 copy would go to the sheriff's department; one copy would
20 go to Mr. Breed; and then another copy would go on the
21 incident log sheet type thing that we had in the
22 operations room; and I always kept a copy of the incident
23 reports.

24 Q And in point of fact, the copy that I've handed you
25 is one of the copies that you kept. Isn't that right?

1 A Yes, sir.

2 Q The black sticky spot is where there was something on
3 it --

4 MR. HALIO: Objection, your Honor. Can we get a
5 question instead of a statement?

6 Q Was the black sticky spot where there was a sticky
7 placed on there saying which was the first report and --

8 A Correct. It had -- yes, sir.

9 Q Is there anything under this black spot?

10 A No, sir.

11 Q Can you identify that as the report that you kept of
12 the incident that took place on the early morning of May
13 20th?

14 A Yes. I have a copy of this report.

15 Q And did you, in fact, at some point after that date,
16 furnish this report to Ms. Coffey's lawyer, Mr. Holloway?

17 A That's the reason why these sticky notes are on
18 there, yes, sir.

19 Q And did it go by fax, which is why there's a fax
20 stripe at the top?

21 A Yes. It was sent to him by fax.

22 MR. MATHISON: Move the introduction to the incident
23 report.

24 MR. HALIO: No objection.

25 THE COURT: Without objection.

1 COPY OF DOCUMENT REFERRED TO AS
2 FIRST INCIDENT REPORT MARKED
3 PLAINTIFF'S EXHIBIT NUMBER 10,
4 ADMITTED AS EVIDENCE.

5 BY MR. MATHISON:

6 Q Did you do anything with this report that was out of
7 the ordinary?

8 A No, sir.

9 Q So you filled it out; you put it in the box it was
10 supposed to go; and you kept a copy. Is that right?

11 A Correct. Yes, sir.

12 Q That evening, did you and Mr. Breed either during the
13 conversation you testified to or during another telephone
14 conversation, discuss whether this report should have
15 been written up as an in-house report or an incident
16 report?

17 A Later on that morning, would have been the same day,
18 I received a phone call from Mr. Breed again. This time
19 it was on the -- the security phones. And I told him
20 that I completed the incident report. And he did get
21 irate with me about getting an incident report. And his
22 comment to me was -- his comment to me was, *Well, why did*
23 *you do that? Do you know what you just did? Now we have*
24 *a crime. Now we have a crime.*

25 After speaking with the -- the deputies that arrived

1 there, then I was following what they --

2 MR. HALIO: Objection to what the deputies might
3 have said as being hearsay.

4 THE COURT: Sustained.

5 BY MR. MATHISON:

6 Q But your report didn't say there was a crime. It
7 just said suspicious activity.

8 A Suspicious activities, yes, sir.

9 Q Okay. Did you understand why he was upset?

10 A Yes, sir. There was -- I don't really understand
11 everything, no, sir, as far as that goes. But there was
12 a lot of confusion at that time whether to do an in-house
13 report or an incident report. It was -- all the officers
14 was actually a little bit confused on -- on the matter.

15 Q Would it be correct to say that the confusion
16 resulted from the fact that --

17 MR. HALIO: I'm going to object to the leading
18 question.

19 THE COURT: Okay.

20 MR. HALIO: He's clearly leading with the record.

21 THE COURT: Don't lead, Mr. Mathison.

22 BY MR. MATHISON:

23 Q When you went to the site of an incident and
24 determined that a crime had been committed, which type of
25 incident report should you have filed?

1 A If a crime was committed, it should have been AN
2 incident report with a -- with a case number.

3 Q And if you went to a site and found something less
4 than a crime, an argument between neighbors, for example,
5 or a barking dog, what would happen then?

6 A An incident -- or an in-house report would be
7 completed.

8 Q So it would be the difference between a crime
9 committed and something less than a crime?

10 A For an example, we used to do a lot of in-house
11 reports on -- on missing or stolen bicycles, because
12 sometimes we'd get a case number for it being criminal.
13 And then, the bicycle, we'd find out later, was picked up
14 by one of the rental companies. Thing -- things like
15 that.

16 Q And after you turned in your report, did you and an
17 officer on the day shift go back into the neighborhood
18 for any reason?

19 A Yes. I stayed after, the morning of the 20th, myself
20 and lieutenant Campbell backtracked where the incident
21 took place, and we was also trying to locate the bicycle.

22 Q Did you, in fact, find the bicycle?

23 A No, sir.

24 Q During that period, did you learn anything about the
25 Coffey family that you thought was important?

1 A That's when I learned that --

2 MR. HALIO: Your Honor, I'm going to object. I

3 don't know what he learned and who he's learning it from.

4 Could we have some kind of foundation before he just --

5 Q Who was the officer that accompanied you on the

6 morning of May 20th to look for the bicycle?

7 A That would be Lieutenant Campbell with Sea Pines

8 Security.

9 Q Did Mr. Campbell indicate that Otis Coffey was the

10 only black person in Judge Coffey's family?

11 A No. That's when I learned that -- that that there

12 was two brothers that were adopted.

13 Q Did that have any impact or bearing on what it is

14 that you did either before or after?

15 A No, sir.

16 Q When you went to work that evening at 9:00, at, you

17 know, 10:30 or 9:30, whenever you got to work, was there

18 any change or any difference in the way you went through

19 your work night?

20 A Not that night, no, sir.

21 Q When you went home to following day, the morning of

22 the 21st, what did you do once you got home?

23 A When I got home, I woke my children up and was

24 getting them ready for -- for school.

25 Q Were you awake or asleep when you received a

1 telephone call from Mr. Breed on the 21st?

2 A I -- I -- I was asleep when Mr. Breed called me.

3 Yes, sir.

4 Q Do you know whether Mr. Breed was calling you on a

5 Sea Pines Security phone or on his own phone?

6 A I do believe that it was a Sea Pines phone.

7 Q So, according to your understanding, should there be

8 a recording of that phone call?

9 A Yes, sir.

10 Q What did Mr. Breed say to you when he called you and

11 awakened you?

12 A Mr. Breed called me, and he told me, he said, *I want*

13 *you to understand something. He said, You're not 80*

14 *percent, you're not 90 percent, you're a hundred percent*

15 *that it's Otis Coffey. Do you understand? And I said,*

16 *Yes, sir.*

17 Q Did you understand? What was he saying to you?

18 A He was --

19 MR. HALIO: Objection. We've heard his statement.

20 THE COURT: Okay.

21 MR. HALIO: He'S asking for interpretation.

22 THE COURT: Yes. You can't speculate.

23 BY MR. MATHISON:

24 Q Did he say 80 percent or 80 percent sure? Which was

25 it?

1 A He wanted me to be a hundred percent sure that who I
2 saw was Otis Coffey.

3 Q Was that the truth?

4 A No, sir.

5 Q After Mr. Breed got on the phone and told you that
6 you -- told you the statement that you testified about,
7 did you receive another telephone call?

8 A Yes, sir. From Detective Florencio, from the
9 Beaufort County Sheriff's Office.

10 Q How long after Mr. Breed's call did Detective
11 Florencio call?

12 A Not long. Maybe about five minutes.

13 Q Did she tell you where she was calling from?

14 A She was calling me from what I believed -- what I do
15 believe she told me from the operations room.

16 MR. HALIO: Objection to what he believes. If he
17 knows, he knows. If he doesn't know, he doesn't know.

18 A No. It's -- it was from the -- the operations room
19 in Sea Pines, where our computers are set up in the back.

20 COURT REPORTER: Set up in the what?

21 A In the back. In the back of the building.

22 Q What did Detective Florencio tell you she wanted?

23 A She wanted to ask me questions about the night --
24 about the incident on -- on the 20th.

25 Q Specifically, your encounter with the black male. Is

1 that right?

2 A Yes, sir. Yes, sir.

3 Q Did she ask you -- well, tell me what she asked you.

4 A She asked me if I could positively identify the
5 subject that I saw as Otis Coffey. I told her yes. She
6 then proceeded to ask me how I knew Otis Coffey and that
7 -- and I stated that -- that I met him -- or seen him at
8 the gates coming in and out; I used to log him in, you
9 know, his pass, working the night shift.

10 And then she continued to -- to say that what was
11 going to happen was, I was going to have to get a warrant
12 for the arrest of Otis Coffey.

13 Q Did Detective Florencio tell you that she was talking
14 to you on the speaker phone?

15 A Yes, sir.

16 Q Did Detective Florencio say to you while she was
17 talking to you that she was, essentially, revising or
18 changing your incident report?

19 A I do not recall that, no, sir.

20 Q When you told her that you could positively identify
21 Otis Coffey, was that the truth?

22 A No, sir.

23 Q Why did you tell her a lie?

24 A Mr. Breed told me to.

25 Q When you went in to work the evening of the 21st, did

1 you find another incident report that had been prepared
2 in your name?

3 A Yes. There was another incident report that was
4 placed in my box, the revised version of this report.

5 Q I'm handing you this document, which by all
6 appearances is very similar to the one you prepared, and
7 ask if you can identify it as the report that you found
8 after your conversations with Mr. Breed, and then with
9 Detective Florencio?

10 A Yes, sir.

11 Q On the first page, in the upper left-hand corner,
12 what, if anything, had been changed?

13 A They have *suspicious activity and fleeing to evade*
14 *arrest or detection.*

15 Q The suspect was still Otis Coffey. Is that right?
16 On the front page.

17 A Yes, sir.

18 Q Except, now, instead of just being suspected of
19 suspicious activity, was he suspected of a crime?

20 A Yes, sir.

21 Q Is fleeing to avoid detection a crime?

22 A Yes, sir.

23 Q Did you realize that she also changed the time with
24 respect to your report? At the top of the page on the
25 left.

1 A Yes, sir, it is -- it is changed.

2 Q During your conversation with Detective Florencio,
3 did she tell you that she was going to make grammatical
4 changes in your report?

5 A I -- I don't -- don't recall.

6 Q On the second page of the narrative of the event,
7 what is different that's material?

8 A Well, the first thing that stands out with me is, I'm
9 not the best speller, and everything is spelled
10 correctly. And the second thing that I see it has I
11 identified the black male subject as Otis Coffey.

12 Q Was that true?

13 A No, sir.

14 Q Would you read the paragraph in which that appears?

15 A The -- the whole paragraph?

16 Q Yes. Starting with on dates and times.

17 A Okay. On 5/20, 2008, at 0011 hours -- that would be
18 12:11 -- I was conducting an extra patrol at the South
19 Beach Lane area, due to recent peeping Toms, prowlers,
20 and burglaries. While walking on South Beach Lane in the
21 area of Seaside Sparrow, I noted a black male on a
22 bicycle coming towards me -- coming towards me on South
23 Beach Lane.

24 As I approached the subject and told him to stop and
25 speak with me, he quickly made a right turn onto the

1 beach access. I pursued the subject on foot and
2 continued to call out to him, telling him to stop, which
3 he did not.

4 Towards the end of South Beach -- towards the end of
5 the beach access, he made left turn into 14 Seaside
6 Sparrow's back yard, where I lost sight of him.

7 I identified the black male subject as Otis Coffey,
8 due to having much contact with him while I was working
9 the front gate of Sea Pines for two years.

10 I had Corporal Fryman, also Sea Pines Security
11 officer, set up a perimeter in the area of Gadwall, where
12 Otis Coffey resides. Corporal Fryman stated that, within
13 about 15 minutes of my foot chase, he observed a male
14 subject in dark-colored clothing speed-walking towards
15 number 4 Gadwall Road, which he then entered.

16 Q Did you write that or did someone else?

17 A Somebody else wrote this, sir.

18 Q Upon finding this new incident report, the revised
19 incident report, what, if anything, did you do?

20 A I immediately -- I was scared. I did talk to some of
21 the other officers about it, especially my lieutenant.

22 Q Who was that?

23 A That would be Lieutenant Haynes.

24 Q He's the night shift --

25 A He is my -- yes. He was -- was my immediate

1 supervisor, yes, sir. And I was angry. I also spoke
2 with, I think, Corporal Martin worked that night.

3 Q That's Bobbie Martin?

4 A I do believe that was the night that -- that -- that
5 she was working, yes, sir, that we discussed this, as
6 well.

7 Q Can you identify what has been handed to you as the
8 revised report?

9 A Yes, sir.

10 Q But not prepared by you. Is that correct?

11 A No, sir.

12 MR. MATHISON: Move the introduction as Plaintiff's
13 Exhibit 11.

14 MR. HALIO: No objection.

15 THE COURT: Without objection.

16 COPY OF DOCUMENT REFERRED TO AS
17 REVISED INCIDENT REPORT, MARKED
18 PLAINTIFF'S EXHIBIT NUMBER 11,
19 ADMITTED AS EVIDENCE.

20 BY MR. MATHISON:

21 Q Did you actually receive another call on the morning
22 that you got a call first from Mr. Breed, and then from
23 Ms. Florencio?

24 A That morning -- we're talking about the morning of
25 the 21st?

1 Q Yes.

2 A Yes. Mr. Breed called me first. And then Detective
3 Florencio. And then I received a second phone call. I
4 don't believe it was by Mr. Breed. I think it was
5 Lieutenant Campbell, who said that the following day that
6 I would need to stay after, because we were going to go
7 get a warrant for Otis Coffey's arrest.

8 Q And do I understand, the following day would not be
9 the 21st, but the 22nd?

10 A I do believe so, yes, sir.

11 Q Do you know what day of the week that was?

12 A No, sir.

13 Q I'm handing you what's been marked as Plaintiff's
14 Exhibit 5, which I represent to you is a calendar of May
15 2008. Ask you what day May 22nd was of the week.

16 A On Thursday..

17 Q What happened on that day at the end of your shift?

18 A I stayed after and -- I stayed after. And when
19 Campbell showed up, when, apparently, they -- when the
20 courthouse is -- had opened, Bill Campbell said, *Well,*
21 *let's go.* And I told him -- we went -- we went outside
22 in the back. We were actually having a cigarette. And
23 I told him, I said -- I said, *You know, I -- I said,*
24 *Campbell, I said, I can't do this. I can't positively*
25 *identify this guy as Otis Coffey.*

1 And they had previously actually handed me a picture
2 of Otis Coffey in -- in color. And McNeill, Sergeant
3 McNeill of Sea Pines Security, says, Well, you have his
4 picture right there. You can study it on the way to the
5 courthouse. And I told Lieutenant Campbell that -- that
6 I could not -- I could not do that.

7 Lieutenant Campbell, in return -- I guess I can't
8 even say what he said, so. He told me it took a big --
9 big man to -- to stand up and do the right thing. And he
10 left and went in to -- to Mr. Breed's office, and came
11 back and just told me to leave.

12 Q He went to see Mr. Breed?

13 A Bill Campbell did. Lieutenant Campbell did.

14 Q Did you talk to Mr. Breed that morning?

15 A No, sir.

16 Q Did you go home?

17 A I did go home, yes, sir.

18 Q Didn't you tell me earlier that they had a photograph
19 of Otis Coffey in the box for everybody?

20 A They put pictures of Otis Coffey in every patrol
21 officer's box. They also had one hanging up in the
22 operations room.

23 Q What was different about the one that they gave you
24 before they wanted you to go get the warrant?

25 A They -- the -- the first pictures were in black and

1 white. Then, that the second picture that they gave me
2 the morning that we was going to get the warrant was a
3 color picture.

4 Q Did you subsequently have a conversation with George
5 Breed about this incident?

6 A Mr. Breed and I eventually did have a conversation
7 with this after I turned in my -- my two-weeks' notice.

8 Q Stop right there. What happened or occurred to get
9 you to turn in your two-weeks' notice?

10 A After -- after this, I went from a very good officer
11 to -- to a very poor officer. I -- I couldn't do
12 anything right anymore. Everything I did was under
13 scrutiny. And that's when I decided -- decided with --
14 along with Corporal Martin, that we typed up my two-
15 weeks' notice and slid it under Mr. Breed's door.

16 Q Was there a specific incident that caused this to
17 occur?

18 A There was an incident that happened, malicious injury
19 to -- to property, I do believe, with the -- with some
20 damage being done to -- to the lights along the bike path
21 that was on Lighthouse Road.

22 Q Are you talking about a case involving Jeffrey Hall
23 II?

24 MR. HALIO: Your Honor, I'm going to object to this
25 being completely irrelevant to this case.

1 THE COURT: Okay. I'm not exactly sure where you're
2 going, but I'm assuming you're going to connect it up.

3 MR. MATHISON: This is one of the investigations --

4 MR. HALIO: Your Honor --

5 THE COURT: Mr. Mathison, let's not testify. It's
6 actually getting late. Should we go ahead and break for
7 lunch, possibly?

8 MR. MATHISON: Certainly.

9 THE COURT: Okay. Ladies and gentlemen of the jury,
10 it is about 1:25 back there, and I think it's now is a
11 very good time for lunch. You are free to go about your
12 business. I am respectfully asking you all be back in
13 the jury room at 2:30, where we're going to go ahead and
14 continue the trial of this case.

15 Additionally, ladies and gentlemen, I understand
16 that we do have a juror that needs to leave at 5:30
17 today, and I can tell you that's probably a very good
18 idea. You all have been here and diligent today. And I
19 certainly don't want to tire anyone out.

20 Again, ladies and gentlemen, you are not to discuss
21 this case. It wouldn't be appropriate to do so. You're
22 not to do any of your own independent research.

23 Again, go get a bite to eat; come on back; and
24 report to the jury room at 2:30. Thank you.

25 JURORS LEAVE COURTROOM 1:26 P.M.

1 BAILIFF: Jury's clear. Door's closed, your Honor.

2 ON-THE-RECORD BENCH CONFERENCE,

3 OUT OF PRESENCE OF JURORS. PRESENT:

4 MR. MATHISON, MR. MICHAEL MATHISON,

5 MR. HALIO, MS. JONES, MS. JOLLEY:

6 THE COURT: Thank you. All right. We're going to
7 go ahead and take a lunch break. Mr. Jolin, I need to
8 instruct you. You are not to discuss your testimony with
9 anyone involved in this case. Do you understand?

10 A Yes, ma'am.

11 THE COURT: All right, sir. Anything further until
12 we come back from lunch, you all?

13 MR. HALIO: We need to discuss that last question
14 now, or when we get back? Because I'm going to object to
15 it again.

16 THE COURT: Okay. The last question, what are you
17 talking about?

18 MR. MATHISON: We're talking about one of the
19 investigations we talked earlier about off the record.
20 Officer Jolin is the one that ticketed the grandson of
21 Linda Fugate for damaging 15 lights.

22 THE COURT: Um-hmm.

23 MR. MATHISON: And he is the person who -- he was,
24 apparently, given a good deal of grief over having done
25 so by Mr. Breed. That was one of the precipitating

1 causes for his resignation. Mr. Jolin does not know
2 anything more than he wrote the ticket. He does not know
3 what happened later, which was that an agreement was
4 reached where Mr. Hall and his grandmother agreed to pay
5 \$3,250.00 to CSA.

6 THE COURT: To replace the lights.

7 MR. MATHISON: Yes. And he does not know -- he
8 didn't until I told him -- that someone had gone to court
9 and claimed to have been there at the time he wrote the
10 ticket, and testified about the fact that he witnessed
11 the event; and by that means, he managed to obtain a
12 conviction against Mr. Hall. That was subsequently
13 unraveled once the people at town hall became aware of
14 what had happened.

15 THE COURT: Okay. So what you're trying to elicit
16 from him is strictly what he knows of his own knowledge,
17 which is testimony that he turned in his resignation as a
18 result of his having written tickets to Mr. Hall, Jr.

19 MR. MATHISON: There were two incidents. One
20 incident had to do with him recovering a dog, or actually
21 calling the name on the dog's collar. And the other was
22 the arrest of Mr. Hall for which he was criticized.
23 Those are the two incidents that I believe he will
24 testify to.

25 THE COURT: Okay. Okay. I think he can testify as

1 to why he resigned. I just don't think he can testify to
2 any of the other information, because he doesn't have any
3 knowledge of it.

4 MR. MATHISON: And I'm not going to ask him to do
5 that.

6 THE COURT: Okay. I think It's fair game of why did
7 you resign. Okay.

8 MR. HALIO: Well, I just didn't want to get into
9 trying this other ticket.

10 THE COURT: Okay. All right.

11 MR. HALIO: We've got enough to try.

12 THE COURT: Okay. All right, you all. Go have a
13 nice lunch. Again, Mr. Jolin, you are not to discuss
14 your testimony with anyone. Okay?

15 A Yes, ma'am.

16 THE COURT: Thank you.

17 OFF THE RECORD 1:30 P.M.

18 BACK ON THE RECORD 2:40 P.M.

19 BY THE COURT:

20 THE COURT: Everyone appears to be ready to go. Mr.
21 Mathison, are you ready?

22 MR. MATHISON: Yes, ma'am.

23 THE COURT: Is the defense ready?

24 MR. HALIO: Yes, ma'am.

25 THE COURT: Let's bring the jury in.

1 BAILIFF: Yes, ma'am.

2 THE COURT: Thank you. Is this your list, Wanda, or
3 is this -- this looks like your list, so you know what's
4 in and out.

5 COURT REPORTER: Yes.

6 THE COURT: Okay. You can have it back, then.

7 COURT REPORTER: No, that's not mine. I just made a
8 copy for you.

9 THE COURT: Oh, that's mine?

10 COURT REPORTER: Um-hmm.

11 THE COURT: Oh, thank you.

12 COURT REPORTER: Okay.

13 THE COURT: I appreciate it.

14 BAILIFF: Jurors are entering, your Honor.

15 JURORS ENTER COURTROOM 2:42 P.M.

16 THE COURT: Thank you. Welcome back, ladies and
17 gentlemen. I trust you all had a nice lunch. At this
18 time, we're going to ahead and continue direct
19 examination of Mr. Jolin. Mr. Mathison.

20 MR. MATHISON: Thank you, your Honor.

21 CONTINUE JOHN ALBERT JOLIN, JR.

22 DIRECT EXAMINATION, MR. MATHISON:

23 Q John, when we broke for lunch, I was asking you about
24 a ticket that you wrote to a man by the name of Jeffrey
25 S. Hall II. Do you have any recollection of that ticket?

1 A Yes, sir.

2 Q I'm handing you this document, and ask you if you can
3 identify it for me, please.

4 A Yes, sir. This is the summons that I issued.

5 Q What was the date on which you issued the summons?

6 A June 4, 2008..

7 MR. MATHISON: Move the introduction of the summons
8 for Mr. Hall as Plaintiff's Exhibit 13.

9 THE COURT: Any objection?

10 MR. HALIO: Yes. I --

11 COURT REPORTER: I'm sorry -- go ahead.

12 THE COURT: I'm sorry, Wanda.

13 COURT REPORTER: I believe that's 12.

14 MR. MATHISON: 12. I'm sorry. Do you want to look
15 at it, Andy?

16 MR. HALIO: She's not ready.

17 That's nothing to do with that. The basis of the
18 objection is it has nothing -- it's irrelevant. It has
19 nothing to do with this case. And I would ask the Court,
20 if the Court is considering letting it in, just to wait
21 until it becomes relevant. Because right now, it's got
22 no relevance.

23 THE COURT: I can tell you, I think he's already
24 testified as to what he did, when he wrote the ticket. I
25 don't think it needs to come into evidence, so we're not

1 going to let it come in at this time.

2 MR. HALIO: Thank you, your Honor.

3 THE COURT: Unless there's something specific about
4 it.

5 MR. MATHISON: What I wanted to get in was the date,
6 your Honor. It's perfectly all right if you just mark it
7 for identification.

8 THE COURT: He didn't testify to it.

9 COPY OF DOCUMENT REFERRED TO AS UNIFORM
10 TRAFFIC TICKET MARKED PLAINTIFF'S
11 EXHIBIT NUMBER 12, FOR IDENTIFICATION.

12 BY MR. MATHISON:

13 Q Mr. Jolin, as a result of having -- tell me what the
14 ticket was for that -- what had Mr. Hall done that had
15 caused you to write him a ticket?

16 A Malicious injury to property. He was -- him and one
17 other gentleman, like were kicking the lights along the
18 bike path from Lighthouse Road headed up to Harbour Town.

19 Q Did you apprehend them in the act?

20 A Not in the act, but after questioning them, they --
21 they then state that -- that they were the ones kicking
22 -- kicking the lights.

23 Q Was anybody else with you at the time that you did
24 the arrest?

25 A Sergeant Dunn with Sea Pines Security was also there.

1 Q Oren Dunn? Is that who?

2 A Oren Dunn. Yes, sir.

3 Q Did you have a problem as a result of having written

4 this ticket?

5 A Mr. Breed wanted me to -- or wanted to have that

6 individual locked up for the damages that they had

7 caused.

8 Q How do you know he wanted them locked up?

9 A He did state that to me, and also, that he was trying

10 to Google his name or something like -- couldn't get any

11 information on him. He stated that now we had the damage

12 to -- to the lights, and possibly no -- no subject. But

13 all his information, his ID information, is on the

14 summons.

15 Q Did another Sea Pines security guard write a ticket

16 to Mr. Hall at the same time? Or do you know?

17 A I don't know.

18 Q Have you ever seen this summons before?

19 A No, sir.

20 Q Did this event occur before or after what, for want

21 of a better term, we'll call it the dog incident?

22 A That was before the dog incident.

23 Q What happened during the dog incident?

24 A I cannot recall the date that it took place on, but I

25 went to work, usually, at the same time, between 9:00 and

1 9:30. As I was going out the -- the back of our security
2 building to load the patrol car, I noticed Sergeant
3 McNeill, and he was training Officer Waxel, Bill Waxel,
4 as a patrol officer. I saw them pulling up, and I
5 noticed that they had a dog. And I asked them, I said,
6 *Oh, you found a dog.* And Bill, Bill Waxel, he said that,
7 yeah, that they found the dog down at South Beach Marina;
8 they had a complaint; they went and picked it up.

9 At that time Todd McNeill was going up the back
10 steps to get -- we have a one of those machines where, if
11 you have a chip in the dog, it gives us all the
12 information, so he was going to get that and the camera
13 to take a picture of -- of the dog.

14 And I asked Bill, I said, *He has a collar.* I said,
15 *Does -- did you guys try to call the number?* He said
16 that, yes, they'd tried to call the number, but all they
17 got was static. And at that time, I left and continued
18 my routine patrol.

19 I arrived --

20 Q Stop right there. At this point in your career with
21 Sea Pines, had you ever submitted your resignation?

22 A Yes. Yes, sir.

23 Q Tell me what happened that caused you to submit your
24 resignation.

25 A After -- after I told Mr. Breed that I couldn't

1 positively identify Otis Coffey, things seemed to have
2 started to go downhill. Anything that I did, it was all
3 scrutinized. And then myself and Bobbie Martin, Corporal
4 Martin, now she's a Lieutenant with Sea Pines, we were
5 talking about it. And I came down to the conclusion to
6 -- to go ahead and turn -- to put my two-week notice in.
7 And she and I typed up the two-weeks' notice and slid it
8 under Mr. Breed's door.

9 Q What, if anything, came of your having given your
10 notice that you were resigning?

11 A Mr. Breed then called me to his office, and he was
12 asking me why I was quitting. And it was me not wanting
13 -- it had to do with the -- my report and the revised
14 report, and that I couldn't positively identify Otis
15 Coffey. He said -- stated that -- that -- that it was
16 taken care of; I couldn't identify him, 100 percent
17 identify Otis Coffey; and that it would all be taken care
18 of.

19 Q Did he indicate that your report, meaning the one you
20 prepared initially, would or would not be used as the
21 official report?

22 A I was under the conclusion that the --

23 MR. HALIO: Objection, your Honor. He's already
24 said what Mr. Breed told him. I don't think he's
25 entitled to make any conclusions on the basis of that.

1 THE COURT: Okay. All you can say is what you know.

2 BY MR. MATHISON:

3 Q Did Mr. Breed say anything else, besides the fact
4 that it would be taken care of?

5 A He also stated that if -- that if I ever -- after us
6 talking, we came to an agreement, and I decided to stay.
7 And he further stated that, if I ever turned in my two-
8 weeks' notice again, that -- that I was done.

9 Q Okay. Did you ever submit your report, the one you
10 prepared, to go to the Beaufort County Sheriff's Office?

11 A No, sir. The only thing -- we have that box in the
12 back, and it gets put in there. Dispatch, at the end of
13 the night, will collect it, and it goes into -- to these
14 files or reports for Mr. Breed that get slid underneath
15 his door, or it gets -- he has a -- a little thing on his
16 door that you -- that you set all of that information in.
17 It gets submitted by another officer, as far as our
18 tickets and our reports, that goes up to the Sheriff's
19 Office or up to the courthouse.

20 Q It's hand-carried. Is that right?

21 A Yes, sir.

22 Q Do you know whether, after you prepared your initial
23 report, which is Plaintiff's Exhibit 10, it was hand-
24 carried to the Sheriff's Office or not?

25 A I don't know.

1 Q Did you ever submit Plaintiff's Exhibit 11, which is
2 the revised report?

3 A No, sir.

4 Q Did you want that to go to the Sheriff's Office?

5 A No, sir.

6 Q Did Mr. Breed, did you tell him that you didn't want
7 it to go?

8 A Yes, sir.

9 Q Did you tell him that you had not told the truth in
10 that report?

11 A Yes, sir. He knew that.

12 Q Do you know whether Plaintiff's Exhibit 11 is, in
13 fact, the one that got submitted to the Beaufort County
14 Sheriff's Office?

15 A I didn't know it at the time, but I do now.

16 Q After you and Mr. Breed had this conversation in his
17 office, did things change for you in terms of your
18 scrutiny?

19 A It -- it did. It -- it quieted down between the
20 other officers, and everything seemed to be okay.

21 Q And then the dog incident came along?

22 A Yes, sir, then the dog incident came along.

23 Q And finish what you were telling me about the dog
24 incident, if you would.

25 A After I left from the back office, when Corporal

1 Waxel and Todd McNeill was dealing with the dog, when I
2 returned back up at the office to do my daily paperwork,
3 which is around 5:00 a.m., maybe a little bit later, I
4 went in through the -- the back door to the operations
5 room. As I was going in, Lieutenant Martin, with Sea
6 Pines Security, was walking down the hallway. And there
7 were several officers in the operations room. This is
8 about shift change. One was Sergeant Hamminus, and
9 Lieutenant Campbell was -- was also there. And as soon
10 as, kind of, Bobbie Martin and I met in the door, I think
11 it was Sergeant Hamminus who said, *Whose dog's out there*
12 *running around?*

13 So Bobbie Martin and I, we kind of -- we looked at
14 each other. And the dog was in our possession, so we
15 went outside, re-captured the dog. And Bobbie asked
16 then, did anybody call the number on the collar? And I
17 said, *Well, Waxel said that -- that they called it, but*
18 *it was disconnected.*

19 So Bobbie said, *Well, why don't you go ahead and*
20 *call it -- call it.* So I pulled out my cell phone; I
21 called it; and I got an answer; and started asking, you
22 know, is this your -- are you missing a dog?

23 And she said, -- it was a little bit confusion there
24 -- there at first. She was, *What kind of dog was it?*

25 And I then explained what kind of dog that it was.

1 And -- and she said, *Well, yeah, that's -- that's my*
2 *son's dog, not - it's my son's dog, but my mother is*
3 *taking care of the dog.*

4 And I think that's when Judge Coffey identified
5 herself as being Judge Coffey. At the beginning, I
6 didn't know that it was Judge Coffey who answered the
7 phone.

8 Q You called the name on a dog collar.

9 A I called the phone number on -- on the dog collar.

10 Q Okay. And it turned out to be Judge Coffey's number.
11 Is that correct?

12 A Yes, sir.

13 Q Do you know whether it was a mobile number or whether
14 it was a land line?

15 A I don't know.

16 Q Were there repercussions as a result of that
17 telephone call?

18 A As soon as she said it -- it was Judge Coffey, I knew
19 that there was going to be problems. Just -- so Bobbie
20 Martin, after -- well, at first, I explained everything.
21 Hey, what you're going to have to do is -- to do is come
22 by the office; there's some paperwork and things like
23 that to fill out for -- for the dog.

24 And then she said, *Yes, I understand, signatures and*
25 *blah, blah, blah.* I said, *Okay.*

1 And then she said that she was kind of concerned
2 about her mother, I guess, Ms. Coffey, because she always
3 knew where the dog was. And I asked Judge Coffey if she
4 wanted -- if she wanted us to -- to do a health and
5 welfare check on her mother.

6 And she said, *No, no, no. That's okay.*

7 So, when we went into the security office, Bobbie
8 Martin stopped me, and she said, *Well, you better write a*
9 *report about this or put it in -- in your -- in your*
10 *daily patrol log, because you know Mr. Breed's going to*
11 *want to know about it.*

12 So I did type -- did write the incident that took
13 place about, you know, us calling Judge Coffey and the
14 dog. And then I called Lieutenant Campbell, and let
15 Lieutenant Campbell know what had happened.

16 Q And after that, were there repercussions?

17 A I went home, and shortly after I arrived home, Bobbie
18 Martin called me. She was very upset. And she said that
19 -- that, *This is bull crap. This is bull.*

20 MR. HALIO: Objection to what somebody else said as
21 being hearsay.

22 THE COURT: Okay.

23 MR. MATHISON: She's a called witness and will
24 testify.

25 THE COURT: And again, you can't testify as to what

1 she said. You need to put that witness up.

2 BY MR. MATHISON:

3 Q As a result of what -- was she Corporal Martin at
4 the time?

5 A Yes.

6 Q As a result of what Corporal Martin said, what did
7 you do?

8 A I told her that it was okay, not to worry about it.
9 And I said, *I'll be down there in a little bit.*

10 I gathered up all my -- my Sea Pines uniforms, and I
11 actually stopped at another employment where I knew I had
12 a job. I wanted to make sure that it was secure. And I
13 turned all my uniforms and quit right there.

14 Q Subsequent to your leaving the employ of Sea Pines
15 Security, did you learn of statements that were
16 circulating about you having a sexual relationship, or
17 other relationship, with Judge Coffey?

18 MR. HALIO: Objection. Hearsay.

19 MR. MATHISON: We're going to have to discuss this.
20 This is defamatory hearsay, and it is admissible as an
21 act or an event.

22 THE COURT: Doesn't go to the truth of the matter
23 asserted. It goes to whether or not he had heard any
24 statements.

25 BY MR. MATHISON:

1 Q Did you, from any source, learn of statements that
2 were being made?

3 A In the beginning, it was personal relationship.

4 Q And who told you that?

5 A That came from -- from Bobbie Martin.

6 Q And who did she attribute that to? Who said that
7 about you?

8 MR. HALIO: Objection. That's hearsay. Hearsay on
9 hearsay.

10 THE COURT: That is. That is hearsay.

11 MR. HALIO: Double.

12 MR. MATHISON: Sorry, your Honor. I think we need
13 to be heard on this. The *Goodwin* case indicates this is
14 the sort of evidence that you can place in the record to
15 show that the comments are out there and made. Ms.
16 Martin is called for the express purpose of --

17 THE COURT: And she's coming, correct?

18 MR. MATHISON: -- and tracing it back to the next
19 step.

20 THE COURT: And again, but she has to be called.
21 And then, at that point, if there's anything to impeach
22 her on, then she can.

23 MR. MATHISON: It's not a question of impeaching
24 her. She's called to testify as to what it is that she
25 knows, and the same rule would apply as to the statement

1 made to her by the speaker.

2 THE COURT: I'm going to allow you to testify -- or
3 let him testify as to where he heard it from, or where
4 Bobbie Martin heard it from. You know something. I
5 won't do that. There's no way to do that.

6 MR. MATHISON: He's just testifying about the event.
7 Every time a defamation --

8 THE COURT: Okay. You need to come talk to me for a
9 minute.

10 OFF-THE-RECORD DISCUSSION, OUT

11 OF HEARING OF JURORS. PRESENT:

12 THE COURT, MR. MATHISON, MR. HALIO,

13 MS. JOLLEY.

14 BY MR. MATHISON:

15 Q Mr. Jolin, don't tell me who told Bobbie Martin what
16 she told you. All right? Did you hear the rumor from
17 another source at Sea Pines Security, besides Bobbie
18 Martin?

19 A Yes.

20 Q And who was that?

21 A Randy Woods.

22 Q And what, exactly, did Mr. Woods tell you?

23 A This was after, I guess, when Judge Coffey had Tom
24 Holloway. I don't know if it got dropped or what had
25 happened. But Randy Woods called me, and he said, *I just*

1 *want you to know that -- that you -- you -- you're a good*
2 *guy; you're a good friend; and I hope you understand that*
3 *I couldn't talk to you because of the lawsuit; but now*
4 *it's done and over with.*

5 And I was -- I didn't know that it was done and over
6 with. And he said, *I just want you to know that I didn't*
7 *believe any of that -- that -- bull crap and that, you*
8 *know, what Sea Pines was saying about you and -- and the*
9 sexual relationship with Judge Coffey.

10 Q In addition to hearing it direct -- and what is Mr.
11 Woods at Sea Pines Security?

12 A He's a lieutenant.

13 Q Was he on your shift?

14 A No. He was second shift.

15 Q Did you hear the same rumor from someone else?

16 A Mike Ryan.

17 Q At the time that you heard it from Mr. Ryan, was he
18 working for Sea Pines Security?

19 A Not at the time. He was trying to -- to go back to
20 work for Sea Pines.

21 Q And don't tell me where he heard it.

22 A Um-hmm.

23 Q Did Mr. Ryan tell it to anyone?

24 A To my wife.

25 Q And what was the result?

1 A At the beginning, it -- it wasn't -- wasn't good, But
2 then she -- she knows Sea Pines and that it was -- was
3 not -- not true.

4 Q When you spoke to Mr. Breed on the telephone, on the
5 morning when he called and told you that you were
6 supposed to be not 80 percent certain or 90 percent
7 certain, but a hundred percent certain, was that call
8 made, to the best of your knowledge, on a Sea Pines
9 Security telephone?

10 A To my knowledge, yes.

11 Q Should there be a recording of that call somewhere?

12 A All telephones in the security building, and they
13 have audio in the operations room, are recorded.

14 Q When Detective Florencio made her call to you, do you
15 know where she was? Did she tell you?

16 MR. HALIO: Your Honor, this has all been asked and
17 answered previously. We went through this once. And I
18 don't know why we have to go through it twice.

19 THE COURT: Okay. I'm going to give you a little
20 bit of room, but you need to wrap it up.

21 BY MR. MATHISON:

22 Q Where was she calling from?

23 A The operations room.

24 Q So that call should have been recorded, too. Is that
25 right?

1 A Yes, sir.

2 Q The incident report that you initially prepared,
3 Plaintiff's Exhibit 10, was the information in there with
4 respect to an identification of Otis Coffey true or not?

5 A About me being 100 percent positive?

6 Q No. The one that you prepared that omitted the
7 positive identification on the second page.

8 A Yes, I could not.

9 Q Could not what?

10 A I -- I could not identify Otis Coffey, no, sir.

11 Q Was the incident report that was prepared over your
12 name, Plaintiff's Exhibit 11, true or false evidence?

13 A The revised version?

14 Q Yes, sir.

15 A That -- that was false.

16 Q One moment, please. I'm going to hand you a
17 document, which purports, on its face, to be an
18 affidavit. And I'm going to represent to you this was
19 produced to me from Sea Pines Security, specifically,
20 Community Services Associates. Did you prepare that
21 document?

22 A No, sir. Never seen it before.

23 Q Never seen the document before?

24 A No, sir.

25 MR. MATHISON: Let's ask that that be marked as

1 Plaintiff's Exhibit 14?

2 COURT REPORTER: 13.

3 MR. MATHISON: 13. It's an undated affidavit. I
4 think you know which one I'm talking about. Just for
5 identification.

6 Thank you, Mr. Jolin.

7 COPY OF DOCUMENT REFERRED TO AS
8 UNDATED AFFIDAVIT, MARKED PLAINTIFF'S
9 EXHIBIT NUMBER 13, FOR IDENTIFICATION.

10 MR. HALIO: May it please the Court.

11 THE COURT: Yes, sir, Mr. Halio.

12 JOHN ALBERT JOLIN, JR.

13 CROSS-EXAMINATION, MR. HALIO:

14 Q Good afternoon, Mr. Jolin.

15 A Good afternoon.

16 Q Tell the jury how many times you've spoken with
17 plaintiff's attorneys about this case.

18 A I talked to Mr. Holloway. And I think I've had two,
19 maybe three, now, that -- that I've met with Mr.

20 Mathison. May -- maybe four, with the deposition.

21 Q Okay. And you got to Mr. Holloway through Ms.
22 Hamilton, right? Sherry Hamilton?

23 A Is that Sher -- yes, sir.

24 Q Sherry Hamilton is her name, right? The Judge's
25 secretary.

1 A Okay.

2 Q I was just asking you how you knew who Otis Coffey

3 was, and that was during your time at the gate, right?

4 A I -- yes. I logged in the -- the pass.

5 Q So you would login passes for Otis Coffey?

6 A Yes, sir.

7 Q And he would have to come through the gate and, would

8 you hand him the pass?

9 A When they pull up, we ask, if it's after hours, I

10 need to see your pass. They'd hand it to us. We'd have

11 a log. It had the time that they came in, the name on

12 the pass, destination, vehicle make, model, year.

13 Q So, when Otis Coffey was coming through with a guest

14 pass, he'd have to be about as close to you as I am?

15 A Maybe a little bit further, with the curb.

16 Q Close enough that he had to hand you the pass, right?

17 A Yes, sir.

18 Q And that was more than one occasion, correct?

19 A I think I've seen him maybe two times. Logged him in

20 two times. He would -- I had the login sheets.

21 Q Then, at some point, you became a third-shift patrol

22 officer. Is that correct?

23 A That is correct.

24 Q And that's where you were -- that's what you were

25 doing in May 2008, correct?

1 Q Okay. Now, first thing you came across was clearly
2 an African-American individual. Is that correct?
3 A Yes, sir.
4 Q And you said you identified yourself as Sergeant
5 Jolin, Sea Pines Security, and the guy took off. Is that
6 right?
7 A Yes, sir.
8 Q And you thought it was Otis Coffey; didn't you?
9 A Yes, sir.
10 Q Okay. And you called dispatch.
11 A Yes, sir.
12 Q And told dispatch I'm chasing Otis Coffey; didn't
13 you?
14 A No, sir.
15 Q All right. How close did you get to this person that
16 you were thinking was Otis Coffey when you were chasing
17 him?
18 A If he wouldn't have made that left turn, I -- around
19 that house, I probably would have had him, whoever it
20 was. I was --
21 Q You were within a couple of feet of him?
22 A I actually jumped to grab the back of his shirt when
23 he made the left.
24 Q Okay. And you told us earlier that he made a left,
25 into the back yard of a residence. Is that right?

1 A I do believe it was the 14 Seaside Sparrow. Yes,
2 sir.
3 Q And that's where you lost him, is right after he made
4 that left.
5 A Yes, sir.
6 Q You never saw him again.
7 A No, sir. There was a bunch of brush, actually,
8 there. I guess the residents or whatever, they had these
9 big vines, and it looked like, actually, a little trail
10 that led out to the beach, and I lost him -- lost him
11 there.
12 Q And you don't have any idea what happened to that
13 person --
14 A None.
15 Q -- after you lost them in the brush.
16 A None. That was it.
17 Q But you did call Corporal Fryman.
18 A Yes, sir.
19 Q Didn't you?
20 A Yes, sir.
21 Q And what did you tell Corporal Fryman?
22 A I had Corporal Fryman go to the Gadwall area. I had
23 him -- I told him, I said, *Park your car out-of-sight and*
24 *just observe the area.*
25 Q You sent him to 4 Gadwall; didn't you?

1 A I sent him to the Gadwall area, yes, sir.

2 Q And why did you send him there?

3 A Because I thought that it possibly could have been

4 Otis.

5 Q You thought it was Otis. You didn't think it was

6 possible. You thought it was Otis; didn't you?

7 A Thinking and proving something is two different

8 things, so.

9 Q Okay. And in between that, in between your reaching

10 out and being close enough to almost touching him, and

11 actually losing him, and calling Corporal Fryman, you

12 called the Sheriff's Office, as well; didn't you?

13 A I had -- yes, the sheriff's office was called.

14 Q And you told them that you were chasing somebody,

15 right?

16 A I did.

17 Q And you asked for assistance, right?

18 A Yes, sir. We were told whenever we had issues in

19 there, that the sheriff's department needed to be

20 notified.

21 Q And you sent them to 4 Gadwall; didn't you?

22 A No. They came to my location first.

23 Q Okay. And then you took them to 4 Gadwall?

24 A Then we went to 4 Gadwall.

25 Q All right. And who lives at 4 Gadwall?

1 And I was on the phone with Mr. Breed when the Beaufort
2 County Sheriff's Office -- well, officers, arrived.

3 Q And you told Mr. Breed you were chasing Otis Coffey.

4 A I told Mr. Breed that I was 80 percent sure that --
5 that it was Otis Coffey.

6 Q All right. Now, let me kind of run through this with
7 you. You're out here patrolling an area that's got a
8 bunch of crime going on in it.

9 A Yes, sir.

10 Q You get out of your car. You run into somebody on a
11 bicycle. You asked that person to stop, and to identify
12 yourself. The person doesn't stop. You run after them.

13 A Yes, sir.

14 Q Leap at them and fall into the bushes.

15 A Yes, sir.

16 Q Get up. Call Fryman. Tell Fryman to go to 4
17 Gadwall. Call the dispatch. Call the sheriff's office.
18 And you talked to Chief Breed and said, *Oh, Chief Breed,*
19 *I've been chasing a guy I think it's 80 percent -- I'm 80*
20 *percent sure it was Otis Coffey?*

21 A I called Mr. Breed, because, yes, sir, I didn't have
22 -- I knew Mr. Breed was wanting -- or wanted the
23 information. And actually, I thought that Steve Newell
24 jumped the gun. I -- I -- you know. That's the reason
25 why I called Mr. Breed. He should have waited for us to

1 Q You were a sergeant.

2 A Yes, sir.

3 Q He was a corporal.

4 A Yes, sir.

5 Q Would you read what Corporal Fryman wrote? Do you

6 have that?

7 A It's very sketchy and hard to --

8 Q Well, here. Use this one. What did he write as his

9 supplementary report?

10 A It says, *I, Corporal Fryman, assisted Sergeant Jolin*

11 *in attempting to stop a --* and I can't read what --

12 MR. MATHISON: Here's a good one, Andy. It's got to

13 be clearer.

14 MR. HALIO: Okay. Let me give him --

15 Q Is this one any better? Is that one better?

16 A It says, *I, Corporal Fryman, assisted Sergeant Jolin*

17 *in attempting to stop a --* and I can't read those two --

18 two words. *On a --*

19 Q Does it say *subject fleeing*?

20 A -- *a subject fleeing on -- on foot.*

21 Q It doesn't say on foot; does it? It says on a

22 bicycle.

23 A On a bicycle. That's what it said. *Sergeant*

24 *Jolin --*

25 Q Instructed.

1 A -- instructed me to go to 4 Gadwall Road, and to
2 watch for a black male subject entering that address. At
3 approximately 0020 hours, I observed a black male walking
4 down --
5 Q The road.
6 A -- the road and entering the residence at 4 Gadwall.
7 I notified Sergeant Jolin.
8 Q And that's where you went. You went to 4 Gadwall,
9 right?
10 A With the sheriff's department, yes, sir.
11 Q Okay. Now, did you tell Todd McNeill that you'd been
12 chasing Otis Coffey?
13 A No, sir.
14 Q Did you tell Randy Woods that you'd been chasing Otis
15 Coffey?
16 A No, sir.
17 Q The sheriff's office comes.
18 A Yes, sir.
19 Q They knocked on the door.
20 A Yes, sir.
21 Q And had a word or two with Ms. Coffey.
22 A Yes, sir.
23 Q And they can't do anything, right?
24 A Correct.
25 Q So you got nothing. For all your efforts, you got

1 nothing, right?

2 A Got nothing. Yes, sir.

3 Q But you needed to go back, and you needed to write up
4 an incident report, right?

5 A Yes, sir.

6 Q And you did go back and write up an incident report.
7 And I believe that is Exhibit Number 10. Is that
8 correct? Do you have Exhibit Number 10?

9 A I have --

10 Q You got 10?

11 A 10. Okay. Looking at the incident report now, if
12 you'll follow along with me. The incident type you've
13 got is suspicious activity, correct?

14 A Yes, sir.

15 Q You got suspect listed on there?

16 A Yes, sir.

17 Q Who was the suspect you've got listed on there?

18 A Otis Coffey.

19 Q It doesn't say 80 percent Otis. It says Otis Coffey;
20 doesn't it?

21 A Correct.

22 Q Is that his address there, 4 Gadwall Road? Right?

23 A Yes, sir.

24 Q Is that his description?

25 A Yes, sir.

1 Q All right. Got the time, date, all that stuff on it,
2 right?
3 A Yes, sir.
4 Q And it's got Otis Coffey listed as the suspect,
5 correct?
6 A Yes, sir.
7 Q And down in the bottom, left-hand corner, it says,
8 *Subject identified.* Yes. That would be Otis Coffey?
9 A Yes, sir.
10 Q Said subject located, yes.
11 A Yes, sir.
12 Q That's Otis Coffey?
13 A Yes, sir.
14 Q What you've told us is that this is the report that
15 you wrote without any help or without any corrections,
16 right?
17 A Correct, sir.
18 Q And that is a -- I think we've established that that
19 report identifies the suspect as Otis Coffey, right?
20 A No, sir.
21 Q That's what it says. It says, *Suspect, Otis Coffey,*
22 right?
23 A It has him as the suspect, but I don't know how to
24 answer the question without bringing in -- after
25 discussing what the sheriff's department --

1 Q I don't want to hear discussion.

2 A Exactly.

3 Q Just talking about the report.

4 A I mean, I don't know.

5 Q The report says, *Suspect, Otis Coffey*, right?

6 A Right.

7 Q Okay. I'm sorry. Doesn't this report have a case
8 number?

9 A Yes, sir, it does.

10 Q And the case number was obtained from the Beaufort
11 County Sheriff's Office?

12 A Yes, sir.

13 Q All right. And so, this wasn't an in-house report.

14 A This one was not an in-house report, no, sir.

15 Q Exhibit Number 3, in your deposition, second page of
16 the incident report. Want to turn to that?

17 A Yes, sir.

18 Q We talked about it a little bit. We talked about
19 what was going on at Sea Pines with the crimes and that
20 sort of stuff. I'd like to ask you a few more questions
21 about the supplemental incident report. Okay?

22 A Yes, sir.

23 Q On Page 2.

24 A Yes, sir.

25 Q And in the first paragraph you said, *I saw a black*

1 A At the gate, yes.

2 Q -- from the gate.

3 A Yes, sir.

4 Q Which was true, right?

5 A Yes, sir. And I remember the part of her saying that

6 we were going to have to -- that I was going to have to

7 get a warrant for his arrest.

8 Q You don't remember Detective Florencio -- well, do

9 you remember how long you were on the call with her?

10 A No, sir. It would be --

11 Q Do you remember whether or not she was at the type

12 writer, re-typing the report?

13 A I -- I don't remember that. I don't recall. I -- I

14 remember her asking me -- me questions how I -- how I met

15 him, and about the --

16 Q Yeah, we've already talked about this.

17 A Yes.

18 Q The two things, the two or three things you do

19 remember.

20 A Yes. I don't recall anything other than that.

21 Q But you don't remember anything else from the

22 conversation with Detective Florencio, including how long

23 that conversation was; do you?

24 A No, sir. If we had the tapes, that would clear this

25 up.

1 Q Okay. Let me ask you about that.

2 A Okay.

3 Q How long can you keep a tape, without it being taped

4 over? Do you know?

5 A Depends on -- on the subject matter that's on them.

6 Q Did you all have -- when you left Sea Pines and

7 immediately went and took your next job at LongCo, --

8 A Um-hmm.

9 Q -- did you all have the ability to tape record

10 telephone conversations?

11 A At my job? My -- the new place?

12 Q Yeah.

13 A No, sir. They didn't do that there.

14 Q Even though they were a security operation, with -- I

15 assume they had some law enforcement authority, they

16 didn't tape telephone calls?

17 A They took telephone calls, yes, sir, but nothing was

18 called --

19 Q Did they tape them?

20 A No, sir.

21 Q And then, of course, you never worked for a police

22 department. You don't know what they routinely --

23 A No, sir. No, sir.

24 Q And you're not an I.T. guy; are you?

25 A No, sir.

1 Q Okay. So you don't know whether or not -- you do
2 know that telephone calls to dispatch at CSA, Sea Pines,
3 were routinely recorded, right?

4 A Yes, sir.

5 Q And that's it. You really don't know about any of
6 the other calls; do you?

7 A I know that all the phones are -- are suppo -- and
8 they had audio in -- in the rooms at Sea Pines.

9 Q You don't know that; do you?

10 A I know that it's in -- in the operations room.
11 That's where we keep prisoners. And before they changed
12 the system, I worked dispatch several times, and we used
13 to exchange the -- change the tapes out before that the
14 new system that they -- they had -- or they have now,
15 presently.

16 MR. HALIO: Excuse me one second, your Honor.

17 BY MR. HALIO:

18 Q Mr. Jolin, would you mind turning to -- returning to
19 your deposition?

20 A Yes, sir.

21 Q Look at Page 101.

22 A Yes, sir.

23 Q Looking at Line 7, the question was, *Do you know of*
24 *your own personal knowledge if any phone calls at CSA*
25 *Security were recorded, other than some phone calls to*

1 *dispatch?*

2 A Um-hmm.

3 Q Would you read your answer.

4 A I said, *I can't say for certain. I know that -- that*

5 *they're recorded. I know that everything is recorded.*

6 *All telephones.*

7 Q And hang on. Hang on.

8 A Oh, sorry.

9 Q That's the answer there.

10 A Okay.

11 Q Let me ask you about that. The first sentence there

12 says, *I can't say for certain.* The second sentence says,

13 *I know that they are recorded.*

14 A Um-hmm.

15 Q Can you explain whether you can't say for certain or

16 whether you know it?

17 A I know that the phone calls are -- are recorded.

18 Q Well, how come you said --

19 A And they used -- I remember an incident that they

20 played during the Christmas party with -- with a phone

21 conversation that took place between James Plant and --

22 and -- and somebody calling and complaining about

23 something. But I remember them playing it at the

24 Christmas party.

25 Q How come you said, *I can't say for certain?*

1 A I'm not sure.

2 Q You're not sure.

3 A Especially when I -- we know for a fact that they --

4 Q Let's turn to Page 102, at Line 7. Do you have any

5 personal knowledge of any of the other phones, other than

6 what somebody may have told you, that any of the other

7 phones in the CSA security office recorded every phone

8 call that came in or out?

9 And what was your answer?

10 A 102?

11 Q Yeah. At Line 12. What was your answer?

12 A No. But there's --

13 Q No, no. Wait a minute. Finish the answer before you

14 try to explain.

15 A It says, No, I don't know for --

16 Q For a fact?

17 A -- for fact.

18 Q Keep going. Finish it off.

19 A -- for fact that all -- that all of them are. I

20 don't know that. But Detective Florencio was in the

21 operations room, where there is cameras and audio.

22 Q But you weren't there; were you?

23 A No, sir.

24 Q Okay. And the next one says -- the next question at

25 Line 16, You just know that dispatch did.

1 A Yes, sir.

2 Q Is that your answer?

3 A Yes, sir. And, yes, sir.

4 Q You want to read that first sentence.

5 A I don't know which phones. ; I know that they record

6 conversations. That's -- that's what I know. I don't --

7 I don't know which phones. I know for a fact dispatch

8 is, because I have heard audio on that. But as far as

9 any of the other phones, I can't say yes or no.

10 Q So that's the bottom line. As far as recording

11 telephone calls from any phone other than dispatch, you

12 can't say yes or no; can you?

13 A No, sir.

14 Q According to your sworn testimony given in October.

15 And then you lied to Detective Florencio, right?

16 A I did.

17 Q You acknowledged that you lied to her; didn't you?

18 A For Mr. Breed. Yes, sir.

19 Q No.

20 A Oh, yes.

21 Q You're blaming Mr. Breed for lying? You know the

22 difference between --

23 A I did what he told me to do.

24 Q You lied to Detective Florencio, right?

25 A That's what he told me to do. Yes, sir.

1 hunting. That offer fell on my lap. I didn't just go
2 look for --

3 Q Offer fell in your lap.

4 A Yes, sir.

5 Q I see. Just happened to fall into your lap, so that
6 the same day you resigned at Sea Pines, you went over to
7 LongCo --

8 A Yes, sir.

9 Q -- and started working immediately. And before you
10 left Sea Pines, what did you do with your video tapes?

11 A When I turned all my gear in, I had Sergeant Coleman
12 with me. We went into the locker, which, in the
13 restrooms there. He took everything -- took everything
14 out that belonged to CSA. I told him nothing else was
15 left on those tapes.

16 Q Can you tell us what you did with the video tapes?

17 A Yes. I -- I -- I did what I was told to do with
18 them. When you don't have court cases, you cut them, you
19 rip them out, and you put them in the trash. So that's
20 what I did.

21 Q So you destroyed your video tapes.

22 A Yes, sir.

23 Q And you walked out with the incident reports.

24 A Yes, sir.

25 Q And now you're at the Circle K.

1 A Improper parking.

2 Q Why did you issue a ticket for improper parking?

3 A Because the vehicle was parked in the roadway.

4 Q It's blocking the road; isn't it?

5 A I -- I'm trying to remember this. I'm not too sure

6 if that was -- I remember issuing a -- a warning ticket,

7 but it was parked more in a cul-de-sac. I don't --

8 Q This is the car, right? I mean, you can match up the

9 license plate with the license plate --

10 A Right.

11 Q -- on the ticket, right?

12 A The license plate matches, but I don't recall --

13 Q The car matches?

14 A The car matches, yes, sir.

15 Q And you issued a ticket for improper parking.

16 A Yes, sir.

17 Q And I think what you're trying to tell us is you're

18 not sure --

19 A No.

20 Q -- this is exactly how the car was parked.

21 A I believe that the warning ticket -- exactly. The

22 warning ticket was issued -- if this -- if this over here

23 is the Coffey home, and to the right side of that is this

24 car, I think this vehicle possibly was parked over here,

25 which is a cul-de-sac. Okay. There's no inlet, and

1 that's -- I don't believe that the car was parked there,
2 no, sir.

3 Q Okay. So this car --

4 A I remember issuing --

5 Q -- this car here, in this picture of the Coffey car,
6 it's still not parked properly; is it?

7 A No, sir.

8 Q It's blocking the road.

9 A Yes, sir.

10 Q So you issued a ticket on the 21st for improperly
11 parking in the cul-de-sac.

12 A Yes, sir.

13 Q And then somebody else took a picture of it when it
14 was blocking the road. Apparently. Right?

15 A I am certain -- yes. I am certain that this -- this
16 was parked over here in the cul-de-sac area when I drove
17 by there.

18 Q And it's, you know, I guess it's kind of elementary,
19 but is it fair to say that you issued a warning ticket
20 for parking improperly because the car was parked
21 improperly?

22 A No, sir. Well, the -- the warning ticket?

23 Q Yes.

24 A Yes, yes. I issued that because it was parked --
25 improperly parked.

1 Q Okay. All right. And this wasn't any sort of
2 campaign of harassment against the Coffey family; was it?

3 A No, sir. The car was -- was improperly parked, and
4 I'm sure that there was probably a couple of others
5 written that day, as well.

6 Q And this car hadn't been improperly parked there for
7 eight years; to the best of your knowledge; had it?

8 A To my knowledge, I -- yeah, I couldn't say.

9 Q You would have seen it improperly parked before that,
10 and you would have given it an improper parking ticket
11 before that.

12 A I've written several improperly parked warning
13 tickets. Yes, sir.

14 Q If you wouldn't mind, you can take your seat again.
15 I'd like to go ahead and get this marked as an exhibit
16 for identification. Let me see the ticket, please.

17 MR. MATHISON: Is this the May 21st violation? The
18 warning.

19 MR. HALIO: I just want to I.D. it.

20 MR. MATHISON: That's all right. But that photo
21 does not go with that ticket.

22 MR. HALIO: Thank you for your testimony.

23 MR. MATHISON: You already said that. MR.

24 HALIO: All right. For identification, please.

25 COURT REPORTER: This will be Number 9, Defendants'

1 9.

2 COPY OF DOCUMENT REFERRED TO AS
3 WARNING TICKET MARKED DEFENDANTS'
4 EXHIBIT NUMBER 9, FOR IDENTIFICATION.

5 THE COURT: You all doing okay? Anyone need a break?
6 You okay?

7 BY MR. HALIO

8 Q All right. Prior to this -- I think you said the
9 night of the incident, you were out on routine patrol in
10 the areas that had been the subject of property crimes,
11 right?

12 A Right. Correct.

13 Q You weren't targeting anybody in particular that
14 night; were you?

15 A No, sir.

16 Q You weren't targeting Otis Coffey?

17 A No, sir.

18 Q And after this occurred, you weren't targeting Otis
19 Coffey's family; were you?

20 A No, sir.

21 Q Okay. And the incident of May 20th was not
22 videotaped, because you were outside of your patrol car,
23 right?

24 A I was outside of my patrol vehicle, yes, sir.

25 Q And one last thing I want to ask you. In your direct

1 minutes. Again, Mr. Jolin, do not discuss your
2 testimony. You are free to step down, sir. Okay?
3 A Yes, ma'am. Thank you.
4 THE COURT: Thank you.
5 OFF THE RECORD 4:28 P.M.
6 BACK ON THE RECORD 4:35 P.M..
7 BY THE COURT:
8 THE COURT: Ready to go, you all? MR.
9 HALIO: Yes.
10 THE COURT: Let's bring the jury in. Let's bring
11 the jury in, you all.
12 BAILIFF: Jurors entering, your Honor.
13 THE COURT: Thank you.
14 JURORS ENTER COURTROOM 4:37 P.M.
15 THE COURT: Thank you. Welcome back, ladies and
16 gentlemen. Mr. Mathison, please continue.
17 CONTINUE JOHN ALBERT JOLIN, JR.
18 RE-DIRECT EXAMINATION, MR. MATHISON:
19 Q John, in response to a couple of questions that were
20 asked by Mr. Halio, you weren't dismissed from the Marine
21 Corps; were you?
22 A No. I was -- they actually retired me due to the
23 injury.
24 Q That's how severe it was.
25 A Yes, sir.

1 Q So you weren't dismissed from the Corps?
2 A No, sir.
3 Q That usage was not correct. Is that right?
4 A That's correct.
5 Q Did I ask you when I interviewed you to say anything
6 that's not true, John?
7 A No, sir.
8 Q To the best of your knowledge, did you say anything
9 that was not true when you did your deposition?
10 A There was a question that was asked about were we --
11 I can't remember how it was even asked. Were we ever
12 asked to follow Otis Coffey. I do remember a
13 conversation of that arising, but I can't say who, but I
14 remember an incident --
15 MR. HALIO: I object as being hearsay. He can't
16 even identify who, and it's got nothing to do with the
17 underlying dispute here directly.
18 THE COURT: Okay.
19 BY MR. MATHISON:
20 A I can't identify of an incident.
21 THE COURT: Okay.
22 Q You never followed him. Is that right?
23 A No, sir.
24 Q John, is a suspicious activity a crime?
25 A No, sir.

1 Q What does it mean to be a suspect, with respect to
2 suspicious activity?

3 A He's not -- for me, personally, it's -- it was just
4 somebody who I thought that maybe that I saw, and I put
5 him as a suspect, thinking that it may give the detective
6 enough information to at least question Otis Coffey, to
7 rule him in or out as being what I saw.

8 Q Do you have Plaintiff's 10 up there? The original
9 one? Reading along with me, you're looking at the report
10 you prepared. The activity you identified is suspicious
11 activity. Is that right?

12 A That is correct.

13 Q If you would, look at the report that was prepared as
14 a consequence of your conversation with Detective
15 Florencio. What else has been added to that report?

16 A *Fleeing to evade arrest or detention.*

17 Q And that went right on this line, right under
18 suspicious activity; didn't it?

19 A Correct.

20 Q Is that a crime?

21 A Yes, sir.

22 Q Is that the crime for which you were asked to go get
23 the warrant?

24 A To be completely honest, nobody had even mentioned --

25 Q What they wanted you to get a warrant for?

1 A -- what the warrant was -- was -- was for. Maybe --
2 I -- I can't recall. No, I don't --
3 Q In order to get the warrant, did they need a positive
4 identification?
5 A Yes, sir.
6 Q Does that occur on the first page or the second page?
7 A Of?
8 Q The incident report that you filled out.
9 A Positive identification?
10 Q Yes.
11 A There is none.
12 Q But on the one that's revised on the second page,
13 there is a positive identification in the narrative;
14 isn't there?
15 A Yes, sir.
16 Q Would you take my highlighter and highlight where
17 that appears? So that this poster board that we've got,
18 this little one on the second page, which is what you
19 wrote, doesn't have a positive identification in the
20 narrative; does it?
21 A No, sir.
22 Q The one that was, in fact, revised and substituted
23 does. Isn't that right?
24 A Yes, sir.
25 MR. MATHISON: Request permission to publish the

1 incident report, Plaintiff's Exhibit 11, to the jury.

2 MR. HALIO: Seems like it's already been read a
3 couple of times.

4 THE COURT: You can ask him questions on it, just --

5 MR. HALIO: If he wants to give it to them, that's
6 fine. I'm sorry. I thought he was going to read it.

7 MR. MATHISON: No, I just want to hand it to them and
8 let them look at it.

9 THE COURT: Well, if you want him to do that while
10 you're still questioning him, that's fine.

11 MR. MATHISON: May it please the Court. I'm done
12 with this line of questioning.

13 THE COURT: Okay.

14 BY MR. MATHISON:

15 Q John, was there, in fact, any crime committed on May
16 20th or May 21st that would, in Sea Pines, that would
17 have permitted anyone to arrest Otis Coffey?

18 A Not to my knowledge, no, sir.

19 Q So that, in the absence of the positive
20 identification, and the addition of the charge of fleeing
21 to avoid detention, there was no basis for arresting him
22 at all.

23 A No, sir.

24 Q Did you think that he was committing a crime when you
25 saw a man on a bicycle?

1 A No, sir.

2 Q Did anyone ever accuse the person on the bicycle of
3 stealing the bicycle?

4 A No, sir.

5 Q One other thing. When you were asked to identify the
6 street on which you encountered Mr. Coffey, you had a
7 little difficulty figuring out where it was. Was that
8 because the map was basically upside down initially? Was
9 this the way it was shown to you?

10 A Yes, sir.

11 Q And it should be, as it ended up being, in this form.
12 Isn't that right?

13 A Yes, sir.

14 Q And when you testified that Mr. Coffey had gone left
15 as he was heading to the beach access, --

16 A It would have actually been at right as he was coming
17 up. He was headed north. I was headed south. He would
18 have made a right onto the beach access.

19 Q So he went right on the beach access, toward the
20 beach. Is that right?

21 A Towards the beach. That's correct.

22 Q And then, when he got away from you, when you reached
23 out to get him, which direction did he go?

24 A He went left.

25 Q So he went to the north?

1 A Yes, sir.

2 Q And away from Gadwall.

3 A Yes, sir.

4 Q And he was still on his bicycle.

5 A The last time I saw, yes, sir.

6 Q After you became aware that you had misgivings about

7 participating in what was said to Detective Florencio,

8 what did you do about it?

9 A Could you re-ask the --

10 Q What did you do when you realized that you were upset

11 about having lied to Florencio?

12 A I was mostly upset with myself. But I did talk to --

13 to some of the other officers about it. Lieutenant

14 Haynes being one.

15 Q And as a result of that conversation, if not

16 otherwise, did you also talk to George Breed?

17 A In reference to the report?

18 Q Yes, sir.

19 A Yes, sir.

20 Q Did he know there were two?

21 A Yes. He knew that there were two reports.

22 Q Did he know you were concerned about participating in

23 the second one, the revised one?

24 A Yes, he knew.

25 Q And knowing those concerns, what did he tell you?

1 A He told me that everything was going to be okay; that
2 I was -- that -- that the original report, the report I
3 did, was the one that we were going to stick with.
4 Q And did that satisfy you in terms of soothing your
5 concern?
6 A Yes, sir.
7 Q Do you know whether he actually kept his word or not?
8 A I didn't learn till -- till later that he didn't.
9 MR. HALIO: Objection, your Honor. I don't know how
10 he got his information, but, no foundation.
11 MR. MATHISON: Thank you, Mr. Jolin.
12 MR. HALIO: Just real quick, Judge.
13 THE COURT: Yes.
14 JOHN ALBERT JOLIN, JR.
15 RE-CROSS-EXAMINATION, MR. HALIO:
16 Q You were asked in your direct testimony about what
17 you spoke with Mr. Breed about after you found out about
18 the second incident report, and you didn't mention
19 anything about -- what was the answer that you just gave?
20 A That Mr. Breed and I did discuss -- Mr. Breed knew
21 that there was reports, the two reports.
22 Q What were the exact words you said he said?
23 A That Mr. Breed said?
24 Q Yeah.
25 A He said that -- that if I couldn't -- he actually

1 from either side?

2 MR. HALIO: No, your Honor.

3 MR. MATHISON: No, your Honor.

4 THE COURT: All right. You are excused, sir. Thank
5 you. Mr. Mathison, call your next witness.

6 MR. MATHISON: I would call Detective Florencio to
7 the stand, please.

8 THE COURT: Detective, come on forward and be sworn.

9 WITNESS SWORN.

10 MEREDITH FLORENCIO

11 DIRECT EXAMINATION, MR. MATHISON:

12 Q Detective, your name is Meredith Florencio. Is that
13 correct?

14 A Yes, sir.

15 Q And at the time of the events that we've been
16 discussing, you were not married. Is that right? Your
17 name was Hatch.

18 A Correct.

19 Q So that, the names that would appear at the time on
20 the documents that were addressed to you would be to
21 Meredith Hatch. Is that right?

22 A Yes, sir.

23 Q You and I met for the first time, didn't we,
24 Detective, when you responded to a subpoena to testify at
25 the request of the defendants. Isn't that right?

1 A Yes, sir.

2 Q Have I ever interviewed you or debriefed you, except
3 in the presence of the defense lawyers?

4 A No.

5 Q You and I, other than talking on the phone to arrange
6 the subpoenas, have never talked at all. Is that
7 correct?

8 A No, sir.

9 Q In 2008, you've heard, I believe, testimony that
10 there were burglaries, peeping Toms, and breaking and
11 entering events going on in Sea Pines Plantation. Is
12 that right?

13 A Yes, sir.

14 Q Were you the person with the Beaufort County
15 Sheriff's Office that was investigating most, if not all,
16 of these events?

17 A Yes, sir.

18 Q And who was your supervisor or superior? Who were
19 you reporting to directly?

20 A Angela Vennes.

21 Q Were there other people working with you and under
22 you in these investigations?

23 A Dwuan Holmes.

24 Q And were you the person responsible for coordinating,
25 kind of knitting, them all together?

1 A Yes, sir.

2 Q Was that the case for the entire duration of the 2008

3 investigations?

4 A I believe so, yes, sir.

5 Q Do you know anything that Judge Coffey did to

6 interfere with the investigation of the Beaufort County

7 Sheriff's Office of the events in Sea Pines in 2008?

8 A No, sir.

9 Q Are you certain that she didn't do anything to impair

10 or impede the investigation in any way?

11 A Yes.

12 Q Do you know whether Otis Coffey was ever charged with

13 any crime as a result of events in 2008?

14 A No, sir.

15 Q Do you know whether you, at the Beaufort County

16 Sheriff's Office, in charge of the investigation, ever

17 consider Otis Coffey to be the quote, *primary suspect* in

18 the investigation?

19 A No, sir..

20 Q You did not? You did not or you --

21 A No, sir, he was not considered a prime suspect.

22 Q Was there ever a prime suspect identified?

23 A No, sir. No one was ever identified.

24 Q Did you at one juncture request that Chief Breed

25 provide you with a list of suspects that he thought were

1 capable of committing this crime, who, in fact, resided
2 in Sea Pines Plantation?

3 A Yes, sir.

4 Q And I'm handing you this document, and I'm asking you
5 if you can identify it as being a list that Mr. Breed
6 gave you.

7 A Yes.

8 Q Upon that list, are there seven names?

9 A Yes.

10 Q And among those seven names, how many people are
11 black and how many people are white?

12 A One person is black and the rest are white.

13 Q And of the seven, which one is the black one?

14 A Otis Coffey.

15 Q At the time that this list was submitted, which I
16 believe is early May, did you have reports from incidents
17 indicating that more than one of these instances had been
18 perpetrated, if at all, by a white person?

19 A A lot were unknown. I believe some white was -- some
20 -- some were possibly black.

21 Q Okay. Did you have any reason to believe, based on
22 the submission of those seven names -- and I'm not going
23 to put them in the record -- that Otis Coffey was
24 considered by Mr. Breed to be the prime suspect?

25 A No, sir.

1 Q You can identify this as the list that he submitted?
2 A Yes, it is. I'm sorry. I must not have understood
3 your question.
4 COURT REPORTER: I'm sorry. I didn't hear you.
5 Yes, it is, and what?
6 A I -- I must not have understood the question.
7 Q You can identify it, is what I said.
8 A Yes.
9 Q Okay.
10 MR. MATHISON: Your Honor, I'd like to mark this for
11 identification, but I don't want to put it in the record,
12 because it has the names of individuals that didn't do
13 anything wrong. All right. This is a list of suspects.
14 COURT REPORTER: This would be Plaintiff's 14.
15 COPY OF DOCUMENT REFERRED TO AS
16 LIST OF SUSPECTS MARKED PLAINTIFF'S
17 EXHIBIT NUMBER 14, FOR IDENTIFICATION.
18 BY MR. MATHISON:
19 Q Did you do an investigation of one or more of the
20 individuals on the list submitted by Chief Breed?
21 A Yes.
22 Q Did you, among other things, run a sexual offender
23 check through whatever vehicle you use to check to see if
24 -- did --
25 A Yes, sir, I did. I did a search of sex offenders

1 that might reside in Sea Pines, yes.

2 Q Did you get any positive response as a sex offender
3 for Otis Coffey?

4 A No, sir.

5 Q Does he have anything in his history that would lead
6 you to believe that he's a sex offender or a sexual
7 predator or a peeping Tom or anything else like that?

8 A No, sir.

9 Q On or about May 20, 2008, did you receive an email
10 from Mr. Breed at Sea Pines Security, that was addressed
11 both to you and to Captain Toby McSwain?

12 A Yes, sir, I did.

13 Q I'm handing you this document, and ask if you can
14 identify it for me, please.

15 A Yes. This is an email I received.

16 Q And what is the address from which that was sent?

17 A Securegate@aol.com.

18 Q Can you identify that as the being the address used
19 by Mr. Breed on his email?

20 A Yes, sir.

21 MR. MATHISON: Move the introduction of this document
22 Plaintiffs Exhibit 15.

23 COPY OF DOCUMENT REFERRED TO AS

24 EMAIL FROM GEORGE BREED TO MEREDITH

25 FLORENZIO MARKED PLAINTIFF'S EXHIBIT

1 NUMBER 15, ADMITTED AS EVIDENCE.

2 BY MR. MATHISON:

3 Q Looking at that document, Detective, does it make
4 reference to the events that about which there has been a
5 good bit of testimony that took place around midnight on
6 May 20th?

7 A Yes, sir, it does.

8 Q Would you publish to the jury, would you read the
9 first paragraph that Mr. Breed wrote?

10 A *Last night at midnight, one of my officers was on*
11 *foot near South Beach Lane. He saw a black male on a*
12 *bike (midnight) -- in parentheses -- and identified him*
13 *as Otis Coffey, and called out to him. He took off. He*
14 *radioed another officer who set up out-of-sight at*
15 *Gadwall -- in parentheses -- (Coffey's house). And a few*
16 *minutes later, observed him run into the house and then*
17 *shut off all the interior lights.*

18 Q All right. Do you understand that the person to whom
19 Mr. Breed was referring in that first paragraph, was, in
20 fact, John Jolin, who had quote, *identified Otis Coffey*?

21 A Yes. Now I know. Yes.

22 Q Would you read to me what Mr. Breed said about Mr.
23 Coffey in the third paragraph, please.

24 A *We almost got his little butt. I want his little*
25 *butt, and I don't want it to get back to you-know-who.*

1 Q Do you know who Mr. Breed was referring to by you-
2 know-who?

3 A Yes.

4 Q Who?

5 A Maureen Coffey.

6 Q Would you read the next sentence, please.

7 A *He thinks he can get away with this crap because he*
8 *has cover.*

9 Q Do you know who he was referring to when he said that
10 he has cover?

11 A Maureen Coffey.

12 Q Do you think -- would you read the next sentence,
13 please.

14 A *Do you think that we have enough to secure a search*
15 *warrant?*

16 Q Okay. And just go ahead and finish off the rest of
17 this memo.

18 A *His house is smack in the center of the B and E's; he*
19 *matches the description of our B and E suspect, and the*
20 *peeper, and he is on a bike at midnight right in the*
21 *middle of our stakeout; takes off; runs into a house;*
22 *cuts off the lights; and then his mommy - has his mommy*
23 *lie for him. And for Heaven's sake, you know not where*
24 *to go to get the search warrant.*

25 *I think, over the past several months, his looking*

1 into windows for targets may have been mistaken for a
2 peeper. May be able to get -- may be able to close both
3 groups.

4 COURT REPORTER: Close both what?

5 A Close both groups.

6 Q Do you know what Mr. Breed referred to when he said
7 that he matches the description of both the B and E?
8 That's breaking and entering; isn't it?

9 A Yes, sir.

10 Q Suspect and the peeper?

11 A Yes.

12 Q Was there a uniform description of the B and E
13 suspect and the peeper?

14 A There was multiple incidents occurring.

15 Q And some were white and some were black. Isn't that
16 right?

17 A Yes, sir.

18 Q How can anybody who was a black person match them
19 all?

20 A Exact. Yes, sir.

21 Q Did Mr. Breed make reference to the fact that he had
22 a stakeout into which this person, namely, the person he
23 thought was Otis Coffey, came?

24 A Yes. He does refer to that.

25 Q Is it your understanding the only organization in

1 Beaufort County that's lawfully capable of --

2 MR. HALIO: Objection.

3 MR. MATHISON: -- investigating crime is the
4 Beaufort --

5 MR. HALIO: Objection. This is totally irrelevant.

6 THE COURT: It's not for her to say.

7 BY MR. MATHISON:

8 Q Who was in charge of investigating crime in Beaufort
9 County?

10 A The Beaufort County Sheriff's Office.

11 Q Including crimes inside private property like Sea
12 Pines. Is that right?

13 A Yes, sir.

14 Q Did you authorize anybody to conduct a stakeout in
15 Sea Pines in an effort to catch the breaking and entering
16 or peeper in South Beach Lane area of Sea Pines?

17 A No, sir.

18 Q Did anybody else that you're aware of at the Beaufort
19 County Sheriff's Office authorize a stakeout to go on?

20 A No, sir.

21 Q Did you authorize the Sea Pines Security to conduct
22 any other form of investigation with respect to Otis
23 Coffey or any of the other six subjects who were
24 identified as living in Sea Pines Plantation in Mr.
25 Breed's transmittal to you, which is Plaintiffs Exhibit

1 14?

2 A No, sir.

3 Q Had you decided that you wanted to obtain a warrant,
4 either to search or for an arrest, would you have gone to
5 Maureen Coffey to get a warrant to arrest her -- or
6 search her brother?

7 A No, sir.

8 Q Did you need to be reminded that that would be not
9 appropriate?

10 A No, sir, I did not.

11 Q Did this letter presuppose a pretty high level of
12 familiarity between its writer and the recipients with
13 the subject matter in question?

14 MR. HALIO: Objection. Speculation.

15 THE COURT: She can't answer that question.

16 BY MR. MATHISON:

17 Q Did you ever have a conversation, verbally or in
18 writing, with Mr. Breed before, where he referred to
19 getting any suspect's little butt?

20 A No, sir.

21 Q Since then, have you had a conversation with him
22 about it?

23 A No, sir.

24 Q During this period, and specifically at any point on
25 or before June 6, 2008, did Mr. Breed ever contact you to

1 find out whether Otis Coffey was the primary suspect
2 under investigation by the Beaufort County Sheriff's
3 Office on or about the first week of June 2008?

4 A I don't -- I don't remember.

5 Q Did you ever tell him that?

6 A No, sir.

7 Q If he had contacted you, would you have told him
8 that?

9 A I -- again, I don't remember if he contacted me, so I
10 can't answer that.

11 Q Ms. Florencio, as a result of getting this email,
12 what, if anything, did you do afterwards, in terms of
13 following through with the incident?

14 A I got this, actually, in the morning when I got to
15 work. So I actually went down to Sea Pines to go look
16 for the report and to collect the security blotters.

17 Q Do you customarily go to Sea Pines to -- or during
18 this period, did you customarily go down there to check
19 the blotters?

20 A Yes, sir.

21 Q What, exactly, does that mean?

22 A Those are just in-house reports when officers might
23 call on the dispatch radio that they might have seen
24 something suspicious. They don't necessarily make
25 reports on those. It just is in -- information for me,

1 and I was collecting any information I could get at the
2 time.

3 Q But if you do go, you can see all of the things that
4 were reported, not just the things that got case numbers.

5 A Correct.

6 Q So that's a way of auditing what it is that's not
7 being reported, and making sure that you're not missing
8 something or something's fallen through the cracks,
9 right?

10 A Yes, sir.

11 Q And were there, during this period of time, in-house
12 reports that weren't being routinely turned in that you
13 would see on the blotters?

14 A I -- I did actually have one incident where there was
15 an incident that occurred that wasn't reported by the
16 officer.

17 Q During this period?

18 A Yes, sir.

19 Q Was it material to your investigation of who might
20 have been committing these crimes?

21 A No, sir.

22 Q When did you first see Mr. Jolin's incident report?
23 And by that, I mean, that which has been identified as
24 Plaintiffs Exhibit 10?

25 A It would have been the morning that I got this email.

1 Q I'm handing you Plaintiffs Exhibit 10. Did you see
2 it because it came to the Beaufort County Sheriff's
3 Office, or did you see it because it was on hand at Sea
4 Pines Security when you went down there to look at the
5 blotters?

6 A On hand at Sea Pines Security.

7 Q Tell me what happened after you got to Sea Pines
8 Security, on the day you saw the original Jolin incident
9 report, which is Plaintiffs Exhibit 10.

10 A I looked at the report, and the report wasn't
11 consistent with this email. So I asked the supervisors
12 that were there if I could call Jolin, because he was
13 already off duty, to find out what's going on -- why --
14 why are these two things different, and find out from him
15 what was going on.

16 Q Specifically, was your concern that in his email from
17 May 20th, George Breed, in the first paragraph, that said
18 his officer has identified Otis Coffey; and in the
19 narrative to his incident report, there wasn't any
20 identification.

21 A Correct.

22 Q When you called John Jolin, where were you situated
23 inside Sea Pines Security?

24 A I was in the computer room. I guess that's the --
25 one of the main offices in the building.

1 Q Do you know whether that's what John called the
2 operations room?

3 MR. HALIO: Objection. She's asking him what --

4 MR. HALIO: -- what somebody thought about some room
5 somebody else thought about was the room was called.

6 THE COURT: Okay.

7 MR. MATHISON: He referred to the room as the
8 operations room, and I'm asking whether she's describing
9 the same room.

10 BY MR. MATHISON:

11 A I believe it is the same room.

12 THE COURT: Okay.

13 Q And when you made the telephone call, did you put him
14 on speaker phone?

15 A Yes, sir, I did.

16 Q And were there other people in the room?

17 A Yes, sir.

18 Q And why was that? Do you know?

19 A They appeared that they were doing other reports. I
20 guess that's the operation room, I guess that they could
21 be doing a number of paperwork. I -- I don't really
22 know.

23 Q But why did you put him on speaker phone?

24 A Because I was accessing a computer to type, so I
25 could have my hands free.

1 Q Okay. So, if I understand correctly, you were going
2 to type something on Sea Pines Security computers. Is
3 that right?

4 A Yes, sir.

5 Q Did that require that you get some kind of pass code
6 in order to get entry?

7 A I don't remember.

8 Q Did anybody there have the ability to put you in Mr.
9 Jolin's computer?

10 A I don't believe it was Mr. Jolin's computer. I think
11 it was just a general computer, and they might have just
12 opened up a regular omni form. I don't believe it was
13 Mr. Jolin's account.

14 Q And the omni form was a fill-in-the-blank incident
15 report like the one I got in my hand, right?

16 A Yes, sir.

17 Q So you couldn't just take his report and revise it;
18 you had to type it all over.

19 A Correct.

20 Q When you called Officer Jolin, Sergeant Jolin, did
21 you tell him that you were in the process of revising his
22 report?

23 A No, sir. I actually asked him about the differences
24 in the email, and wanting to know about the report. At
25 that point, he advised me that he did actually identify

1 Otis Coffey.

2 Q Okay. What, exactly, did he tell you about
3 identifying Otis Coffey?

4 A He basically told me that he know was -- he
5 recognized Otis Coffey because he had worked the gate for
6 a couple years, and that he knows Otis Coffey, and that
7 was Otis Coffey on the -- on the roadway.

8 Q Okay. So he seemed to fulfill the identification
9 that Mr. Breed had told you about in that May 20th email?

10 A Correct.

11 Q And what, if anything, did you do at that juncture
12 because he told you that there had been a positive
13 identification?

14 A Well, seeing as that was the first actual
15 identification of anybody at -- at midnight in the area
16 of where we were having a lot of issues, in order to help
17 him out, because he had his zip drive home, I made
18 several corrections, just grammatical, because we have a
19 certain way that we write reports. And if this was going
20 to be a big case, linking somebody, I wanted to make sure
21 it sounded a little -- like flowed a little bit better.

22 And also, I put in the information that he supplied
23 to me about the identification.

24 Q And the information that he supplied about the
25 identification is what I have had Mr. Jolin highlight in

1 yellow, on the second page. Is that correct?

2 A Yes, sir.

3 Q And would you read what the highlighted information
4 says?

5 A Yes, sir.

6 Q I -- I identified a black male subject as Otis
7 Coffey, due to having much contact with him while I was
8 working the front gate of Sea Pines for two years.

9 Q Okay. And you added that based on the conversation
10 you had with Mr. Jolin.

11 A Yes, sir.

12 Q Which you had on speaker phone at the operations room
13 at Sea Pines Security.

14 A Yes, sir.

15 Q Did you tell Mr. Jolin that you were revising his
16 report?

17 A I -- yes, I believe -- I don't remember back that
18 far, but that was the point of talking with him. And he
19 had the zip drive, so I would have to do it on a
20 computer, so I believe we did have that conversation.

21 Q He had a zip drive, which meant that he had the
22 ability to do it on any computer he could stick in.

23 A Correct.

24 Q Okay. But it wasn't in his computer. Is that what
25 you're saying?

1 A Correct.

2 Q Okay. Is the document that I handed you,
3 Plaintiffs's Exhibit 11, in fact, a copy of the document
4 that you prepared?

5 A Yes, sir.

6 Q Did you take that document with you when you left to
7 go to the Beaufort County Sheriff's Office?

8 A No, sir.

9 Q In point of fact, when your deposition was taken,
10 wasn't it your impression that John Jolin --

11 MR. HALIO: I'm going to object to the leading.

12 THE COURT: Okay. Let's not lead her. Let's just
13 get this going.

14 BY MR. MATHISON:

15 Q When your deposition was taken, weren't you under the
16 impression that Mr. Jolin himself had submitted your
17 report under his name?

18 A Yes, sir.

19 Q Do you now know that that's not correct?

20 A From what I've heard, I don't know that. I don't
21 know who submitted it.

22 Q Let me ask you this. Does the Beaufort County
23 Sheriff's Office have one or two reports?

24 A One report, sir.

25 Q Is the report that the Beaufort County Sheriff's

1 Office has the one that you prepared or the one that John
2 Jolin prepared?

3 A The one that I prepared.

4 Q Do you know who sent or submitted the report to the
5 Beaufort County Sheriff's Office that you prepared?

6 A No, sir.

7 Q Did you have a telephone conversation with Mr. Breed
8 on the morning that you went to Sea Pines Security to
9 talk to Mr. Jolin?

10 A No, sir.

11 Q Did you have an in-person conversation with him?

12 A No, sir. He wasn't there when I got there.

13 Q Did you have a conversation with any of the three
14 gentlemen who were in the operations room at the time you
15 put Mr. Jolin on speaker phone?

16 A I -- only to ask them to give me Jolin's number and,
17 I guess, access the computer. I don't remember having
18 any other conversations.

19 Q Did Mr. Jolin tell you that he had received a
20 telephone call from Mr. Breed fewer than ten minutes
21 before talking to you on the telephone?

22 A No, sir.

23 Q Did he tell you that Mr. Breed had advised him that
24 he needed to be not 80 percent sure, not 90 percent sure,
25 but a hundred percent sure that it was Otis Coffey?

1 A No, sir.

2 Q Did anyone else, Mr. Breed or any of the officers at
3 Sea Pines Security, tell you that?

4 A No, sir.

5 Q If you had known about the conversation between Breed
6 and Jolin, assuming for the moment that it took place,
7 would you have revised the report and treated it as good
8 evidence at the Beaufort County Sheriff's Office?

9 A No, I would not.

10 Q And if what I just said is correct, that the
11 conversation did take place, isn't it possible that you
12 were an unwitting tool in basically getting a false
13 police report on record at the Beaufort County Sheriff's
14 Office?

15 A Yes.

16 Q In Plaintiff's Exhibit 13, which is Mr. Breed's email
17 of May 20th, he makes reference to obtaining a search
18 warrant. Do you know whether anybody had probable cause
19 to get a search warrant, under the circumstances
20 described, where you had basically an encounter with a
21 man on a bicycle?

22 A No.

23 Q I mean, unless he'd stolen the bicycle, there's no
24 probable cause for a crime; is there?

25 A Again, I wasn't out there. I don't know.

1 Q Well, when you -- he asked you to get a search
2 warrant. Did you ever respond and tell him we can't get
3 one?

4 A I don't remember. I'm sure I must have told him
5 something.

6 Q Was it your understanding that, based on the report
7 as you had revised it, that an arrest would take place?

8 A No, sir.

9 Q Well, in addition to revising the second page of the
10 incident report, didn't you also revise a couple of key
11 aspects on the front page?

12 A I'm trying to still remember. I don't remember if I
13 did a first page for him or just did a second page, and
14 had them attach the first page. I -- I don't know. It
15 appears that way. I just don't know.

16 Q I can understand how you might feel, because I
17 bleary-eyed. I've read 600 pages of these things in the
18 last week. I'm going to give you both of them.

19 A Yes, sir.

20 Q And the first one, 10 on your left, is Mr. Jolin's.
21 And the second one, 11 on the right, is yours. And I'm
22 calling your attention to, first, the time box. And I
23 think that you may have corrected an error there, in the
24 incident times.

25 A On the incident times. If I did, I don't remember if

1 I did anything with this first page.

2 Q Okay. Well, I'm looking at the top of the first page
3 of Mr. Jolin's report, and it says suspicious activity.

4 A Yes, sir.

5 Q What does it say at the top on the of the first page
6 of your report?

7 A *Suspicious activity and fleeing to evade arrest or*
8 *detention.*

9 Q And suspicious activity is not a crime; is it?

10 A No, sir.

11 Q But fleeing to evade arrest or detention is; isn't
12 it?

13 A Yes, sir.

14 Q Would you put a yellow stripe on the additional
15 charges you added at the top of the warrant -- excuse me
16 -- at the top of the incident report?

17 A Again, I don't know if I added that, so I don't know
18 if I even touched this. Again, I could have -- I could
19 have easily just done the second page, and they could
20 have just attached whatever Jolin's first page was, but
21 because during the deposition, there were things on this
22 first page that I wouldn't have done. Different ways
23 that things are written.

24 Q Well, there are differences between the two pages;
25 aren't there?

1 A No, everything's correct. The only thing that's
2 different is some differences in time. And the fleeing
3 to evade is the same -- or is added in one. Other than
4 that, I wouldn't put any of the information the way he
5 did it.

6 Q You're saying that, at the bottom of the page where
7 it says, in Jolin's report, suspect Otis Coffey, who is
8 suspected of being someone engaged in suspicious
9 activity, that's not being a suspect in a crime.

10 A No, sir. You would put that maybe as a person of
11 interest.

12 Q And maybe provide the basis for going and actually
13 interviewing that person. Is that correct?

14 A Correct.

15 Q But once you get stepped up a notch to fleeing to
16 avoid, then you do have a crime.

17 A Yes, sir.

18 Q For which an arrest warrant could be issued.

19 A Then it would further the investigation. There was
20 nobody, from what Officer Jolin's saying, he didn't
21 actually catch somebody, and he did not -- he told me he
22 didn't identify him, so, either, enough to be able to
23 secure any kind of warrant.

24 Q So the result was there was no warrant. Is that
25 right?

1 A Correct.

2 Q Arrest or otherwise.

3 A Yes, sir.

4 Q But isn't it a fact that, right now, in the Beaufort

5 County Sheriff's Office, there is an incident report that

6 identifies Otis Coffey as a potential suspect in the

7 crime of fleeing to avoid detention, arrest and

8 detention?

9 A Yes, sir.

10 Q And that's Plaintiffs Exhibit 11. Is that right?

11 A Yes, sir.

12 Q And isn't it a fact that the Beaufort County

13 Sheriff's Office --

14 MR. HALIO: I'm going to object to the leading.

15 It's just --

16 THE COURT: Okay. Again, let's just --

17 MR. MATHISON: I thought we were trying to expedite.

18 I'm just asking her what's in her deposition, your Honor.

19 THE COURT: Just ask her.

20 BY MR. MATHISON:

21 Q And is it true that the Beaufort County Sheriff's

22 Office does not have the original incident report

23 prepared by Officer Jolin?

24 A Correct.

25 Q So the only one that's there is, apparently, false,

1 if, in fact, there was no positive identification.
2 A Yes, sir.
3 Q One second. The other person to whom Mr. Breed's
4 email of May 20th was sent is identified by his email
5 address, and what's that?
6 A Polygraph99@hotmail.com.
7 Q And do you know who polygraph99 is?
8 A Captain McSwain.
9 Q Did you typically get email directly either from
10 Captain McSwain or from Mr. Breed?
11 A Yes. Mr. Breed.
12 Q But not Captain McSwain?
13 A Not generally, no.
14 Q And the reason you got email from Mr. Breed is that
15 you were in charge of these investigations going on, on
16 his plantation. Is that right?
17 A Yes, sir. He was assisting me, yes.
18 Q And I believe you already testified that you didn't
19 authorize any stakeout to go on in any neighborhood of
20 Sea Pines --
21 MR. HALIO: Objection. Asked and answered.
22 THE COURT: Okay.
23 BY MR. MATHISON:
24 Q Did you authorize saturation patrols?
25 A I did not authorize them to do anything.

1 Q Do you know, Detective, whether a number of Sea Pines
2 peeper and breaking-and-entering cases in 2004 were
3 resolved by the arrest and conviction of John Thomas
4 Levy?

5 A Yes, they were.

6 Q Do you know whether he was arrested at or about the
7 end of the fall of 2004?

8 A I don't have the information in front of me to -- I'd
9 have to see where the report is.

10 Q Did you understand, when you undertook the 2008
11 investigations, that Mr. Levy's profile was no longer
12 there because he was in prison?

13 A Correct.

14 Q He had been convicted.

15 A Yes.

16 Q Do you know how many cases, approximately, in Hilton
17 Head Plantation and Sea Pines Plantation the Beaufort
18 County Sheriff's Office closed as a result of convicting
19 him of, I think, nine different cases in both?

20 A No, sir, not off the top of my head.

21 Q Do you know whether Mr. Breed, and specifically one
22 of his officers, were integrally involved in the arrest
23 of John Thomas Levy.

24 A I don't know.

25 Q Do you know whether Mr. McNeill received an -- or one

1 of the Sea Pines Security officers -- received an award
2 for finding a tape that had been turned in that was
3 ultimately traced to Mr. Levy?
4 A I don't know.
5 Q But you do know that he was arrested and a number of
6 these cases quit. Is that right?
7 A Yes, sir.
8 Q Are you quite -- you never saw the letter that Mr.
9 Breed wrote about Judge Coffey; did you?
10 A No, sir.
11 Q Did Mr. Breed consult with you before writing the
12 letter, to find out whether Mr. Coffey was a primary
13 suspect in 2004?
14 A No, sir.
15 Q Did he consult with you about 2008?
16 A No, sir.
17 Q Was he, in your view, a primary suspect in either
18 2004 or 2008?
19 A I can only say that, in 2008, he was not.
20 Q Do you have any knowledge of anything that Otis
21 Coffey has done inside Sea Pines Plantation, with the
22 exception of being arrested for trespassing on December
23 10, 2004?
24 A No, sir.
25 MR. MATHISON: I don't have any questions. Please

1 today. Very attentive. I want you to go home, get a
2 good night's dinner, a good night's sleep, and I look
3 forward to seeing you all back at 10:00 a.m. tomorrow
4 morning, because I know I had you waiting down there for
5 a half hour this morning. And inevitably, that will
6 happen again. So I'll have you all back in your jury
7 room at 10:00 a.m., where we are going to, again,
8 continue the trial of this case. Thank you. Good night.

9 JURORS LEAVE COURTROOM 5:15 P.M.

10 BAILIFF: Jury's clear. The door is closed, your
11 Honor.

12 BY THE COURT:

13 THE COURT: All right. Before I say goodnight, I
14 look forward to seeing everyone about 9:15 tomorrow
15 morning, where we'll take up any extraneous matters we
16 have.

17 Additionally, I'm reminding everyone that you are to
18 get to -- or you probably already -- already should have
19 or already have that we requested charge to the law
20 clerk. I thought we were going to get those by 5:00
21 today, apparently. So, if you haven't done it, you need
22 to do it. And anything else need to go on the record
23 right now?

24 MR. HALIO: I've just got a quick question, Judge.

25 THE COURT: Sure.

1 MR. HALIO: And that is, I don't want to invade Mr.
2 Mathison's strategy, but there's a lot of people have
3 been sitting out here for a long time doing nothing. And
4 I was just wondering if we could get some sort of idea as
5 to who's coming next, so we don't have a bunch of people
6 sitting out there wasting time.

7 MR. MATHISON: My order of witnesses is roughly
8 going to follow the sequence that I put in my witness
9 list, your Honor. And a number of people that are here,
10 are here because I feel that I would encounter hearsay
11 objections if they weren't here. Some of them will
12 testify with respect to the defamation.

13 THE COURT: Um-hmm.

14 MR. MATHISON: Other than that, they're here because
15 I don't know whether they have achieved the level of
16 agency for the defendant, for example, to actually use
17 their out-of-court statements if I had them in
18 depositions. So I've got to have them against the
19 possibility that someone would say that's -- as they
20 have, many times today.

21 MR. HALIO: Well, with that in mind, and in light of
22 the Court's rulings on that issue every time it comes up,
23 is there anybody that could possibly be released from a
24 subpoena? I mean, you've already ruled that having them
25 in the courtroom doesn't make any difference.

1 MR. MATHISON: I think that I have to have them, if
2 I'm right. And I don't know that I can release them
3 without conceding that I'm not.

4 MR. HALIO: I'd be happy to stipulate that they've
5 been subpoenaed here, and the only reason he would have
6 released them is because -- I mean, I'd be happy to
7 stipulate that they're here. But is there any way that
8 he can release them?

9 THE COURT: Well, I don't know who he's going to
10 call and who he's not going to call. Is that --

11 MR. MATHISON: I can't tell until we get there. All
12 right. I have a good idea, based on what Mr. Jolin said
13 and based on your ruling. I think it's all but certain
14 that I'll call Ms. Martin, Bobbie Martin, and that I'll
15 call Randy Woods.

16 MR. HALIO: Okay. Thank you, your Honor. I just --

17 THE COURT: Hold on just a second. There was one
18 other one. What about Mike Ryan?

19 MR. MATHISON: Pardon me?

20 THE COURT: What about Mike Ryan?

21 MR. MATHISON: I don't have him under subpoena --

22 THE COURT: Okay.

23 MR. MATHISON: -- because I can't get him.

24 THE COURT: Okay. Okay.

25 MR. HALIO: Thank you.

1 THE COURT: All right. See you all at 9:15 tomorrow
2 morning. I'll admonish you, Detective, you aren't to
3 discuss your testimony, because you're still on the stand
4 overnight with anyone involved in this case. All right.

5 A Yes. Yes, ma'am.

6 THE COURT: I'll look forward to seeing you. Don't
7 you worry about being here until 10:00 tomorrow morning.

8 A I'm sorry. I'm on vacation, anyway.

9 END DAY TWO, WEDNESDAY,

10 MAY 30, 2012, 5:20 P.M.

11 BEGIN DAY THREE, THURSDAY,

12 MAY 31, 2012, 9:30 A.M.

13 BY THE COURT:

14 THE COURT: Good morning, again, you all. Is there
15 anything we need to put on the record before we start
16 this morning?

17 MR. MATHISON: First of all, let me apologize for
18 being late. We forgot our jury charges and had turn
19 around and go back and get them.

20 THE COURT: Okay.

21 MR. MATHISON: I thought it might be advisable to
22 have them so we would know what we were doing.

23 THE COURT: Okay. That sounds good. I will tell
24 you all that what I have read so far was the -- I've been
25 reading who's depositions today? Is that Birdwell?

1 Steve Birdwell. Birdwell. I have gone through and
2 looked at the designations and the objections on
3 Birdwell. Do you anticipate that we're going to get to
4 that today?

5 MR. MATHISON: Probably, yes.

6 THE COURT: Okay. And right now, I'm going through
7 Cary Kelley. And then, I'm assuming I need to go through
8 Mr. Breed's. Is that correct?

9 MR. MATHISON: Definitely, your Honor. Yes.

10 THE COURT: Okay. I figured as much. Who else do I
11 need to look at or review evidence? Just those --

12 MR. MATHISON: That's those three.

13 THE COURT: Okay. And how far are you hoping to get
14 today, as far as your case? And I guess my question is,
15 is, is how much filler are you going to have the next
16 day, tomorrow?

17 MR. MATHISON: I think I may have all but one or two
18 witnesses today.

19 THE COURT: Okay.

20 MR. MATHISON: I'm going to try and fill up
21 everybody's plate. Maybe four, five, six, depending upon
22 how fast it goes.

23 THE COURT: Okay. I know that reading a deposition
24 is going take some amount of time. Have you gone ahead
25 and figured out how you're going to read? If you read,

1 are you going to have your son read? Or how are you
2 going to do that?

3 MR. MATHISON: I think that I would have my son
4 read, or actually, I prefer to have somebody else, but
5 that would be fine. The reason is, the timbre of our
6 voices is almost identical.

7 THE COURT: Okay.

8 MR. MATHISON: And consequently, he sounds like me;
9 I sound like him. Exactly which one is which is
10 difficult, so.

11 THE COURT: Okay. Okay. Well then, you might want
12 to -- they're all writing.

13 MR. MATHISON: Nobody looks eager. Let's put it
14 that way.

15 THE COURT: Okay.

16 MR. HALIO: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. HALIO: I'm kind of hazy on where we stood on a
19 couple of the items in the motion in limine.

20 THE COURT: Um-hmm.

21 MR. HALIO: Having to deal with other so-called bad
22 acts, for lack of a better description.

23 THE COURT: Okay.

24 MR. HALIO: I thought they were generally ruled out,
25 but some qualification that maybe the Court wanted to

1 hear the testimony?

2 THE COURT: Okay. For what, specifically?

3 MR. HALIO: That is Section B, Numbers 7.

4 THE COURT: Um-hmm.

5 MR. HALIO: 8, 9, and 10 is kind of a catchall.

6 THE COURT: Okay.

7 MR. HALIO: And I think that's probably going to

8 come up if and when Hulbert is called, because the ticket

9 to -- given -- it was entered through Mr. Jolin, --

10 THE COURT: Right.

11 MR. HALIO: -- which was, purportedly, why he quit

12 was entered into evidence, and that's all that was talked

13 about.

14 THE COURT: Okay.

15 MR. HALIO: But I think that and the other cases

16 that we've received the ticket on will probably come up

17 in Mr. Hulbert. I didn't know if you wanted to deal with

18 that now or when it came up.

19 THE COURT: Was it the ticket that didn't come in?

20 That one, that you're talking about?

21 MR. HALIO: It would be both of them.

22 THE COURT: Okay.

23 MR. HALIO: If you hold on one second, Judge, I will

24 get it.

25 THE COURT: Okay.

1 MR. HALIO: It is -- yesterday, the one that came in
2 had to do with a Jeffrey Hall. Hall, right.

3 THE COURT: Right. It was the lights, the boy that
4 had kicked the lights, apparently. The one that we
5 didn't bring in because it was already testified to was
6 the --

7 MR. HALIO: Peck.

8 THE COURT: Pardon?

9 MR. HALIO: There's another one in by the name of
10 John Peck.

11 THE COURT: Okay. Okay. And what is that ticket
12 for?

13 MR. HALIO: Disorderly conduct, maybe.

14 MR. MATHISON: Hall was malicious injury to
15 property, and you know, what he's talking about --

16 THE COURT: No, we've already had done that. We
17 already -- that already went in yesterday, correct?

18 MR. HALIO: Just the ticket. No comment on it.
19 Just the ticket. And it wasn't -- it didn't come in. It
20 came in for I.D. only.

21 THE COURT: Okay.

22 MR. MATHISON: There's more after the fact, and what
23 that --

24 THE COURT: My understanding is, again, what I heard
25 was that the 3,450 was for restitution for the lights.

1 Or are you claiming something else?

2 MR. MATHISON: He didn't testify at all about the
3 30. He didn't have any knowledge of --

4 THE COURT: I understand. But I guess my question
5 is, is are you arguing that that is a donation versus
6 restitution? I have no idea how much those lights cost.

7 MR. MATHISON: It was not a donation.

8 THE COURT: It was not a donation.

9 MR. MATHISON: No.

10 THE COURT: It was restitution.

11 MR. MATHISON: There was an agreement reached he was
12 not to be prosecuted. He made the payments; they
13 prosecuted him anyway. Mr. Hulbert has knowledge of
14 that.

15 THE COURT: Okay.

16 MR. MATHISON: And the other one that he has
17 knowledge of is the donation --

18 THE COURT: Well, okay. Just give one moment and
19 we'll just do one at a time. I don't see that having any
20 relevance, other than you're trying to show as a prior
21 bad act of if they -- if the agreement was that he pay
22 the restitution, and they weren't supposed to prosecute
23 him, and they prosecuted him anyway?

24 MR. MATHISON: That's correct.

25 THE COURT: Okay. I'm just, Mr. Mathison, I'm just

1 having a hard time finding that relevant. If you can tie
2 it up for me. Again, I mean, two things could have
3 happened, obviously. They could have intentionally
4 prosecuted him anyway, despite the agreement. Or
5 secondly, they could have erroneously prosecuted him.
6 Although, I'm not quite sure how they'd do that, because
7 they're the ones that actually bring the cases. So I
8 think it's like a bad check and I'm sorry we took care of
9 and sent in. And more of a bad check to actively go down
10 and prosecute it, so.

11 MR. MATHISON: They did both, basically. And what
12 I'm trying for, obviously, is the state of the
13 defendant's mind is important to prove constitutional
14 actual malice. And the *Metts* case says it's the totality
15 of the circumstances on the whole record.

16 THE COURT: Doesn't it have to be relevant, though?
17 I still think it has to be relevant. And that's why I
18 let in, you know, the things like harassing Mr. Coffey
19 for trespass, and the towing of the mother's car, and I
20 think all of that goes to Maureen Coffey. And certainly,
21 was raised in her letter to the Commission. So I think
22 that's all fair game.

23 I'm thinking in the *Metts* case, the actual malice
24 portion that you're allowed to prove has got to be
25 something at least relevant.

1 MR. HALIO: Your Honor, if you want to take that
2 out, I mean, you know, any bad act at any time? I mean,
3 why should it be limited to a month or two before it
4 happened?

5 THE COURT: I'm guessing he's limiting to just Mr.
6 Breed's duties as to the security. I don't mean to put
7 words in your mouth, but I'm guessing that's what you're
8 doing.

9 MR. MATHISON: That's correct. And I'm limiting in
10 terms of the time that he was so disposed to write this
11 letter, which is on or about June 6th.

12 THE COURT: Um-hmm.

13 MR. MATHISON: That arrest to which Mr. Jolin made
14 reference took place two days before, on June 4th.

15 MR. HALIO: Well then, why limit it to two weeks?
16 Why not 20 years? I mean, why didn't every bad act
17 somebody's ever committed bear on state of mind under
18 that logic? It just doesn't have anything to do with it.
19 I think you're thinking is right, though.

20 THE COURT: And that's where my -- I just love it
21 when attorneys finally say one thing is right. I don't
22 see it relevant, but I will say this. If, for some
23 reason, something comes out in the testimony, it's so
24 hard for me to literally foreshadow what's going to
25 happen and what's going to be said, where I may let it

1 in. I can just tell you that, as of right now, I just
2 don't see the relevance of it to this case.

3 If it was a similar act, like what they had done
4 with, I guess, -- if it were a similar act in some way
5 maybe that how they prosecuted Otis Coffey or, you know,
6 there's got to be a little more connection. There's just
7 got to be something there for me. So, as of right now, I
8 don't think we need to get into it, unless --

9 Again, and I will say this. And I'm not sure,
10 again, what your position is on calling Mr. Breed, but if
11 he puts his character an issue in this case, you can have
12 at it. And I have told you that all along. I think if
13 he opens that door, I think you can lay out every bad act
14 they've ever had from the time he was, you know.

15 MR. MATHISON: I already have in the deposition.

16 THE COURT: Okay.

17 MR. MATHISON: And I don't think he's going to
18 testify.

19 THE COURT: Okay.

20 MR. MATHISON: And frankly, with respect to a number
21 of his bad acts, he doesn't recall his thought process.
22 That's something that's repeated in his deposition 35, 40
23 times, maybe.

24 THE COURT: Okay. All right. Well, I haven't read
25 his deposition yet, so. Again, I am going to assume, in

1 that deposition, you have some questions, and he in some
2 way states that he does a good job; he runs a tight ship;
3 that type of thing? Does he, Mr. Mathison?

4 MR. MATHISON: Yes.

5 THE COURT: I haven't read it, again, so I'm
6 assuming he does. And I think, if that's the case, then,
7 I do think it makes it fair game. I just need it to be
8 close enough. But if you're telling me he does that,
9 again, a little difficult that it's coming in through a
10 deposition, but.

11 MR. MATHISON: The reason it's coming in is they
12 won't assure me they're going to call him. All right.

13 THE COURT: Well, you can just call him.

14 MR. MATHISON: I know, but I don't want to.

15 THE COURT: You don't think you can do it anyway?

16 MR. MATHISON: Well, let me see if I can put it this
17 way. He was difficult in his deposition, and I couldn't
18 get him to say much of anything the first day. I had to
19 come get a deposition he'd already given in the Klippel
20 case --

21 THE COURT: Um-hmm.

22 MR. MATHISON: -- to find out what I needed to know.
23 And only with that cattle prod could I force him down the
24 road to actually admitting some things.

25 THE COURT: Okay.

1 MR. MATHISON: So the answer is, I think that --

2 THE COURT: Your deposition is better than what you
3 think you can get out of him on the stand?

4 MR. MATHISON: It certainly took a long time, and it
5 took two, basically, two trips to the plate to do it.

6 THE COURT: Yes?

7 MR. HALIO: The only other issue, your Honor, is
8 again, this issue of the late added witness, Mr. Sonberg.
9 We would, again, renew our motion to exclude him on the
10 ground that he has never been mentioned in answers to
11 interrogatories, and never covered by any sort of a broad
12 designation, like some of these other people, like all
13 the people from the Town of Hilton Head or all the people
14 from Sea Pines.

15 THE COURT: I actually read Maureen Coffey's
16 deposition testimony yesterday, and it wasn't just a
17 slight mentioning of a -- I think it he was called
18 someone else, but then it was Dick Sonberg. It was two
19 pages about Dick Sonberg. So, while I agree that they
20 may not have designated him as a witness, they certainly
21 talked about him. And it was certainly something -- I
22 think there was even a mention of, well, you need to go
23 talk to him. And it may have been Ms. Coffey suggested
24 that, if you want to know, you maybe better to talk to
25 him. So whoever was taking her deposition, I can't

1 remember.

2 So, I mean, it wasn't just a name thrown out there;
3 it was -- there was a lengthy discussion about him.
4 Again, you're right. It appears that they didn't
5 designate him, but I think it is what it is. And quite
6 frankly, this whole case, despite having gone on for four
7 years, it appears that there's a lot of stuff that hasn't
8 been done. And so, I think for completeness, I'm going
9 to let it in.

10 And again, I will tell you Mr. Halio, if Mr. Breed's
11 deposition reads like I'm assuming it does, -- and maybe
12 I should be grab it back right now. If he puts his
13 character at issue, and that he does a good job, I am
14 going to let them go into things like prosecuting and
15 you're not supposed to be. But again, I haven't seen the
16 deposition. I haven't read it. So typically, I wouldn't
17 have to deal with that unless he got on the stand and
18 said anything yet, so.

19 MS. JONES: Well, to that end, for the record, we
20 also have the issue of the position. And what we have in
21 that regard, actually, when you go back and you look at
22 the pleadings, is the interrogatories that we propounded,
23 and then we have these answers. There was a motion to
24 compel filed by CSA on April the 27th. And then you
25 entered an order on June the 23rd, granting the motion to

1 compel. And despite that, we have not only no listing of
2 Mr. Sonberg on any catchall; but we have, in response to
3 our question concerning expert witnesses, a response that
4 says:

5 *The plaintiff hadn't retained any expert, reserves*
6 *the right to employ an expert and would supplement if*
7 *necessary.*

8 And then says: *That one or more -- the physicians*
9 *and other medical providers may well be called. At this*
10 *point, however, the plaintiff does not know the subject*
11 *matter about which any witness may be requested to*
12 *testify as an expert.*

13 So, to the extent that that has never been
14 supplemented, and now they want to call --

15 THE COURT: Did you file a subsequent motion to
16 compel the actual -- I mean, he responded, but didn't
17 respond in full as he should have. So my question is,
18 did you file another motion to compel?

19 MS. JONES: No. No. This response from -- this
20 response from Mathison was April the 25th, 2011.

21 THE COURT: Oh.

22 MS. JONES: Your order granting the motion to compel
23 was June the 20 -- June the 23rd, 2011.

24 THE COURT: 2011? Okay.

25 MS. JONES: So it was April, May, two months

1 afterwards.

2 MR. MATHISON: May it please the Court. They didn't
3 move to compel me to give them any of that information.
4 There's 34 pages to my answers to interrogatories,
5 including what they asked for, which was every physician
6 she had seen for the previous five years.

7 THE COURT: And do they have --

8 MR. MATHISON: We gave them all.

9 THE COURT: And do they have the records for --

10 MR. MATHISON: They did.

11 THE COURT: It sounds like the one you're upset
12 about or complaining about, is Dorsner, correct?

13 MS. JONES: Well, we only have -- the record that we
14 have for Dorsner, --

15 THE COURT: Um-hmm.

16 MS. JONES: -- for Mr. Dorsner, the only record we
17 have from him, we have two visits prior to the June, 2008
18 letter, where she sought some treatment. And then one
19 time in 2008, for a cold. June of 2010 for allergies.
20 September of 2010 for sinus and allergies and a cough.
21 And then March the 23rd, 2011, the allegation that she's
22 made here for weight gain.

23 THE COURT: Okay.

24 MS. JONES: And there was a --

25 THE COURT: But you have those records.

1 MS. JONES: Those are the only records that ever
2 got.

3 THE COURT: Okay.

4 MS. JONES: And the only information contained in
5 that record about the weight gain is a referral to
6 another physician. So based on that, and the fact that,
7 in the answer, the plaintiff committed to supplement the
8 answer with what the opinion would be of the expert, it's
9 never been supplemented. There --

10 THE COURT: If I understand you, too, she gave you
11 the damages, and I think the damages for Dorsner.
12 Dorsner's 146, is what I remember the number being, which
13 is -- couldn't be more than one or two visits, I can't
14 imagine, I can't imagine, for a doctor. But okay.

15 MS. JONES: Well, we don't really -- we didn't have
16 a breakdown of her medical costs, her treatment, from Dr.
17 Dorsner. The only thing that we, on our own subpoena got
18 from Dr. Dorsner, were these couple of office visits over
19 the course of the years. We've never been given any
20 information from the plaintiff about what they propose to
21 ask him, what he proposes to say about it, or what the
22 basis is for him saying about it, giving the opinion.

23 THE COURT: I think Mr. Mathison admitted, I believe
24 it was Tuesday, that he didn't know he was going to say
25 either.

1 MR. MATHISON: I don't. All I know is that he's
2 going to say that Maureen's symptoms are stress-related.
3 And frankly, I didn't figure we'd be arguing about things
4 of this detail of this magnitude, but we are.
5 Consequently, the way I would put it is this. We made a
6 production that was over a hundred pages of medical,
7 which is what we had. The production consisted of
8 documents that we can't use in front of the jury, because
9 they are explanation of benefits, materials that came
10 from Ms. Coffey's insurance.

11 THE COURT: Um-hmm.

12 MR. MATHISON: Andy then sent me a letter saying
13 that he was going to serve every doctor with a subpoena
14 and subpoena duces tecum for every record they had of
15 financial.

16 THE COURT: Which is what you do in every case.

17 MR. MATHISON: And what they did is -- that's the
18 record they subpoenaed.

19 THE COURT: Okay.

20 MR. MATHISON: Because we were sent copies of it.
21 All right.

22 THE COURT: When did you send that subpoena, Mr.
23 Halio? And where did you get the records from Dr.
24 Dorsner?

25 MR. HALIO: I don't know what the date was.

1 THE COURT: I mean, are we talking about a year ago?
2 Are we talking about three years ago?

3 MR. HALIO: It would have had to have been --

4 MS. JONES: Yeah, in 2011.

5 THE COURT: It was in 2011?

6 MS. JONES: Right. And there's nothing in the
7 records that would indicate what, purportedly, I guess
8 he's going to get on the witness stand and indicate now.
9 There's nothing in the --

10 THE COURT: I guess my question to you is, is that
11 there's nothing that would have prevented you that, had
12 someone gone through and read his records, and obviously,
13 not until he got to what -- arguably, if he even has
14 records, where he says that there is some kind of stress.
15 If someone had gone through and looked at it, then you,
16 obviously, could have deposed him.

17 MS. JONES: Right. If we had known he was going to
18 be asked as an expert what his opinion is.

19 THE COURT: And you want me to --

20 MS. JONES: But he would never --

21 THE COURT: And you only subpoenaed his records
22 because Mr. Halio subpoenaed every doctor she listed that
23 she had ever seen in the last five years.

24 MS. JONES: That's right.

25 THE COURT: Okay.

1 MR. MATHISON: And we --

2 MS. JONES: That's correct.

3 MR. MATHISON: There's ten pages of medical
4 information.

5 THE COURT: I thought you listed --

6 MR. MATHISON: We also sent --

7 THE COURT: Correct me if I'm wrong. I thought you
8 listed in your interrogatories you may call any and all
9 treating physicians of Maureen Coffey. Did you not do a
10 catchall? And quite frankly --

11 MR. MATHISON: Yes, there is. But it's at the
12 bottom of our witness list, and not off the bottom of our
13 expert witness list. It says that all of the physicians
14 listed --

15 MS. JONES: Fact witnesses.

16 MR. MATHISON: -- in the subsequent paragraph may be
17 called as witnesses.

18 THE COURT: Okay.

19 MS. JONES: Not as experts. Here's the answer to
20 the expert witness question. There's nothing in there,
21 other than saying they've not identified any expert, and
22 they will supplement it if they do.

23 THE COURT: All right. Let's do this. Do you plan
24 on bringing Dorsner today?

25 MR. MATHISON: I do. He would be --

1 THE COURT: What time is he going to be here?

2 MR. MATHISON: He's going to be here at 10:00 or
3 10:30.

4 THE COURT: Is that going to be your next witness
5 or?

6 MR. MATHISON: It would be if he gets here on time,
7 yes.

8 THE COURT: Okay. What I'm going to do is this.
9 And again, before you put him up on the stand -- you
10 don't even know what he's able to say.

11 MR. MATHISON: I did speak to him yesterday, and
12 this is what he's going to say. He's going to say that
13 he treated Maureen on four or five occasions; that she
14 complained of stress; that stress has certain
15 manifestations; that the ones that she suffers from are
16 stress-related. That's what he's going to say.

17 THE COURT: And is he going to say that this
18 publication is, within a reasonable degree of medical
19 certainty, this publication is one of the things that
20 causes her stress?

21 MR. MATHISON: She did not disclose the publication
22 to him. She just said she had stress.

23 THE COURT: Well then, when he gets here, we'll just
24 go ahead and do a proffer, because I don't know how
25 you're going to put that testimony in. I don't see how

1 it's relevant in any way unless he can say that this is
2 one of the causes of her stress.

3 He says he'll state to a reasonable degree of
4 medical certainty. I don't think he has to say most
5 probably this is it. I don't think he has to reach that
6 standard. But I think he has to be able to say, within a
7 reasonable degree of medical certainty, this publication,
8 this what's been going on, is a cause of her stress. And
9 if he can't say that, I'm not sure how in the world
10 you're going to claim damages, because you can't show
11 causation.

12 MR. MATHISON: Well, I can ask him, your Honor.

13 THE COURT: Well, what we're going to do is this.
14 When he comes, we'll take a break. And I'm going to let
15 you all go talk to him and see what he says.

16 MR. MATHISON: Okay.

17 THE COURT: I think it might be a good time to just
18 let you all go back and sit in the room. And we can
19 certainly do it out here, but why not you all go back
20 there and see exactly what it is. Figure out what he's
21 going to say. We'll come up here and we'll do a proffer.
22 And then, at that point, I'll decide whether or not he
23 can testify. Okay?

24 Do you have any other medical experts coming?

25 MR. MATHISON: I could subpoena one.

1 THE COURT: I'm asking are you? Just not if you
2 can, but are you.

3 MR. MATHISON: No, I do not.

4 THE COURT: Okay. So Mr. Mathison, am I correct
5 that the counselor that saw Ms. Coffey did know about it?

6 MR. MATHISON: She did. She's got a policy, which
7 they know about, where she doesn't come to court.

8 THE COURT: Okay.

9 MR. MATHISON: She makes her patients sign it.
10 Consequently, if you serve a subpoena on her and drag her
11 to court, there's no telling what she would say. But if
12 we continue going down this road, we're going to call her
13 and see if we can get her to come anyway.

14 THE COURT: I guess what I was just trying to figure
15 out is --

16 MR. MATHISON: She does know what the stress is
17 related to, your Honor.

18 THE COURT: Okay.

19 MR. MATHISON: I mean, she could testify to that.

20 THE COURT: Okay. Is the jury all here? No? Will
21 you check for me?

22 You all, one thing I need on -- and if we could do
23 it on the record or not on the record. I need someone to
24 clarify, again, exactly what Mr. Kelley's role is for
25 which organization and both. I understand that he is the

1 -- what I see to be the CEO Of CSA. But I need to know
2 as far as the other property owners association. I
3 understand Mr. Breed reports to him, but it's not really
4 clear as to the other association that you're alleging,
5 Mr. Mathison, that he wears the dual hats. It's not
6 clear in his deposition. I'll put it that way.

7 MR. MATHISON: He's the --

8 THE COURT: So, can you maybe help me with that.

9 MR. MATHISON: He's the only administrator of the
10 Association of Sea Pines Plantation Property Owners.
11 They have one other employee, and that person is involved
12 in covenant enforcement.

13 THE COURT: Okay.

14 MR. MATHISON: All right? There are only two people
15 that are employed by the Association. The rest are all
16 volunteers.

17 THE COURT: Okay. And that is the association that
18 you are not required to be a part of.

19 MR. MATHISON: That's correct.

20 THE COURT: You're not required. You can join it if
21 you want to.

22 MR. MATHISON: It's voluntary.

23 THE COURT: Okay. And how many people that -- never
24 mind. Do they have their own board?

25 MR. MATHISON: They do.

1 THE COURT: They have their own board.

2 MR. MATHISON: They do. And --

3 THE COURT: And do any of their board members
4 overlap between that and the CSA board?

5 MR. MATHISON: They do.

6 THE COURT: And who is on those boards?

7 MR. MATHISON: I'm not exactly certain as to the
8 ASPPPPO members.

9 THE COURT: Okay. And also, too, my question is, is
10 Mr. Kelley a voting member of CSA, or just an
11 administrator?

12 MR. MATHISON: He's not. He's an administrator. He
13 does not vote on the board.

14 THE COURT: Is he a voting member of the Association
15 of Sea Pines Plantation Property Owners?

16 MR. MATHISON: To the best of my knowledge, I don't
17 believe so, but I can confirm that, because I've got
18 minutes of their meetings.

19 THE COURT: And quite frankly, I'm just still
20 thinking for the civil conspiracy portion of it, in light
21 of what I've read so far in Mr. Kelley's deposition.
22 Okay. All right.

23 Is there going to be anything -- who do you
24 anticipate putting up next, Mr. Mathison? I know you
25 said Dr. Dorsner if he's here. But of course, I need to

1 give you all an opportunity to speak with him.

2 MR. MATHISON: Mr. Hulbert after Dr. Dorsner.

3 THE COURT: Mr. Hulbert. Okay. And is he here?

4 MR. HALIO: Your Honor, you remember we're in the

5 middle of a witness.

6 THE COURT: I know we are. I know it's after we

7 finish up with Florencio. Is she here? There she is.

8 Oh, the jury's all here. All right. Let's go. Perfect.

9 All right, Mr. Mathison, if you all are ready, the

10 defendants are ready, let's get going this morning.

11 BAILIFF: May I appreciate.

12 THE COURT: Yes, sir.

13 OFF-THE-RECORD DISCUSSION, OUT

14 OF HEARING OF JURY, BETWEEN THE

15 COURT AND BAILIFF.

16 MR. HALIO: Your Honor?

17 THE COURT: Yes, sir?

18 MR. HALIO: I May have jumped the gun a little bit.

19 I don't see the witness.

20 THE COURT: They told me she was here. MR.

21 HALIO: She is?

22 THE COURT: I thought they told me Florencio was

23 here. I discussed that.

24 MR. MATHISON: Trust me, I haven't spoken to her, so

25 I don't know.

1 THE COURT: Is she here to take the stand?

2 BAILIFF: No, your Honor.

3 THE COURT: Well, hold the jury back, then, a
4 minute. She's not here. She's on the stand. I thought
5 I just asked is Florencio here. I thought you all told
6 me that she was. Hold on.

7 Good morning, Detective. Come on up.

8 MS. FLORENCIO: Do I need -- do I need to be sworn
9 or anything?

10 THE COURT: What I'm going to do, Detective
11 Florencio, is I'm just going to remind you in front of
12 the jury that you're under oath. I'm not going to re-
13 swear you.

14 MS. FLORENCIO: Okay.

15 THE COURT: I think we're fine. Okay?

16 MS. FLORENCIO: Okay. Thanks.

17 THE COURT: Just to let you know. Okay? I need you
18 to just acknowledge, okay?

19 MS. FLORENCIO: Yes, ma'am.

20 THE COURT: Okay. Just go ahead and bring them now.

21 BAILIFF: The jurors are entering, your Honor.

22 JURORS ENTER COURTROOM 10:02 A.M.

23 BAILIFF: The jury is seated, your Honor.

24 THE COURT: Thank you. Good morning ladies and
25 gentlemen. It's good to see you all. At this time we

1 Q Do you agree that Otis Coffey was a person worth
2 looking at in the investigation?

3 A Yes, sir.

4 Q Let me hand you what has been marked as Defendants'
5 Exhibit Number 4. Do you know what that is?

6 A It is a criminal history.

7 Q Is that something that you obtained as a result of
8 your being in charge of this investigation?

9 A Yes, sir.

10 Q And who is that a criminal history of?

11 A This is the criminal history for Mr. Coffey.

12 Q Otis Coffey?

13 A Yes, sir.

14 Q All right. And would you tell the jury what you
15 found when you pulled Otis Coffey's rap sheet?

16 A That he had been charged quite a bit of time ago with
17 property crimes, but there was no convictions.

18 Q What property crimes are you talking about?

19 A He had been charged with burglaries, grand larcenies.
20 I have to look back at the record. And also, substance
21 abuse charges.

22 Q Okay. And when are the -- when are the dates of the
23 charges? What's the stamp at the top of the charges in
24 the document you're looking at?

25 A I believe that, through the deposition, we determined

1 A Yes, sir. It appears so.

2 Q The property crimes and the drug charges, correct?

3 A Yes, sir.

4 Q Okay. And you pulled this as part of your
5 investigation, right?

6 A Yes, sir, I did.

7 MR. HALIO: Your Honor, this was previously been
8 marked as Defendants' Exhibit Number 4 for
9 identification. We would now move to admit it into
10 evidence.

11 MR. MATHISON: I don't object.

12 MR. HALIO: No objection.

13 MR. MATHISON: No.

14 MR. HALIO: Without objection.

15 THE COURT: Without objection.

16 COPY OF DOCUMENT REFERRED TO AS
17 CRIMINAL RECORD OF OTIS COFFEY
18 MARKED DEFENDANTS' EXHIBIT
19 NUMBER 4, ADMITTED AS EVIDENCE.

20 BY MR. HALIO:

21 Q As a result of that, you felt like he was a person
22 worth looking at, correct?

23 A Yes. A person of interest, yes.

24 Q All right. Now, with regard to the chase between Mr.
25 Jolin and the person on the bicycle on May 20, 2008,

1 A Well, we still, to this day, have similar cases.
2 Q But this particular pattern, this particular cluster
3 of activity, stopped.
4 A I closed out all my case files.
5 Q You closed out your case file.
6 A Yes, sir.
7 MR. HALIO: Thank you, ma'am.
8 MEREDITH FLORENZIO
9 RE-DIRECT EXAMINATION, MR. MATHISON:
10 Q Just a few quick questions on redirect, Ms.
11 Florencio. You went through Mr. Coffey's record. And is
12 there any indication of a property crime, like breaking
13 and entering or burglary, since 1992?
14 A No, sir.
15 Q So roughly 20 years ago?
16 A Yes, sir.
17 Q And the 1992 charges that were brought against him,
18 were they dismissed?
19 A Yes, sir.
20 Q So effectively, we're looking for someone who engages
21 in burglary, if at all, in 1992, and evidently
22 successfully enough that it was dismissed in 1992, and
23 nothing in the interim. Is that right?
24 A Yes, sir.
25 Q Is there anything in Mr. Coffey's criminal record

1 that even suggests that he was a peeper, or that there
2 was some sexual proclivity for the crimes that he was
3 committing?

4 A No, sir.

5 Q At all?

6 A No.

7 Q Is that correct?

8 A No, sir.

9 Q Why would he be a suspect in peeper cases?

10 A Because the peeper cases, there was also burglaries
11 and property crimes. So we just actually pulled everyone
12 that we had that had any type of history on, because we
13 had no suspects at that time. So he was just a person of
14 interest like everyone else.

15 Q Okay. In response to Mr. Halio's question, did you
16 mean to limit yourself in terms of what you were in
17 charge of in this investigation? It wasn't just property
18 crimes; was it?

19 A Correct.

20 Q It also was the peeper cases.

21 A Yes, sir.

22 Q Do you know whether Mr. Breed had a theory that the
23 peeper cases were related, because the peeper was just a
24 burglar looking for places to break in the next time?

25 A I believe in one of the emails that is mentioned.

1 Q Is that your experience, that peeping Toms and
2 burglars are one in the same?

3 A I can't answer that.. I mean --

4 Q Well, have you ever arrested somebody who was both a
5 burglar and a peeping Tom?

6 A No, sir.

7 Q I believe you said that you thought that Mr. Coffey
8 was the person that should have been investigated. Were
9 the other six people on the list that Mr. Breed submitted
10 to you people that you thought should be investigated,
11 too?

12 A Yes.. I did the same thing for everybody.

13 Q So everybody was basically fed from the same spoon.

14 A Yes, sir. I -- I looked at everybody just to see if,
15 in our internal system, if we've had contact with him.
16 And I did the same thing for everybody.

17 Q Did Mr. Breed submit a list with names and addresses
18 of every single property owner in Sea Pines Plantation to
19 you?

20 A I did have a disk, yes.

21 Q Was that for purposes of investigating these crimes?

22 A Actually, a lot of times, when we had burglaries, we
23 can never get a hold of the homeowners. So it was very
24 helpful if we could not get in touch with them to be able
25 to have that information.

1 Q Did you ever investigate any of the 6,000 homeowners
2 that he gave you their --
3 A No, sir.
4 Q -- addresses and phone number to?
5 A No, sir.
6 Q What was the point of giving you the C.D. full of all
7 these names and addresses?
8 A So if we had burglaries and we couldn't reach
9 somebody, if there was unsecure premise, we could
10 actually know the names of the owners of the residence,
11 maybe get in contact with them.
12 Q When I asked you during the deposition about this,
13 didn't you indicate that that was so that you could
14 investigate them, if and to the extent they were
15 suspects?
16 A I -- I don't know, sir. I'd have to look back at the
17 deposition.
18 Q Didn't you also tell me that, when the case was
19 closed, the C.D. should have been destroyed to remove any
20 evidence that the owners in Sea Pines, 6,000 strong, were
21 somehow under investigation?
22 A I would have to look at the deposition again.
23 Q Have you, in fact, destroyed the C.D.?
24 A The C.D. stayed with the case file, which was secured
25 in my office.

1 Q So it's still there?

2 A Yes, sir.

3 Q I'm handing you what has been identified as

4 Plaintiff's Exhibit 11, which I believe is the copy of

5 the report that you prepared, the revised report.

6 A Yes, sir.

7 Q And I'm asking you to put it side by side with the

8 copy that Mr. Jolin prepared. I believe you said that

9 you made a number of changes in the second page. Is that

10 correct?

11 A Not a number. Just a couple changes.

12 Q What was the most important change you made on the

13 second page?

14 A How his identification of Otis Coffey.

15 Q And is it the portion of that page that's

16 highlighted?

17 A Yes, sir.

18 Q Would you read that?

19 A *I identified the black male subject as Otis Coffey,*

20 *due to having much contact with him while I was working*

21 *the front gate at Sea Pines for two years.*

22 Q And that doesn't appear in the other report; does it?

23 A No, sir.

24 Q And your report, on the first page, also differs;

25 does it not? I'd ask you to come down, if you would, so

1 that you can look at this and show it the jury. We're
2 probably going to need a copy of the report.

3 *Suspicious activity* appears on the top of Mr.
4 Jolin's report where it says *crime*. That's not a crime,
5 right?

6 A No, sir.

7 Q So, if you're a suspect for suspicious activity,
8 you're suspected of being suspicious.

9 A Yes, sir.

10 Q Okay. What appears on the top of your report?

11 A The suspicious activity and fleeing to evade arrest
12 or detention.

13 Q That appears right there; isn't that right?

14 A Yes, sir.

15 Q On your report. And is fleeing to evade arrest or
16 detection a crime?

17 A Yes, sir.

18 Q So whoever changed the front page, turned this from
19 incident into a crime; didn't they?

20 A Correct.

21 Q And to be suspected of a crime is different than
22 being suspected of suspicious activity. Isn't that
23 right?

24 A Correct.

25 Q Did you, in fact, change the first page of that

1 report?

2 A I'm -- I'm confused, because of the depositions that
3 we did that you guys said that Jolin put the information
4 here. So I don't really --

5 Q You don't know whether you changed it?

6 A I don't remember putting that in.

7 Q What about the times that are on the two of them?

8 A Again, I don't -- I don't remember if I did that --
9 anything to the first page.

10 Q On Mr. Jolin's, what's the time indicated as the
11 inception of the report?

12 A 0011 hours.

13 Q That would be eleven minutes after midnight?

14 A Yes, sir.

15 Q And what time did he close it out?

16 A 1:11 p.m.

17 Q All right. And what is the inception on the second
18 one?

19 A It just has a beginning time of eleven minutes after
20 twelve.

21 Q And no ending.

22 A Yes, sir.

23 Q So, do you know whether this report with both of the
24 two suspicious activity and fleeing to avoid arrest or
25 detention is, in fact, the report that the Beaufort

1 County Sheriff's Office has?

2 A This is the report, yes, that we have.

3 Q And this is the one that, but for the fact that you

4 can't remember writing the crime at the top of it, --

5 A Correct.

6 Q -- is the one that you prepared. Is that right?

7 A That I left in his office, yes.

8 Q And that somebody from Sea Pines Security sent over

9 to Beaufort County Sheriff Office.

10 A Yes, sir.

11 MR. MATHISON: Thank you.

12 THE COURT: Mr. Halio.

13 MR. MATHISON: Thank you, Ms. Florenzio.

14 MEREDITH FLORENZIO

15 RE-CROSS-EXAMINATION, MR. HALIO:

16 Q Real quick. Mr. Mathison asked you a question about

17 a C.D. of property owners' names that were sent over to

18 you, and suggested that Chief Breed wanted you to

19 investigate 6,000 property owners? That wasn't why it

20 was sent over; was it?

21 A Not -- not that I believe, sir.

22 Q That would be ridiculous; wouldn't it?

23 A Yes, sir.

24 Q It was sent over to help you in case there was a

25 problem in one of the properties, right?

1 A From what I remember, yes.

2 MR. HALIO: Thank you, ma'am.

3 THE COURT: Anything further, Mr. Mathison?

4 MR. MATHISON: No, your Honor.

5 THE COURT: Any objection to Detective Florencio

6 being excused, so she can go back to her vacation?

7 MR. HALIO: None from the defense.

8 THE COURT: From the plaintiffs? All right. You

9 are excused.

10 MS. FLORENZIO: Thank you, ma'am.

11 BY THE COURT:

12 THE COURT: Ladies and gentlemen of the jury, we are

13 going to take a brief recess at this time. Again, do not

14 discuss this case. It wouldn't be appropriate to do so

15 at this time. I will get back with you. You are welcome

16 when you come back to bring water or coffee, whatever you

17 need, into the courtroom.

18 Again, go ahead and please excuse yourself and we'll

19 be with you shortly. Thank you.

20 JURORS LEAVE COURTROOM 10:37 A.M.

21 BAILIFF: The jury is clear. The door is closed,

22 your Honor.

23 THE COURT: We're going to at ease for about ten

24 minutes, so.

25 OFF THE RECORD 10:40 A.M.

1 BACK ON THE RECORD 10:54 A.M.

2 BY THE COURT:

3 MR. MATHISON: We know what he's going to say, and
4 we're prepared to make a proffer if you want to listen,
5 your Honor.

6 THE COURT: Okay. Mr. Halio, come on forward. Do I
7 need to wait for Ms. Jolley, you think, or are we okay?

8 MS. JONES: We're fine.

9 THE COURT: Okay. Ms. Jones, you're handling it?

10 MS. JONES: Yes.

11 THE COURT: All right. Just going to make a
12 proffer? Okay. Dr. Dorsner, come on up. We're going to
13 swear you in.

14 WITNESS SWORN.

15 THE COURT: This is Dr. David Dorsner, for the
16 record. And this is a proffer.

17 MR. MATHISON: May it please the Court. For
18 purposes of this proffer, he's a qualified medical
19 doctor. He's a physician licensed to practice in South
20 Carolina.

21 THE COURT: Dr. Dorsner, are you a general
22 practitioner or are you a -- what are you, again?

23 DR. DORSNER: I'm -- I do urgent care. I've done
24 20-some years. Board-eligible in emergency medicine.

25 THE COURT: Emergency medicine. Thank you. That's

1 what I want.

2 DR. DORSNER: Yes.

3 THE COURT: Okay. Sorry. Go on.

4 DAVID DORSNER, M.D., PROFFER

5 DIRECT EXAMINATION, MR. MATHISON:

6 Q Doctor, where do you practice?

7 A I practice at Cross Island Medical Center, which is
8 157 William Hilton Parkway, Hilton Head, South Carolina.

9 Q Have you seen my client, Maureen Coffey?

10 A Yes, I have.

11 Q Did you commence treating her at least as far back as
12 2008?

13 A Yes, I have.

14 Q Has Ms. Coffey come to you complaining of stress?

15 A Yes, sir.

16 Q Do you know what her symptoms of stress are?

17 A Yes, I do.

18 Q Can you tell the Court what stress has been
19 manifested in Ms. Coffey?

20 A Basically, three items: headaches, weight gain, and
21 neuropathy.

22 Q Neuropathy, for those of us like me who don't
23 understand these things, is facial numbness. Would that
24 be what that is?

25 A Facial numbness. Matter of fact, they extend it to

1 I wouldn't be sleeping at night. Headaches, yes, of
2 course. You know, it's a personal attack on your
3 character that you would experience as judge.

4 THE COURT: Right.

5 DR. DORSNER: Knowing it not to be true, knowing
6 that that's your job.

7 THE COURT: What my question becomes -- and this
8 makes it a little more difficult. How would anyone in
9 any case prove that stress is related -- or the stress
10 that they're suffering from is caused by a specific
11 incident? Because the simple fact is, you would always
12 state that there are other causes or pre-existing causes,
13 because everyone -- everyone undergoes stress, because no
14 one lives in a bubble. They have families; they have
15 marriages; they have jobs.

16 I guess my question is, is what is required, and has
17 anyone done the research, what is required? I think it
18 would be one thing when we're talking about causation of
19 you were in an automobile accident; you are, you know,
20 pushed back, forward, and you go to the emergency room
21 complaining of soft tissue injury. That, I think, is
22 easier for you to say, well, if you were in an auto
23 accident this time, and two hours later you were
24 suffering from this problem, and you didn't have it
25 before, I think you can pretty easily say that, yes, the

1 result of that trauma is what's causing the pain.

2 I'm not so sure, though, in a case such as stress,
3 if any doctor could ever say, could ever say that. But
4 of course, we allow the complaint and the damages of
5 stress in cases. So I'm trying to figure out has anyone
6 done any research?

7 MR. HALIO: Your Honor, I think what you've hit on
8 is that we've got the wrong field here. You need to have
9 a psychologist, is what you need. I think that's how you
10 would prove it.

11 THE COURT: It really -- all he's doing is verifying
12 that she complained of stress. And quite frankly, I
13 don't think -- I don't think that the bill, of course,
14 would be appropriate in this case as a piece of damage
15 for \$146.00 for her visit to him, because he can't say
16 that this incident did it. So I don't think that would
17 be appropriate.

18 The question becomes is, then, can he testify that
19 she complained about the stress and -- I don't know that
20 it -- I tend to agree with Mr. Halio. I think what we
21 need is Dr. Geiger. I'm just not so sure that -- I'm not
22 so sure that we want to ride this on this.

23 MR. MATHISON: Well then, I'll serve a subpoena on
24 Dr. Geiger, and we'll see what we get.

25 THE COURT: Do whatever you do.

1 MR. MATHISON: All right.

2 THE COURT: Okay. All right. Well, we've made the
3 proffer. At this point, I just, Dr. Dorsner,
4 respectfully, -- obviously, I know you and I know you are
5 a respected and good doctor. Literally, the standard, as
6 you understand, is I have to have you to be able to say
7 within a reasonable degree of medical certainty that your
8 treatment was caused as a result of the publication of
9 this letter, and that's where I'm having the hard part.

10 DR. DORSNER: I didn't even know it existed, so.

11 THE COURT: And that's kind of where we are.

12 DR. DORSNER: Um-hmm.

13 THE COURT: Which makes it a bit difficult for me.

14 DR. DORSNER: I understand.

15 THE COURT: And I just think it's a bit of a
16 stretch, particularly when she didn't tell you that. I
17 think it would be one thing, and I think you could
18 surmise if she had related to you, but she did not.

19 DR. DORSNER: Yeah.

20 THE COURT: So, at this point, I'm not going to
21 allow him to testify. Okay. So I'm going to go ahead
22 and excuse Dr. Dorsner, and release him from the
23 subpoena. I appreciate you being here, sir.

24 DR. DORSNER: Thank you.

25 THE COURT: Thank you.

1 MR. MATHISON: Thank you, Doctor.
2 THE COURT: Subject to your objection, Mr. Mathison.
3 MR. MATHISON: I understand.
4 THE COURT: Okay.
5 MS. JONES: I'm just going to get the medical
6 records back.
7 THE COURT: Sure. Mr. Mathison, you can also tell
8 Dr. Geiger that if she really does have a problem with
9 this, I understand what her policy is, from what you've
10 just told me; you might want to explain to her that as
11 far as the subpoena, she is required to come and the
12 judge will have to set it up if you need to go get her or
13 him or whatever if she doesn't come. I'd maybe suggest
14 your client call her, as well.
15 MS. COFFEY: I already did.
16 THE COURT: Okay.
17 MR. MATHISON: She's been called on multiple
18 occasions.
19 THE COURT: Okay. All right. Where are you going
20 next?
21 MR. MATHISON: I was going to Mr. Hulbert, but I
22 need just a moment if you wouldn't mind.
23 THE COURT: Sure. We'll take five minutes and then
24 we'll go. Okay?
25 OFF THE RECORD 11:19 A.M.

1 BACK ON THE RECORD 11:35 A.M.

2 BY THE COURT:

3 THE COURT: I will tell you Mr. Mathison, my law
4 clerk is continuing to do some research on our issue with
5 Dr. Dorsner.

6 MR. MATHISON: May it please the Court.

7 THE COURT: So, if anything comes differently and I
8 change my mind, we'll let you know.

9 MR. MATHISON: Not to beat a dead horse, but when I
10 talked to Dr. Dorsner initially, he said that as a result
11 of the business reversal, he knew that he could say to a
12 substantial medical certainty that this sort of
13 embarrassing occurrence -- I don't want to say what the
14 occurrence is --

15 THE COURT: I know what it is, but I have a hard
16 time believing Dr. Dorsner has to get up here and talk
17 about that in front of a jury and somehow relate his
18 experience to Judge Coffey's experience.

19 MR. MATHISON: I understand.

20 THE COURT: Okay.

21 MR. MATHISON: Your Honor, before we bring the jury
22 back, Mr. Halio addressed one of the matters, which is
23 the Hall case, with respect to whether I could go into
24 that. And there's another case that I believe that I am
25 going to go into, and I want to make sure that this does

1 not violate your order.

2 In the deposition testimony of Mr. Breed and Mr.
3 Kelley that I'm going to read into the record, I asked
4 them specifically whether there was a program ongoing
5 where they had their security company writing tickets,
6 and effectively not prossing those tickets in return for
7 contributions to the Sea Pines Museum and Forest Preserve
8 Foundation.

9 The witness I'm putting up did, in fact, become
10 aware that there was an ongoing situation where tickets
11 were being not prossed and contributions were being made.
12 And as a consequence, he went to see Mr. Kelley and told
13 him that it had to stop. And in depositions, Mr. Kelley
14 denied that he had the meeting. He denied that he knew
15 anything about it. Mr. Breed denied there was a meeting,
16 or that he knew anything about it.

17 One of the documents that I --

18 THE COURT: So you asked both of them about it in
19 their depositions?

20 MR. MATHISON: That's correct. And I'm going to ask
21 the jury to listen to it. And this witness has the
22 evidence that would contradict what they said in their
23 depositions, because he has a copy of a letter written by
24 Mr. Kelley, where the money is sent back to the person
25 who made the contribution in lieu of paying the ticket.

1 THE COURT: I'd love to see the letter. The only
2 problem I have with that -- I think it's fair game. My
3 question just becomes you tend to be putting the cart
4 before the horse in all of this. I understand you intend
5 on reading their deposition, but typically, you would be
6 able to use that as rebuttal testimony, and then there
7 would be no issue about whether or not he has listed them
8 as a witness.

9 MR. MATHISON: There's no issue about listing
10 witnesses.

11 THE COURT: You listed this person as a witness?

12 MR. MATHISON: Yes, ma'am.

13 THE COURT: Okay.

14 MR. MATHISON: Disclosed in the 34 pages of answers
15 to interrogatories.

16 THE COURT: What is the first -- what is the first
17 piece of paper? I can't quite tell what it is. I see
18 the letter from the attorney, but.

19 MR. MATHISON: There's also a letter from Mr. Kelley
20 in response.

21 THE COURT: I'm sorry. That's what I needed to see
22 I just -- I didn't know what the first one was. Hang on
23 a second. Well, here's a letter from the Forest Preserve
24 to Mr. Kelley sending it back saying we're not accepting
25 it; it's not appropriate.

1 MR. MATHISON: That's after the conversation with
2 Mr. Hulbert.

3 THE COURT: Okay. What conversation, again, with
4 Mr. Hulbert?

5 MR. MATHISON: Mr. Hulbert became aware that this
6 was a problem. He was instructed by the Town to go down
7 and talk to Mr. Kelley. Mr. Kelley said that he would
8 investigate; and that as a product of the investigation,
9 if there was a problem, they would, effectively, restore
10 the money and not pros the tickets. And I believe they
11 did that. Those are Mr. Hulbert's notes.

12 But in the deposition, they denied any knowledge of
13 the incidents; said it didn't happen.

14 MR. HALIO: Well, actually, he specifically said I
15 don't recall this.

16 MR. MATHISON: Which one?

17 MR. HALIO: Mr. Kelley.

18 THE COURT: Do you have any testimony from any
19 deputies, Mr. Mathison, that this has occurred more than
20 this one single time?

21 MR. MATHISON: From the deputies?

22 THE COURT: I'm sorry. Not deputies. I apologize.
23 Security guards.

24 MR. MATHISON: No, but I didn't plan on asking the
25 security guards that did that, since they say it's an

1 isolated instance. The exact deposition testimony,
2 reading from Mr. Kelley's deposition is the following:

3 THE COURT: I say that he -- I hear he denies it; I
4 hear Mr. Breed denies it; and in the letter from Brian
5 Hulbert to Greg DeLoach and Tom Fultz, he says that
6 management at CSA wasn't aware of it. So my question is,
7 how are you going to prove that they were aware or knew
8 of it when they --

9 MR. MATHISON: That's because management said they
10 weren't aware of it.

11 THE COURT: Okay. Management what?

12 MR. MATHISON: Management said they weren't aware of
13 it when they responded to Mr. --

14 THE COURT: That's what I'm saying. So how are you
15 going to prove it, is my point, again.

16 MR. MATHISON: They denied that the conversation
17 took place with Mr. Hulbert.

18 THE COURT: Oh, in his deposition, he totally denies
19 that ever occurred; that this ever happened.

20 MR. MATHISON: Yes.

21 THE COURT: Is that what you're saying?

22 MR. MATHISON: Yes. During 2008 --

23 THE COURT: Who is that? Mr. Kelley and Mr. Breed?

24 MR. MATHISON: One says he didn't recall. The other
25 says that it didn't happen.

1 Mr. Kelley's deposition, Page 129:
2 During 2008 and 2008 --
3 THE COURT: Okay.
4 MR. MATHISON: Was Sea Pines Security not prossing
5 tickets written in Sea Pines in return for a
6 contribution to the person who otherwise would
7 have received the tickets to the Forest
8 Preserve or Museum Foundation?
9 Answer: Not to my knowledge, no.
10 Do you recall having a meeting with a gentleman
11 by the name of Brian Hulbert at your office at
12 CSA?
13 No, I do not.
14 THE COURT: Can I just ask you a quick question.
15 MR. MATHISON: Sure.
16 THE COURT: Just so I know. I haven't read Breed's
17 deposition yet. Is he denying any wrongdoing in any way?
18 Does he completely support what was done? Because it
19 appears that Mr. Kelley does in his deposition, and I've
20 read enough to know that.
21 MR. MATHISON: Mr. Breed acknowledges no wrongdoing.
22 THE COURT: Okay. Okay. I'm going to give this
23 back to you and let you go into it.
24 MR. MATHISON: Thank you.
25 THE COURT: Anything else?

1 MR. MATHISON: No. But I felt that we needed to
2 discuss that.

3 THE COURT: And I appreciate that, because I am
4 confident they would have objected to it, so. And I am
5 going to, subject to your objection, I am overruling it.
6 I will allow that to go in.

7 MR. HALIO: And just for the record, your Honor, as
8 I understand it, Mr. Mathison is offering that just for a
9 sort of a general bad faith, in generality, just --

10 THE COURT: He's using it for impeachment purposes.

11 MR. HALIO: For impeachment?

12 THE COURT: Correct?

13 MR. MATHISON: Yes.

14 THE COURT: For impeachment purposes. MR.

15 HALIO: Well, it's our position that the letter is not
16 relevant to any issue in this case, and that, you know,
17 allowing it for impeachment purposes, would be far too
18 prejudicial. The prejudice would way outweigh the
19 probative value.

20 THE COURT: Okay. Well, respectfully, I disagree.
21 Under Rule 403, I think the probative value outweighs any
22 prejudice. If he flat out denied it ever occurred, I
23 think it can be used for impeachment purposes. So, he'll
24 be allowed to use it.

25 Anything else? Are we ready to go?

1 MR. MATHISON: I'm ready.

2 THE COURT: Okay. Well, let's call your next

3 witness. Well, let's bring the jury in first.

4 BAILIFF: Jurors entering, your Honor.

5 JURORS ENTER COURTROOM 11:45 A.M.

6 THE COURT: Welcome back, ladies and gentlemen. Mr.

7 Mathison, will you call your next witness, please.

8 MR. MATHISON: I would call Tom Fultz to the stand,

9 please. Excuse me. I would call Brian Hulbert to the

10 stand.

11 THE COURT: All right. Mr. Hulbert, come on forward

12 and be sworn, sir.

13 WITNESS SWORN.

14 BRIAN HULBERT: Good morning, your Honor.

15 THE COURT: Good morning, sir.

16 BRIAN HULBERT

17 DIRECT EXAMINATION, MR. MATHISON

18 Q State your name for the record, please.

19 A Yes, sir. My name is Brian Hulbert.

20 Q And how old are you, Mr. Hulbert?

21 A I'm 53 years old.

22 Q And where do you reside?

23 A I reside here in Beaufort on Lady's Island.

24 Q What is your occupation?

25 A I'm an attorney, and I'm currently employed with the

1 Town of Hilton Head Island as the staff attorney and town
2 prosecutor.

3 Q And just so the jury gets some idea, what do you do
4 in your capacity as town prosecutor?

5 A As the town prosecutor, which is about anywhere from
6 10 to 15 or 20 percent of my job, I'm charged with
7 prosecuting the jury trials for simple possession of
8 marijuana, for criminal domestic violence, and for DUI
9 cases. I also assist deputies in other cases when they
10 ask for my assistance.

11 Often, if there's an attorney they're going up
12 against, or if they're a new deputy and they've not
13 prosecuted a case or a jury trial, they ask for my
14 assistance, and I'll assist them and teach them how to
15 prosecute a case.

16 Q For those on the jury who don't go to court, it is
17 true that, in most misdemeanor cases, officers, including
18 security officers, make their own case and prosecute it
19 themselves. Is that right?

20 A In better than 95 to 97 percent of the cases that's
21 true.

22 Q But people that need help, you're available to help
23 if they require.

24 A Either to advise them or to assist them in trial.

25 Q And with respect to the other duties that you have,

1 what do you do as the counsel for the Town of Hilton
2 Head?

3 A As the staff attorney for the Town of Hilton Head, I
4 provide legal advice to the town manager, the assistant
5 town manager, the department heads, and the staff for the
6 town on various topics. It's very broad-ranged. It
7 could be on land management. It could be on
8 environmental law. It could be on contracts. I review
9 contracts on a regular basis. It just -- it covers
10 ethics. It covers the whole gamut.

11 Additionally, the code enforcement officers work for
12 me, under my supervision, and they're responsible for
13 enforcing our municipal code and our land management
14 ordinance within the town.

15 Q Do you recall events that occurred to Maureen Coffey
16 on our about June 24th through 26th of 2008, as a
17 consequence of having received a letter from the
18 grievance committee?

19 A Do I recall the consequences or the incident, you are
20 asking?

21 Q Yes. Do you recall what happened after she received
22 the letter?

23 A I recall some of it. Some of it of what I'm aware
24 of.

25 Q Well, do you recall talking to Maureen Coffey shortly

1 after she received the letter?

2 A Yes.

3 Q And do you know whether that was in late June of
4 2008?

5 A I believe it was.

6 Q Would you tell the Court what Ms. Coffey said and
7 what you said in response to the initial contact by her
8 about this letter?

9 A Yes. I was at home. I believe it was in the
10 evening, if I recall correctly. And I got a call from
11 Ms. Connie Pratt, who is a code enforcement officer that
12 works for me. And she said that she needed my phone
13 number to give to Maureen Coffey, our judge, because she
14 had to call me, and that she had an ethics complaint. I
15 told -- I gave Connie the number that she called me at,
16 but I told her that I couldn't help her; that I'd been
17 informed that I could not assist her because it was
18 something that had been determined that was in her
19 personal capacity as an individual and not as a town
20 employee; so as a town employee, we weren't providing
21 assistance to assist her.

22 Q Okay. So would it be safe to say that, when she
23 called you to ask for your assistance, you already knew
24 that there was an ethical complaint pending against her?

25 A Well, I knew that one may be submitted and coming

1 down the pike. I didn't know for sure.

2 Q Okay. And how long before Ms. Coffey called you and
3 asked for your help did you know that an ethical
4 complaint was coming down the pike?

5 A I don't recall specifically if it was a couple of
6 days or a week or a week and a half. It was a very short
7 period of time.

8 Q When you learned that this ethical complaint was
9 coming, from whom did you learn it?

10 A From my direct supervisor, the assistant town
11 manager.

12 Q And the assistant town manager in this instance that
13 we're referring to is Greg DeLoach. Is that correct?

14 A Yes, sir. That's correct.

15 Q And how did this conversation come up where Mr.
16 DeLoach told you that he knew that a grievance was coming
17 against Judge Coffey?

18 A It -- just one of the matters where we have frequent
19 discussions, given my job and his job, and he just
20 mentioned that something may be coming down the pike. I
21 don't recall if he said it was an ethics complaint or
22 not. I believe he did, but I don't recall specifically.
23 But that he didn't believe that it was in her employment
24 capacity, and so, we weren't making me available to
25 assist her as the staff attorney for the town to defend

1 the action.

2 Q Did you get the impression, since he had made an
3 evaluation of the claim and decided that it was personal
4 and not professional, that he'd actually read the
5 complaint?

6 A Well, I presumed as much. I don't know that he told
7 me whether or not he had read it or not, but I presumed
8 that, if he had made the determination, uh, --

9 Q Be a little difficult to make that determination
10 without reading it.

11 MR. HALIO: Objection to speculation.

12 THE COURT: Okay. Ask the question.

13 BY MR. MATHISON:

14 Q Did Mr. DeLoach show you the complaint?

15 A No, he did not. I've never seen the complaint; I've
16 never read the complaint; and never had the complaint
17 read to me.

18 Q What was Maureen Coffey's demeanor when she was
19 talking to you on the telephone the first time?

20 A Well, she was very upset, emotionally unstable, I
21 guess, is how I would characterize it. She was
22 trembling. I could tell that she was probably crying.
23 She was upset, as I presume any attorney would be that
24 gets a complaint such as that.

25 Q Did Ms. Coffey continue to ask for your help or not?

1 A Well, she did ask if I could assist her. I explained
2 that I couldn't. And then, she did persist on the phone.
3 And then, I believe the next day and probably over the
4 course of the next couple of weeks, numerous occasions
5 asking me if she could read it to me, or attempting to
6 get me to read the complaint, so that she could show that
7 it was work-related, and that the Town should assist her
8 in defending the action. On each occasion I refused to
9 listen or to read it, or to take the complaint and assess
10 it.

11 Q So from a practical standpoint, you didn't know that
12 the complaint was -- did you know it was from the
13 Commission on Judicial Conduct, as opposed to from the
14 grievance committee for attorneys?

15 A I did not.

16 Q Did you know that George Breed was the signer of the
17 complaint?

18 A I don't know if I did or not.

19 Q Did Mr. DeLoach tell you anything about the
20 complaint, other than the fact that it was *coming down*
21 *the pike*, and you weren't allowed to help Maureen?

22 A He did not.

23 Q Had you known it was from the Commission on Judicial
24 Conduct, and that she was being, essentially, attacked in
25 her capacity as a judge, would it have been difficult to

1 reconcile that with the fact that someone thought it was
2 personal as opposed to professional?

3 A Well, it may be, but again, my supervisor is my boss.
4 He assigns my duties, and he can have me work on what he
5 wants to. And he's an attorney. And as a supervising
6 attorney, I trust his judgment to assess something of
7 that nature. And if that's the determination, then the
8 Town's not going to provide that sort of defense. It's
9 not for me to question that.

10 Q Do you know whether other people at the Town were
11 shown the letter that you didn't see, specifically, the
12 other town managers, namely, Curtis Coltrane and Steve
13 Riley?

14 A I've been told that by Judge Coffey. MR.
15 HALIO: Objection. Objection. Hearsay.

16 THE COURT: Okay. If you know it of your own
17 independent knowledge, you can testify to it. If you
18 don't, then you can't answer.

19 MR. MATHISON: May it please the Court. I think
20 this is -- I'm not exactly certain what he's going to
21 say, but I think this is something that I either have a
22 witness that I can bring in. If it's defamation, I
23 believe that dealing with it as an act --

24 THE COURT: With the publication?

25 MR. MATHISON: Yes.

1 THE COURT: Do you have that person coming that's
2 going to testify?

3 MR. MATHISON: I don't know what he's going to say.
4 I mean, I honestly don't know the answer to that
5 question.

6 THE COURT: And you heard this from someone else?

7 A Yes, your Honor.

8 THE COURT: So did you hear it from the person who
9 actually saw it, or was it someone who said they saw it?

10 A I never had a conversation with that person.

11 THE COURT: With that person. Okay.

12 A On that topic.

13 THE COURT: On that topic. Okay. I'm not going to
14 allow it.

15 BY MR. MATHISON:

16 Q Mr. Hulbert, during your succeeding encounters with
17 Ms. Coffey, how did she react to the pendency of this
18 complaint against her?

19 MR. HALIO: Your Honor, I think I need to object to
20 that. Didn't we establish earlier that this is a
21 privileged matter, and that how she reacted to that is
22 irrelevant?

23 THE COURT: Overruled. You can go ahead.

24 BY MR. MATHISON:

25 A On every occasion where she specifically attempted

1 to, I guess I would say, redeem her character based on
2 the allegation against her, to me, to get me to read that
3 complaint, she was clearly very emotional about it, very
4 upset. I would say that she was a -- a broken woman, I
5 guess is how I'd describe it. And she was walking on egg
6 shells. She'd lost her confidence. It was not the same
7 Judge Coffey that I had known for the couple of years
8 before that.

9 Q Did you think that she was under stress?

10 A Oh, there's not doubt about it, and she took it out
11 on me on a regular basis in court.

12 Q So you had ample opportunity to observe her in the
13 weeks and months that ensued after June of 2008?

14 A Yes, sir.

15 Q And her demeanor was as you've described?

16 A Yes, sir.

17 Q Mr. Hulbert, did anybody ever tell you that the Breed
18 letter, the complaint that was engendered in the Breed
19 letter, was dismissed by the Commission on Judicial
20 Conduct?

21 A Yes. I believe Judge Coffey informed me of that
22 after it occurred.

23 Q Did her outlook improve once it was dismissed?

24 A Well, she was relieved to a degree; there's no doubt
25 about that. She's still not the same person that I knew

1 when I first started with the Town, but clearly, a great
2 relief. And she didn't have the emotional breakdowns as
3 regularly as what she did while that was going on.

4 Q When you say she's not the same person, what is it
5 that's different now, that you can recall from the days
6 before Mr. Breed unleashed this document? MR.

7 HALIO: I just need to make another objection for the
8 record on the grounds that we're dealing with a
9 privileged matter, and it's irrelevant.

10 THE COURT: Overruled.

11 BY MR. MATHISON:

12 A She doesn't have the same confidence or the same
13 demeanor. I guess to put it in a country boy's terms,
14 she'd been taken down a couple of notches in stature.

15 Q Have you ever been approached -- strike that. Do you
16 consider yourself a friend of Ms. Coffey?

17 A I'd say a colleague and a co-worker. I don't know
18 that I'd classify her as a friend. We've never gone out
19 to dinner; she's never been to my house for dinner; I've
20 never been to her house for dinner. We don't socialize
21 outside of work. We have professional conversations, so
22 what I would consider a friend, no. I'd say we're
23 friendly, and certainly, cordial and professional towards
24 each other, and we work together on a regular basis.

25 Q So that you're colleagues, essentially, rather than

1 friends. Is that right?

2 A Yes, sir.

3 Q Did you at one point during the period that you were
4 working for the Town and she was also serving as the town
5 judge, represent her in a domestic matter?

6 A Yes. To say that I represented her may not be
7 completely accurate. I assisted her and her husband to
8 reach an agreement. They were having marital discord at
9 the time. They conveyed to me they couldn't afford an
10 attorney, and they wanted some assistance. She wanted to
11 keep it private to where her reputation wasn't smeared
12 throughout the town. So I agreed to meet with them at
13 their house; tell them the issues that they needed to
14 work out as far as if they were going to reach an
15 agreement to separate and how it happened; and go through
16 that aspect. And then I did appear at court with both of
17 them to put that agreement on the record.

18 Q So essentially, you were serving as an arbiter
19 between the two of them?

20 A I was more of a --

21 MR. HALIO: Objection, your Honor, to the
22 conclusion. He described what he'd done.

23 THE COURT: You can ask the question.

24 BY MR. MATHISON:

25 Q Fine. Did you charge either Judge Coffey or her

1 husband for this service?

2 A No. I would never charge a town employee for
3 something like that.

4 Q And your participation was advising them so they
5 understood what the law was?

6 A Advice, and let them know, based on my previous
7 experience, what I thought were issues that had to be
8 dealt with, and what would be reasonable. I stressed to
9 them that they were trying to reach an agreement, not an
10 argument; and that both parties would have to agree; and
11 it would be something that they could live with, or they
12 would be fighting in court forever. So there were issues
13 that had to be resolved, and they needed to just work
14 through it; and it was in the best interest of the kids
15 to have a fair agreement for both parties to where they
16 could get along and raise their children.

17 Q Did you perceive that having assisted Ms. Coffey and
18 her husband to reach that agreement put you in a conflict
19 situation with you appearing in the judge's court and
20 representing officers or other people that had cases to
21 prosecute?

22 A No, sir. I don't represent officers or other people.
23 I represent the state or the town. And prosecuting
24 people is what I do. I don't appear on my own behalf; I
25 represent them. But during that time, I made clear that

1 they understood that I couldn't take any cases before
2 her, just to be safe. I conferred with counsel that I
3 trusted their opinions as far as if they thought that
4 would be a problem. They explained that it wouldn't be.
5 And so, I didn't see a problem. I don't believe she saw
6 a problem with it. And again, I didn't appear in her
7 court at all during that time frame. Again, it was a
8 very short period, a week or ten days at the most, where
9 I assisted her and her husband at their residence, and
10 then going to court. And I didn't prosecute any cases in
11 her court during that time, or for that month at all.

12 Q Did you become aware at some juncture of a problem
13 with Sea Pines officers not processing tickets?

14 MR. HALIO: Objection. Irrelevant.

15 THE COURT: It's overruled on my earlier grounds as
16 stated. Thank you.

17 BY MR. MATHISON:

18 A Well, officers from Sea Pines, Beaufort County
19 Sheriff, or other plantations not process tickets on a
20 regular basis. It's just a routine matter that occurs in
21 our court.

22 Q Do you know whether there was a problem with tickets
23 being not processed in return for a contribution to the Sea
24 Pines Museum and Forest Preserve Foundation? MR.

25 HALIO: Objection. Irrelevant.

1 THE COURT: Again, overruled, based on my earlier
2 reasons.

3 BY MR. MATHISON:

4

5 A I be -- I became aware of an incident, yes, sir.

6 Q And how did you become aware of the incident?

7 A One of our court administrative staff brought to my
8 attention a letter she had received from an attorney,
9 wherein they were attempting to make a payment, and to
10 make sure the court date wasn't going to occur for a
11 ticket that had been written by a Sea Pines officer. And
12 the payment wasn't to be made to our court, but it was
13 being made to a -- an organization within Sea Pines.
14 They thought that was improper.

15 I took the matter; I looked into it; I informed Mr.
16 Tom Fultz, who is the department head over the court
17 administrative staff at that time. He conveyed that up
18 to our boss, Mr. DeLoach, the assistant manager. And
19 then, after that, the next day, I went to meet with Mr.
20 Cary Kelley, who is the manager for CSA at Sea Pines, to
21 explain the situation that occurred, inquire as to
22 whether or not he was aware of it, and ensure that they
23 understood that I believed it to be inappropriate, and
24 that it was a matter that had to either cease, or that I
25 would have to report up to the State.

1 Q Are you quite certain that you actually went to see
2 Mr. Kelley?

3 A Yes, sir.

4 Q Did you take anybody with you when you went?

5 A Well, my code enforcement officer, Connie Pratt,
6 drove me to his office, because I didn't know where his
7 office was within Sea Pines.

8 Q Did Mr. Kelley acknowledge that there was a problem?

9 MR. HALIO: Objection. Can I just have a running
10 objections on this line of questions, your Honor?

11 THE COURT: Absolutely. For this entire line.

12 MR. HALIO: Thank you, your Honor.

13 BY MR. MATHISON:

14 A Mr. Kelley indicated that he was not aware of it, but
15 that he was going to look into it. He assured me that it
16 would stop if it was a practice. He assured that they
17 would return the -- the money to the defendant, and that
18 the officer would not pros that ticket.

19 I requested that I receive a copy of the returned
20 check and a copy of the letter to the law firm returning
21 the check to him. And then, he assured me he had spoken
22 with Lieutenant Campbell, I believe it was, was the
23 officer that had written the citation, and that
24 Lieutenant Campbell had conveyed to him that it was an
25 isolated incident; and actually, that it was an incident

1 in which, originally, he was wanting to put the defendant
2 into pretrial intervention. We call that PTI. It was a
3 minor charge. It was a charge of leaving an animal
4 within a vehicle, which is against the law within our
5 state. And the lieutenant had offered to let the
6 defendant make a donation to this organization, and then
7 he would nol pros the ticket, and attempt to help the
8 defendant out, I believe is what it was, to where he
9 wouldn't have a conviction for the offense, but yet, he
10 still had some penalty, if you will.

11 Q I'm showing you a uniform traffic ticket, and ask if
12 you can identify that as the ticket that was, in fact,
13 nol prossed.

14 A Yes, sir, it is.

15 MR. MATHISON: Move the introduction of the ticket as
16 Plaintiff's Exhibit --

17 COURT REPORTER: 16

18 MR. MATHISON: -- 16.

19 THE COURT: Subject to prior objection, it's in
20 evidence.

21 MR. HALIO: Thank you.

22 COPY OF DOCUMENT REFERRED TO AS

23 UNIFORM TRAFFIC CITATION THAT WAS

24 NOL PROSSED MARKED PLAINTIFF'S

25 EXHIBIT NUMBER 16, ADMITTED AS EVIDENCE.

1 Q And I believe you said that Mr. Kelley decided to
2 return the money, and did, in fact, return it, and you
3 received a copy of the letter. Is that correct?

4 A I'm not sure if Mr. Kelley decided to return it or it
5 the Sea Pines Security decided to return it. But Mr.
6 Kelley is the one that did, in fact, write the letter and
7 return it. I don't recall who made the decision. I
8 presume it was him, but I don't know for sure.

9 Q And I'm handing you a letter that's written on Sea
10 Pines Museum and Forest Preserve Foundation stationery,
11 and I ask if that's the letter with which the check was
12 returned?

13 A Yes, sir, it is.

14 Q And is this, in fact, the check?

15 A This is a copy of the check that was returned, yes,
16 sir.

17 Q And who is that account owned by?

18 A The Sea Pines Museum and Forest -- it says Perserve,
19 but it's obviously Preserve, from 175 Greenwood Drive,
20 Hilton Head Island, South Carolina.

21 Q Do you know whether 175 Greenwood Drive is, in fact,
22 the same address as Sea Pines Security?

23 A No, sir, I don't.

24 Q Do you know whether Community Service Associates in
25 at 175 Greenwood Drive?

1 A No, sir. No, sir, I don't.

2 Q Do you know where you went when you talked to Mr.
3 Kelley?

4 A To CSA management offices, to Mr. Kelley's office.

5 Q And is that on Greenwood Drive?

6 A Again, Ms. Pratt drove me there. I couldn't tell you
7 what the address was.

8 Q Okay. In what capacity did Mr. Kelley sign this
9 letter to Mr. Andy Wargo?

10 A As the administrator for SPMFPF.

11 Q Is that the Sea Pines Museum and Forest Preserve?

12 A It does appear to be so.

13 Q Thank you.

14 A Yes, sir.

15 MR. MATHISON: Move the introduction of the letter
16 and the check collectively as Plaintiff's Exhibit 17.

17 THE COURT: Subject to your prior objection.

18 COPY OF DOCUMENT REFERRED TO AS
19 LETTER ON SEA PINES MUSEUM AND FOREST
20 PRESERVE STATIONARY, AND CHECK, MARKED
21 PLAINTIFF'S EXHIBIT NUMBER 17, ADMITTED
22 AS EVIDENCE.

23 MR. MATHISON: Excuse me just one minute, Mr. --
24 Thank you very much.

25 MR. HALIO: Please the court.

1 way.

2 MR. MATHISON: I don't think it should come in,
3 because Mr. Edri is not here to say he thinks it's a good
4 idea, and he may not think it's a good idea.

5 MR. HALIO: I didn't offer the decree, which is a
6 public record anyway.

7 THE COURT: I'm not worried about decree. Just give
8 it to me. All right, you all. Let's just move on. And
9 we're going to have to take this up afterwards.

10 MR. MATHISON: Just a moment on re-direct.

11 BRIAN HULBERT

12 RE-DIRECT EXAMINATION, MR. MATHISON:

13 Q Mr. Hulbert, did you ever wonder how it was that Mr.
14 DeLoach knew about the complaint, whether it was to the
15 lawyer grievance committee or to the judicial grievance
16 committee? Did you ever wonder how he would know about
17 it?

18 MR. HALIO: Objection, your Honor. This is not
19 something that we went into on cross. It's improper
20 redirect.

21 MR. MATHISON: He asked him about privilege and
22 matters like that.

23 THE COURT: Okay.

24 MR. MATHISON: I'm simply following up.

25 THE COURT: Go ahead.

1 BY MR. MATHISON:

2 A No, sir. My direction is clear. I wasn't to assist.
3 I'm a retired Marine. I follow orders.

4 Q I understand, but what I'm getting at is, isn't it
5 your understanding that these things are supposed to be
6 confidential?

7 A It is now, yes, sir.

8 Q Well then, how, conceivably, would somebody who was
9 your employer know about it if he wasn't on the conduct
10 commission?

11 A I don't know if I have an answer for that.

12 Q It doesn't make sense; does it, unless someone did
13 not keep the document confidential, right?

14 A I guess. Yes, sir.

15 Q And yet, you knew about its existence, while you
16 didn't know what was in it. And certainly, the person
17 who gave you the direction that it was personal and not
18 professional, knew something more than it just existed.
19 He knew what was in it, or he couldn't have made that
20 determination. Isn't that right?

21 A Yes, sir.

22 MR. MATHISON: Thank you. I have no further
23 questions.

24 THE COURT: Mr. Halio, anything further? MR.

25 HALIO: No, your Honor.

1 until about quarter till 2:00.

2 OFF THE RECORD 12:30 P.M.

3 BACK ON THE RECORD 2:18 P.M.

4 BY THE COURT:

5 MS. JONES: I'll have objections as to foundation,
6 but I wanted to ask the Court if I could just have a
7 continuing objection in that regard so I don't have to
8 keep interrupting.

9 THE COURT: Absolutely. Absolutely. Okay. All
10 right. Let's go.

11 MR. MATHISON: Mr. Sonberg, please.

12 THE COURT: Actually, we need a jury.

13 THE COURT: Mr. Sonberg, just wait if you don't
14 mind, sir, until the jury comes back.

15 BAILIFF: Jurors entering, your Honor.

16 JURORS ENTER COURTROOM 2:20 P.M.

17 THE COURT: Thank you. Thank you. Welcome back
18 ladies and gentlemen. At this time, Mr. Mathison, if you
19 would call your next witness, please.

20 MR. MATHISON: Mr. Sonberg.

21 THE COURT: Come forward, Mr. Sonberg, to be sworn,
22 sir.

23 WITNESS SWORN.

24 THE COURT: Thank you.

25 RICHARD THOMPSON SONBERG

1 DIRECT EXAMINATION, MR. MATHISON:

2 Q State your name for the record, please.

3 A Richard Thompson Sonberg.

4 Q Mr. Sonberg, where do you reside?

5 A I live at 17 North Calibogue Cay, in Sea Pines
6 Plantation, on Hilton Head Island.

7 Q Are you employed at present?

8 A Self-employed. I have several businesses that I own
9 and operate, but my employment -- I was an attorney, and
10 I retired.

11 Q Where were you an attorney, Mr. Sonberg?

12 A I -- I graduated from the University of Colorado Law
13 School in 1962, practiced in Colorado for a couple of
14 years. I then moved to Connecticut and practiced there.
15 And in 1964, I moved to Tulsa, Oklahoma, and practiced
16 from '64 till 1998 in Tulsa, when I retired from the
17 practice of law.

18 Q When you retired, where did you move?

19 A Oh, I'd been living here since 1980. The same house
20 on Calibogue Cay.

21 Q So you were actually living in Sea Pines and
22 practicing law in Oklahoma?

23 A Yes, sir. I commuted almost every week.

24 Q Did you respond to a subpoena that I served on you in
25 connection with this case?

1 A Yes. I have it in my pocket.

2 Q Did you have occasion in January of 2009 to attend a
3 meeting of the Calibogue Cay Property Owners Association?

4 A I did.

5 Q First of all, what is the Calibogue Cay Property
6 Owner's Association?

7 A Well, as I said, I live on Calibogue Cay. That is --
8 used to be an island right off the inside of Hilton Head
9 Island on what's called Broad Creek. When Sea Pines was
10 developed in the '60s, they build a causeway out to it,
11 so it's no longer a -- an island. It's what we call a
12 cay. And the residents who live on Calibogue Cay have
13 their own property owners association, where we kind of
14 attend to the amenities on the -- on the street, and make
15 sure other people keep their lawn mowed and things like
16 that.

17 Q As a long-time resident of Sea Pines Plantation, have
18 you known the Coffey family for quite a while?

19 A Yes. I -- I met them very shortly after they moved
20 to the Island. I think it was about 1983. And I -- I
21 became what I'd call social friends with them. And Dr.
22 Coffey, who is now deceased, was my wife's OB/GYN --
23 OB/GYN doctor for a number of years.

24 Q So you know who the Coffey's are, and have for a long
25 time. Is that right?

1 A That is correct.

2 Q Mr. Sonberg, did Cary Kelley, the executive vice
3 president of Community Services Associates, attend this
4 meeting on January 7, 2009?

5 A Yes, he did.

6 Q Do you know whether he discussed the Coffeys, and
7 specifically, Maureen Coffey and Otis Coffey?

8 A He did.

9 Q Could you tell the jury what it is that he said,
10 first, with reference to Otis Coffey?

11 A Well, the -- the reason he was at the meeting was, he
12 was briefing the residents. It's an annual meeting where
13 most of the residents on Calibogue Cay come, and we elect
14 new directors for the year, and have a review of the
15 events that have affected us during the year. And not
16 every year, but numerous times, Mr. Kelley and other
17 officers of CSA have come to brief us on what's going on
18 Sea Pines-wide, through the plantation, since he's the
19 executive director of CSA.

20 And he was there for the specific purpose of
21 briefing us on litigation that CSA was involved in at
22 that time. And one of the matters that he briefed us on
23 was actually this lawsuit, and a discussion of Otis
24 Coffey.

25 Q What, specifically, did he say, with respect to Otis

1 Coffey?

2 A After he briefed us on the nature of the lawsuit, he
3 then said that the arrest of Otis Coffey was imminent.

4 Q Was that, in fact, -- did that, in fact, come true?

5 A I have no idea.

6 Q What did he say with respect to Maureen Coffey, the
7 plaintiff in this action?

8 A He stated that Judge Maureen Coffey, who is the judge
9 of the municipal court for Hilton Head Island, had filed
10 a lawsuit for damages against CSA, for defamation of her
11 character. And that the lawsuit arose out of a complaint
12 that CSA had filed for unethical judicial conduct by
13 Judge Coffey. And this complaint had been filed with the
14 Commission on Judicial Conduct, which is a state
15 commission. And that the nature of the complaint was,
16 that had been filed by CSA with this commission, was that
17 Judge Coffey had interfered with CSA security officers'
18 investigation of Otis Coffey's possible involvement in
19 burglaries on Hilton Head Island earlier in -- back in
20 2008.

21 Q So, to crystallize, he said that Mr. Coffey, Otis
22 Coffey's, arrest was imminent?

23 A That was after -- after he'd made the comment about
24 what the nature of the lawsuit was, he then added *and*
25 *this suspect is in imminent arrest.*

1 Q So you just voluntarily gave it to him?

2 A Yes, ma'am.

3 Q Oh, okay. And in that regard, this was in February

4 [sic] of 2009. Is that correct?

5 A That's right. On Wednesday, January 7th.

6 Q And had you, prior to having this report on the

7 litigation, which is a routine report that you receive?

8 A I'm not talking about -- what report are you talking

9 about?

10 Q I'm sorry, sir. I thought you testified -- I'm

11 sorry. I thought you had testified that Mr. Kelley and

12 others would, in the normal course of business, come to

13 your meetings and give you reports and updates on pending

14 matters.

15 A Well, okay. Tell me that -- that's the report, yes.

16 He came and gave a report, sure.

17 Q Okay. And that happens in the normal course of these

18 homeowners association meetings. Is that correct?

19 A Not every year, but sometimes he will come and do

20 that.

21 Q And on this occasion, he came and reported to you on

22 the lawsuit that was already pending?

23 A That's correct.

24 Q Okay. And at that point in time, were you already

25 aware that the lawsuit was pending?

1 A I believe I noticed an article in the *Island Packet*
2 back like in December of 2008, that Judge Coffey had
3 filed a lawsuit.

4 Q And --

5 A Which kind of perked my interest because of previous
6 events.

7 Q Yes, sir. And was that article in the *Island Packet*
8 the first time that you had become aware of the complaint
9 of the lawsuit?

10 A Of the lawsuit, yes.

11 Q Okay. And was it the first time you had become aware
12 of the complaint that's discussed in the minutes?

13 A I -- I think that it was mentioned to me by Ann
14 Coffey during the summer of 2008.

15 Q Okay. And was Ms. Coffey mentioning it to you
16 previously, was that the only other time you had heard
17 about it?

18 A I believe so, yeah.

19 Q So, when Ms. Coffey mentioned it to you, Ms. Ann
20 Coffey, --

21 A Yes. Mrs. Ann Coffey.

22 Q Mrs. Ann Coffey, yes, sir, and then the newspaper
23 articles, and then this report that Mr. Kelley gave. Is
24 that correct?

25 A That's basically it, until this event came that Mr.

1 Mathison asked me to come and testify.

2 MS. JONES: Okay. Thank you, sir. That's all the
3 questions I have. Thank you.

4 THE COURT: Anything further, Mr. Mathison?

5 MR. MATHISON: Just one question.

6 RICHARD THOMPSON SONBERG

7 RE-DIRECT EXAMINATION, MR. MATHISON:

8 Q Did Mr. Kelley indicate that the complaint against
9 Judge Coffey had been dismissed by the Commission on
10 Judicial Conduct?

11 A I don't believe so, no.

12 MR. MATHISON: Thank you. No further questions.

13 THE COURT: Anything further?

14 RICHARD THOMPSON SONBERG

15 RE-CROSS-EXAMINATION, MS. JONES:

16 Q just one very briefly. I'm sorry to have to keep
17 walking back over here. had you already read about the
18 complaint being dismissed in the article in the *Island*
19 *Packet*?

20 A No.

21 Q You did not read that part?

22 A No. I had no idea what -- what the nature of the
23 complaint was. I knew there was a judicial complaint,
24 but I didn't know what the nature of it was, until Mr.
25 Cary Kelley gave his report.

1 MS. JONES: Thank you, sir. That's all the
2 questions I have.

3 MR. MATHISON: Thank you, Mr. Sonberg.

4 THE COURT: Mr. Sonberg, you are excused.

5 A What are we going to do with this? Leave that?

6 THE COURT: Just leave that there. Thank you, sir.

7 Mr. Mathison, will you call your next witness.

8 MR. MATHISON: Did you mean to introduce this?

9 MS. JONES: No. Just marked it for identification.

10 MR. MATHISON: Okay. That's fine. Plaintiff would
11 call Greg DeLoach.

12 THE COURT: Mr. DeLoach.

13 WITNESS SWORN.

14 GREG DELOACH

15 DIRECT EXAMINATION, MR. MATHISON:

16 Q State your name for the record, please.

17 A Greg DeLoach.

18 Q By who are you employed, Mr. DeLoach?

19 A By the Town of Hilton Head Island.

20 Q And in what capacity are you employed?

21 A I'm the assistant town manager.

22 Q And is there more than one assistant town manager
23 currently?

24 A No, just myself.

25 Q At the time of this incident in June of 2006, how

1 many managers were there, town managers?

2 A 2006?

3 Q Excuse me. 2008.

4 A There were -- there were two of us.

5 Q You and the other gentleman was Curtis Coltrane. Is

6 that right?

7 A That's -- that's correct.

8 Q Between the two of you, how were the responsibilities

9 divided?

10 A I managed a division in department heads and finance

11 information technology, human resources, legal. Mr.

12 Coltrane managed the community development department,

13 engineering.

14 Q Did both of you report to the town manager?

15 A That's correct.

16 Q And what is that gentleman's name?

17 A Steve Riley.

18 Q And is he still the town manager?

19 A Yes.

20 Q Do you consider George Breed, the director of

21 security at Sea Pines Security, to be a friend of yours?

22 A Yes.

23 Q How long has he been a friend of yours?

24 A I've known him for approximately 15 years.

25 Q Is he also a friend of your father's?

1 A I think so.

2 Q Does your father live in Sea Pines?

3 A Yes, he does.

4 Q Did he, at the time of this event in 2008, serve on

5 the what's called the security committee of the community

6 services board?

7 A I think so.

8 Q And is that the committee that interacts with Mr.

9 Breed and vice versa?

10 A I believe they're an advisory board, yes.

11 Q When did you -- forgive me.

12 COURT REPORTER: Does anyone have Plaintiff's 4?

13 MR. MATHISON: Yes.

14 THE COURT: The letter is 6/6/08.

15 MR. MATHISON: It's not here, your Honor. I think

16 I've got another copy I can use till we find it.

17 THE COURT: Okay.

18 BY MR. MATHISON:

19 Q I'm showing you what will have to serve as

20 Plaintiff's Exhibit 4, for the time being, which is a

21 letter from Mr. Breed addressed to the Judicial Conduct

22 Commission. And I'm going to ask you when you first had

23 knowledge that that letter had been written.

24 A I don't remember when I first had knowledge when this

25 was written.

1 Q Was it before or after June 6th?

2 A I knew that he intended on filing a complaint.

3 Q Did he ever send a, or transmit in any manner, a

4 draft of that document to you for review?

5 A I don't recall any draft for review.

6 Q Did he ever discuss with you the contents of the

7 letter before it was delivered to your office?

8 A He called me to say that he wanted to complain to

9 someone, because he was complaining to me at the time.

10 And at that point, I said that -- that Mrs. Coffey worked

11 for the town council, not for me. And he then asked who

12 else he could complain to. And I indicated to him that

13 he could complain to -- file a complaint with the

14 Commission on Judicial Conduct. That's what he wanted to

15 do.

16 Q Did you tell Maureen Coffey that your friend, Mr.

17 Breed, had contacted you wanting to file some kind of

18 complaint against her?

19 A No.

20 Q One of the areas of your responsibility is the court,

21 the municipal court. Is that correct?

22 A Yes.

23 Q In one form or another, isn't it true that every

24 single person in the municipal court works for you, other

25 than Maureen Coffey?

1 A Indirectly, yes.

2 Q You didn't feel some obligation to go and tell Ms.

3 Coffey that Mr. Breed had effectively come to you in an

4 effort to tell you about something?

5 A In my opinion, this was between Mr. Breed and Maureen

6 Coffey.

7 Q And therefore, was not something that you were going

8 to get involved in?

9 A Well, I wasn't sure he was going to file a complaint.

10 He ultimately did, obviously.

11 Q Do you know whether Mr. Breed said that he never

12 delivered a copy of the letter to you; he just gave you a

13 draft.

14 A I'm sorry.

15 Q Do you know whether Mr. Breed's position was that he

16 had never given you a copy of the letter, full-blown;

17 he'd just given you a draft?

18 A I don't know what his position is or was.

19 Q Have you ever seen a draft of that letter, sir?

20 A I don't recall ever seeing a draft of this letter.

21 Q Do you know how long, if at all, before June 6th, it

22 was that Mr. Breed called you and asked you to file a

23 complaint?

24 A I don't.

25 Q When he called, what did he say he wanted to complain

1 about?

2 A That -- this was a long time ago, but that she was
3 asserting herself as a municipal judge, or the position
4 as municipal judge, in an investigation of her brother.

5 Q Whose investigation?

6 A Sea Pines, CSA.

7 Q Do you know whether it's lawful for Sea Pines to
8 investigate --

9 MR. HALIO: Objection.

10 THE COURT: Okay. Sustained. Sustained. Move on.

11 BY MR. MATHISON:

12 Q Weren't you concerned, if you had a judge who was
13 riding the range, if you will, inserting herself into
14 investigations?

15 A At the time he called me, I wasn't sure he was going
16 to file a complaint.

17 Q But you told him where to file it?

18 A He asked me who else he could complain to, because
19 she doesn't work for me. And I indicated he could
20 complain to town council, or he could file a complaint
21 with the Commission on Judicial Conduct. He then asked
22 me for contact information, telephone number, I think
23 address, which I provided to him.

24 Q Did he ask you for the contact information for town
25 council or not?

1 A He did not.

2 Q How long after that conversation was it that you got
3 a copy of the letter that I have before you, which is
4 Plaintiff's Exhibit 4?

5 A I don't know when I received this. I know I
6 possessed it, but I don't know when I received.

7 Q You know you possessed it, because you delivered what
8 you say is the original to me, in accordance with my
9 subpoena for your deposition. Isn't that right?

10 A Yes. You subpoenaed the copy of the letter.

11 Q I believe that you represented to me, sir, that this
12 is your original copy. Isn't that it? That's what you
13 received.

14 A I provided you a copy of a folded -- a folded letter,
15 yes.

16 Q And to the best of your knowledge, is this the
17 original of the folded letter that you provided to me?

18 A It appears to be. I don't -- if this is -- during
19 the deposition, you asked for the folded copy, which I
20 provided you the same afternoon.

21 Q And you don't know when you received this?

22 A I do not.

23 Q Where was this letter when I served the subpoena for
24 you to produce it?

25 A It was in our municipal court files.

1 Q How many copies of this letter did you make at the
2 municipal court?

3 A At the municipal court? Sorry.

4 Q Wherever it is that this was kept and/or copied.

5 A There was a copy machine across my office. I made
6 one or two copies. I provided you with however many
7 copies we made, I provided those to you.

8 Q In other words, you gave me your only copy. Is that
9 what you're saying?

10 A I gave you a copy of that folded complaint letter.

11 Q Well, this -- I thought, sir, you told me this was
12 the original one right out of your file. That this was
13 it.

14 A During the deposition, you asked me is this the
15 original, and I said, no, I think the original is in my
16 office, which I provided to you later that afternoon.

17 Q And I'm asking you, can you identify this as the
18 original that you provided me later that afternoon?

19 A I don't -- I don't know. It looks like it, yes.

20 Q Okay. So let's have you analyze it. Is that what
21 you gave me, sir?

22 A It appears to be consistent with the letters I
23 produced to you prior to the deposition.

24 Q No. This was after the deposition that you gave me
25 the original, sir.

1 A Right.

2 Q That's what this is.

3 A Right.

4 MR. MATHISON: Move the introduction of the letter as
5 delivered to and received from Mr. DeLoach as Plaintiff's
6 Exhibit 17.

7 MR. HALIO: No objection.

8 THE COURT: Without objection.

9 COPY OF DOCUMENT REFERRED TO AS
10 LETTER DELIVERED BY MR. BREED AND
11 RECEIVED BY MR. DELOACH MARKED
12 PLAINTIFF'S EXHIBIT NUMBER 18
13 ADMITTED AS EVIDENCE.

14 BY MR. MATHISON:

15 Q Why was this letter delivered to you, or do you know?

16 A I don't know.

17 Q Did you read the letter, Mr. DeLoach?

18 A I read the letter. At the time, I know I read the
19 letter is when you requested it.

20 Q You're telling me you didn't read the letter until
21 your deposition was taken?

22 A I don't know. I don't know when I first read the
23 letter.

24 Q The letter has been taken apart and the staple has
25 been taken out of it, hasn't it, Mr. DeLoach?

1 A I don't know.

2 Q Look at the staple spot and see how many staple holes

3 there are in the area.

4 A There's one or two staple holes there.

5 Q On either side.

6 A Correct.

7 Q Looking like it's been stapled at least twice

8 beforehand.

9 A Correct.

10 Q Is it your experience that, in order to copy a

11 document, you have to take the staple out in order to put

12 it in the copy machine?

13 A Yes.

14 Q How many copies of the document were made and

15 circulated after you got it at the Town of Hilton Head?

16 A I don't know.

17 Q When did you advise Brian Hulbert that this sort of

18 thing was *coming down the pike*?

19 A I don't recall having any discussion with Brian

20 Hulbert about it.

21 Q So you never told him anything about it. Is that

22 what your testimony is?

23 A I don't recall. I don't recall any discussion with

24 him.

25 Q Does that mean that you did, and just can't recall

1 it, or?

2 A I don't know that I did.

3 Q Did you ever give him a copy of the letter?

4 A I don't believe that I ever did.

5 Q Did you ever show it to him?

6 A I don't believe that I ever did.

7 Q Did you read it enough to make a determination as to
8 whether it involved a personal or a professional matter?

9 A No, I don't think so.

10 Q So you never reached a conclusion as to whether this
11 was a personal matter or a professional matter?

12 A It was a matter between Mr. Breed and Maureen Coffey.

13 Q Well, I'm sorry, but if that's the case, then why did
14 you tell him to send it to the Commission on Judicial
15 Conduct?

16 A He asked who he could complain to, and I indicated
17 you could complaint to town council or the Commission on
18 Judicial Conduct.

19 Q Once you received that letter, the one that has been
20 marked as Plaintiff's Exhibit 18, did you tell Maureen
21 Coffey that you got it?

22 A I don't recall ever telling Maureen Coffey that I
23 received a complaint letter.

24 Q Are you a lawyer, Mr. DeLoach?

25 A Yes.

1 Q How long have you been licensed to practice in South
2 Carolina?
3 A Twenty-nine years.
4 Q Do you understand that the proceedings before the
5 Commission on Judicial Conduct are confidential?
6 A I've never had any dealings with the Commission on
7 Judicial Conduct, so I'm not aware of their rules.
8 Q Are you aware of the rules that apply to the Bar
9 generally, that is, the disciplinary council?
10 A Very vaguely.
11 Q Do you know whether proceedings are, certainly, for
12 the first 30 days, absolutely confidential?
13 A Not aware of that, no.
14 COURT REPORTER: I'm sorry. I'm not aware of?
15 A I'm not aware of that.
16 Q So it didn't strike you as odd that you got a
17 document that, theoretically, went to the Commission on
18 Judicial Conduct without any explanation for why you had
19 it?
20 A I'm sorry. Would you --
21 Q Did it strike you as odd that you had been given a
22 document that was addressed to the Commission on Judicial
23 Conduct?
24 A I -- it's a document that I never requested that was
25 in our possession.

1 Q Yes, sir. And are you listed as a copy recipient on
2 the last page of the document?
3 A No.
4 Q Is anyone else?
5 A No.
6 Q And you're telling me you didn't realize it was
7 confidential.
8 A No.
9 Q Did you show the document to anyone?
10 A Not that I'm aware of.
11 Q Well, let's be more specific. Did you show the
12 document to your fellow assistant town manager, Curtis
13 Coltrane?
14 A No. I discussed the complaint with him as I recall,
15 but I don't recall providing him a copy of the complaint
16 letter.
17 Q I didn't ask you whether you provided him a copy. I
18 asked you did you show him the letter?
19 A I don't have any recollection of showing him the
20 letter.
21 Q When was it that you went to Mr. Coltrane's office to
22 do whatever you did with reference to the letter?
23 A To discuss the complaint with him, I -- I don't
24 recall any specific date.
25 Q Well, was it at or about the time you received it, or

1 not?

2 A I don't know when I received this letter, and it
3 obviously had to have been after, because something would
4 have triggered our conversation, I think.

5 Q Did you go specifically to discuss the document with
6 Mr. Coltrane?

7 A I don't know whether it was just for this reason or
8 whether we discussed other town matters. I don't recall.

9 Q You do recall, however, in your deposition when you
10 told me that his office was approximately 75 yards away
11 from your office. Is that correct?

12 A It's about that. Maybe -- maybe closer.

13 Q Why would somebody walk 75 yards to have a
14 conversation under the circumstances? Why not get on the
15 telephone?

16 A Because he worked in the same building, right down
17 the hall from my office.

18 Q Seventy-five yards down the hall?

19 A I don't think it's that long, but.

20 Q It's your deposition.

21 A Well. I don't think it's that long.

22 Q Do you know whether you talked to him in the month of
23 June of 2008?

24 A I don't know whether I talked to him in the month of
25 June.

1 Q Did you allow Mr. Coltrane to read the letter?

2 A I don't recall providing the letter to him.

3 Q What did you tell him about the letter?

4 A I don't recall telling him about talking to him about
5 the letter. We discussed the matter. It may have been
6 about it. It was basically a conversation, what do you
7 think? And this is why I think it is logical that he had
8 a copy of the letter, and that it was logical that I
9 would have provided it to him to trigger the
10 conversation. But I don't physically remember handing
11 him or sending him a copy of the letter.

12 Q But you remember discussing the contents of the
13 letter.

14 A That's correct.

15 Q And that presupposes he knew what the contents were.
16 Is that right?

17 A Yes. It would, logically.

18 Q So what you're telling me is, you don't have a
19 recollection of actually taking it or sending it to him,
20 but you have a recollection of discussing the contents
21 with him.

22 A That's correct.

23 Q Did he seem to know the contents were?

24 A Yes.

25 Q Do you know whether someone other than you provided

1 him with a copy of the letter?

2 A I don't know anybody that would have provided him
3 with a copy of the letter..

4 Q And you don't know why it was provided to you. Isn't
5 that right?

6 A That's correct.

7 Q At the time that you received it, do you know whether
8 the Judicial Conduct Committee had received it or not?

9 A I don't know.

10 Q Well, specifically, did it come in the form that
11 you've got there without a stamp on it from the Judicial
12 Conduct Committee?

13 A There's no stamp on the complaint letter that is the
14 exhibit.

15 Q So it doesn't have the stamp that appears on
16 Plaintiff's Exhibit 3, in the upper right corner,
17 indicating receipt by the Commission on June 16th?

18 A Well, there's no stamp from the Commission on
19 Judicial Conduct on this exhibit.

20 Q Okay. In the last paragraph of the letter, and I'm
21 quoting, it says:

22 *In summary, as a result of Judge Coffey's actions,*
23 *she has given the distinct and transparent appearance of*
24 *bias and partiality.*

25 Didn't that sentence cause you reason for concern,

1 Mr. DeLoach?

2 A It is one person's opinion. And that was then up to
3 the Commission on Judicial Conduct to make that
4 determination, not me.

5 Q Going further:

6 *She is not able to be a neutral and detached arbiter*
7 *of the many cases that have been and will be pending*
8 *before her.*

9 Didn't that give you some concern?

10 A No, because I had not heard from anyone that she was
11 anything but a detached arbiter and was neutral and fair.

12 Q After you and Mr. Coltrane, working for the town,
13 discussed the problems, or lack of problems, inherent in
14 this letter, why didn't one or the other of you actually
15 tell Judge Coffey what was going on?

16 A Well, because, as far as I'm concerned -- I can't
17 speak for Mr. Coltrane -- but this was a complaint filed
18 by a resident against our judge, and that would be
19 adjudicated or investigated by another body.

20 Q And you didn't feel you owed your colleague at least
21 so much as a heads up that it was coming?

22 A No.

23 Q And in your case, it may well have been because
24 you're the person that told him to send it to Columbia in
25 the first place. Isn't that right?

1 A No. I never told him to do anything. I provided him
2 with the information that he asked for.

3 Q What was Maureen Coffey's reaction to the delivery
4 later in the month, on or about June 26th, of this letter
5 to her?

6 A What was her reaction to me?

7 Q That you observed. Not what she said to you. What,
8 if anything, did you observe about her after she received
9 this letter?

10 A I have not observed anything about her after she
11 received the letter.

12 Q Mr. DeLoach, did she complain to you beginning in
13 July of being under a great deal of stress?

14 A I don't know what it was, but she did convey that to
15 me, yes.

16 Q Did she consider taking time off because of the
17 stress?

18 A I don't recall whether that was part of the
19 communication.

20 Q Did you make a recommendation with respect to EAP?

21 A I did.

22 Q And what recommendation did you make?

23 A EAP is, if I may, an employee assistance program, and
24 there are -- it provides a number of services to town
25 employees, one of which is counseling for people who are

1 -- any number of needs, stress, for example. And I told
2 her that -- or communicated. I don't know if we were
3 talking or emailing. I don't recall. But I told her
4 that was available to her, and that I would contact human
5 resources and get her some information. And I think --
6 pretty sure that they then forwarded that to her,
7 brochure, contact information.

8 Q So effectively, you believed that she was in need of
9 psychological or psychiatric counseling. Is that what
10 you're saying?

11 A She -- as I recall, she said this was very stressful
12 to her. And I didn't diagnose anything. I just said,
13 well, here's a service. And I wasn't quite sure whether
14 she was even familiar with EAP, but I made her familiar
15 with it, and offered that service to her.

16 Q How many people in your office, Mr. DeLoach, saw that
17 letter, the one that you got out of your file?

18 A I don't know.

19 Q Who filed the letter?

20 A I have two people that could have filed it.

21 Q Same people now as you had then?

22 A Yes.

23 Q Who made the copies of it, if those staple removal
24 marks indicate copies were made?

25 A I don't know whether I made copies of it or had

1 someone in my office make copies of it. I don't recall.

2 Q Did you tell other people at your level of management
3 about the existence of this complaint?

4 A I may have spoken to the town manager. I don't
5 recall whether or not I did. It would be likely that
6 there would be a heads up that there was a complaint, but
7 I don't specifically recall any discussion with him, but
8 it could have happened.

9 Q That's Steve Riley?

10 A Yes.

11 Q And if I understand the way the system works, Mr.
12 Riley works for the Town, and everybody else that is,
13 theoretically, in the Town's employ works for Mr. Riley.
14 Isn't that correct? With two exceptions.

15 A Mr. Riley works for town council. He has a contract
16 with town council. And then, all employees work
17 indirectly and directly for him.

18 Q And who is one of the employees that does not work
19 indirectly for him?

20 A Maureen Coffey has a contract with town council, and
21 our town attorney has a contract with town council.

22 Q And with respect to Ms. Coffey's contract, who is it
23 that makes recommendations to town council as to whether
24 to renew it or not?

25 A That is dependent upon whether or not town council

1 asks for a recommendation. So there is no formal process
2 whereby someone's expected to make a recommendation for a
3 renewal for her or any other judge we've had.

4 Q Who has made the recommendation in each instance in
5 the last three times that her contract has been renewed?

6 A I have been asked -- I was asked the last time, which
7 is a little over a year ago, whether or not I recommended
8 her renewal. Don't know.

9 Q What about in 2008, Mr. DeLoach? Were you asked
10 then, or was it someone else?

11 A I don't recall in 2008. Don't know.

12 Q Prior to the delivery of this letter to you, was it
13 customary for Judge Coffey to meet with town council at
14 least once a year?

15 A Yes.

16 Q Has she met with town council at all since this
17 letter was delivered in 2008?

18 A I don't think so.

19 Q Why is it that town council no longer wants to speak
20 to her about the way she is running the judgeship?

21 A Because she's doing a good job.

22 Q Did she, at one juncture, ask you for permission to
23 go and talk to town council?

24 A No.

25 Q She has not?

1 A She has not.

2 Q Does she need your permission to go?

3 A No, sir.

4 Q Who negotiates Ms. Coffey's contracts?

5 A We -- I do. Typically, if -- that's the process we

6 -- the last one about a year ago, there was some changes,

7 but Maureen and I met and discussed those.

8 Q And is that why Mr. Breed may believe that you are

9 Ms. Coffey's direct report?

10 MR. HALIO: Objection. Objection over Mr. Coffey

11 may -- Mr. Breed made may believe.

12 THE COURT: It's sustained. He can't answer that.

13 BY MR. MATHISON:

14 Q Did you ever tell Mr. Breed that Ms. Coffey was your

15 direct report?

16 A No.

17 Q How often did you discuss with Mr. Breed, after the

18 delivery of that letter, either your reaction or

19 Maureen's reaction to it?

20 A I don't recall ever discussing that with Mr. Breed.

21 Q You and Mr. Breed dine or have lunch together

22 frequently; don't you?

23 A About four or five times a year, I would say.

24 Q Do you have a close enough relationship that you send

25 each other emails of family vacations and things like

1 that?

2 A He has --

3 Q Pictures?

4 A He has sent me photos, yes.

5 Q And you're telling me that you continued to see him

6 and never discussed this?

7 A Yes.

8 Q You didn't think it was confidential, and yet, you

9 never discussed it. Is that correct?

10 A I didn't think what was confidential?

11 Q What's in the letter.

12 A Um-hmm. We didn't discuss this, no.

13 Q Did you negotiate Ms. Coffey's current contract,

14 which is Plaintiff's Exhibit 1?

15 A This is her current contract, and she and I met and

16 discussed the contract, yes.

17 Q And did she ask for a raise over her previous

18 contract, which was executed in February of 2008?

19 A She was considering asking council for a raise, yes.

20 Q And did you discourage her from doing that?

21 A No, I didn't discourage her from that.

22 Q Do you know how much she thought she should get?

23 A She proposed \$90,000.00.

24 Q And she didn't get that; did she?

25 A That's correct.

1 Q Was that a function of you negotiating with her, or
2 was that a function of town council negotiating with her?
3 A Well, council accepted her agreed-upon amount, which
4 is, I believe, \$87,000.00 now.
5 Q But who negotiated that agreed-upon amount?
6 A Maureen and I met to discuss any changes to her
7 contract.
8 Q Mr. DeLoach, there is a major change to that contract
9 from her previous two contracts; isn't there?
10 A Major change? No, I don't see any major changes.
11 Q What is the duration of the current contract?
12 A It's a two-year contract.
13 Q At \$87,000.00. Is that correct?
14 A Correct.
15 Q And the previous contract is for three years; isn't
16 it?
17 A That's correct.
18 Q And that's three years at \$85,600.00. Isn't that
19 right?
20 A That's correct.
21 Q And doesn't that mean that Ms. Coffey has basically
22 lost \$82,000.00 in guaranteed income over the third year
23 that she would have had, had she had the third year of
24 the contract?
25 A She can negotiate this at any time. She can

1 negotiate it between contract periods. That's either in
2 the code or in the the contract, where compensation can
3 be considered from time to time.

4 Q Mr. DeLoach, did you tell Maureen Coffey that the
5 duration of the contract was non-negotiable; it would not
6 be longer than two years?

7 A No.

8 Q Did you negotiate for two years? Is that what you're
9 telling me?

10 A No.

11 Q Well, then, how did it end up going from three years
12 to two years?

13 A The draft that we provided to Maureen included two
14 years, but that was not necessarily proposed. What I
15 convey to council is that they can renew it for a two- to
16 four-year period.

17 Q But they can also not renew it. The third year isn't
18 guaranteed under any set of circumstances.

19 A That's correct. She's had two-year contracts in the
20 past.

21 Q Not before 19 -- not before 2005; has she?

22 A Yeah, she's had several two-year contracts.

23 Q Yes, sir. But the one in 2005 was a three-year
24 contract; wasn't it?

25 A I believe so.

1 Q And the one in 2008 was a three-year contract; wasn't
2 it?

3 A The one in 2005, if I may, I think that was -- that
4 was a two-year and several-month contract, expanded
5 through the holidays, as I recall. And so, it says
6 probably '05 to '08, when, in fact, it was two years and
7 I think two or three months.

8 Q Is that because her previous contract had
9 essentially, she'd outlived it and was working beyond the
10 time?

11 A I believe it expired in October of the previous year,
12 yeah.

13 Q So that, essentially, she kept working at the
14 previous contract rate, and then you renewed it instead
15 of making it three years when it should have renewed, you
16 made it basically two years and a fraction from the date
17 on which you did renew it.

18 A I don't understand your question, sir.

19 Q Well, let's assume that the contract expired in
20 April, all right, and she continued working until --

21 A Um-hmm.

22 Q -- March.

23 A Um-hmm.

24 Q -- the following year. That would make what was
25 otherwise a three-year contract, that would make it into

1 a contract of 2.1 years; wouldn't it?

2 A It would.

3 Q Is that what you're talking about?

4 A Well, again, I think she had a two-year contract.

5 The -- as I recall, we ran it from October to January.

6 There was an election that year, I believe. And in any
7 event, was renewed earlier that year.

8 Q Actually, from October 4, 2005, and terminate on
9 January 25, 2008.

10 A Right.

11 Q Is that correct?

12 A I believe so. Right.

13 Q And isn't that because she had worked -- continued
14 working under the previous contract for a period of time
15 without actually having a contract?

16 A It could have been, yeah.

17 Q So it was three years, but not officially, because
18 she worked without a contract for a while. And the last
19 one was clearly three years; wasn't it?

20 THE COURT: Is that a yes for the record, Mr.
21 DeLoach?

22 A I'm looking. The term of contract for this was
23 October 4, 2005. It terminates January 2008.

24 Q That's --

25 A So that's a two-year and three-month contract.

1 Q Okay. The last one, do you have that one up there?
2 Excuse me. The next-to-the-last one?
3 A I have that, and I've got that.
4 Q Would you read the duration of the contract that
5 Judge Coffey had when this letter was written?
6 A *This employment contract shall be effective beginning*
7 *February 5, 2008, and shall terminate February 5, 2011.*
8 Q So she had a three-year contract; letter was written
9 and delivered; now she's got a two-year contract.
10 A That's her current contract, is two years.
11 Q And that's the way it was presented to her by you.
12 A That number was in there, right. And she reviewed
13 it.
14 Q Are you aware of any job deficiency in Maureen
15 Coffey's performance as a judge since the delivery to you
16 of the letter to the Commission on Judicial Conduct?
17 A No.
18 Q Did anyone with the town council seek to discuss Mr.
19 Breed's complaint with you?
20 A No.
21 Q Do you recall testifying at your deposition about a
22 conversation that you had with a Mr. Williams?
23 A Yes. Mr. George Williams asked me whether or not --
24 something to the effect is the Town involved in this.
25 And I said the Town is not a party to this complaint.

1 And that was our discussion.

2 Q Well, but that's a little ambiguous. The Town was
3 not a party to the original complaint that was filed in
4 the Breed letter, the letter of June 6th. Is that right?

5 A His question related to the first lawsuit, as I
6 recall.

7 Q Did Mr. Breed inform you that his complaint against
8 Maureen Coffey was dismissed by the Commission on
9 Judicial Conduct?

10 A I don't recall whether I heard that from him or not.

11 Q Have you ever seen the letter that announces the
12 dismissal?

13 A I don't believe I've seen that.

14 Q Who, if anyone, told you that it had been dismissed?

15 A I don't recall where I learned that it was dismissed.

16 Q Did Mr. -- excuse me. Did Maureen Coffey herself
17 tell you it had been dismissed?

18 A I don't know.

19 Q Do you have any idea when it was dismissed?

20 A No.

21 Q Did Maureen Coffey tell you that, in view of the
22 complaint that was filed against her by Mr. Breed, she
23 would not be able to continue hearing cases brought by
24 Sea Pines Plantation Security?

25 A Yes.

1 Q Did she explain why?

2 A On the advice of her counsel, she said.

3 Q Well, did you understand that you must avoid the
4 appearance of impropriety? Is that correct?

5 A I think that's what her lawyer would have told her,
6 yeah.

7 Q And did she almost immediately after the service of
8 the complaint stop hearing Sea Pines cases?

9 A I believe so.

10 Q And what did the Town do in order to obtain
11 substitute judicial expertise to resolve the Sea Pines
12 Security cases?

13 A We hired a magistrate or municipal judge. I forget
14 who the first person was, but we hired someone that could
15 hear cases.

16 Q Initially, did you hire Ned Tupper, who was
17 effectively the municipal judge of the City of Beaufort?

18 A That's -- yes, I believe we did.

19 Q Subsequently, did you replace Mr. Tupper with
20 Fletcher Johnson?

21 A That's correct.

22 Q Was one of the reasons for the transitions from Mr.
23 Tupper to Mr. Johnson the fact Mr. Johnson would work for
24 less?

25 A I believe it was.

1 Q How much money annually does it cost annually to have
2 another judge hear Sea Pines cases?

3 A That was tallied up a couple of weeks ago, and it's
4 -- the total has been \$5,400.00.

5 Q For the periods that she recused herself?

6 A Yes.

7 Q Is that one of the reasons that she didn't get a
8 raise beyond \$1,400.00?

9 A No.

10 Q Did Ms. Coffey tell you in October of 2008 that,
11 notwithstanding the fact that the Commission on Judicial
12 Conduct had dismissed the complaint against her, she
13 still couldn't hear Sea Pines cases.

14 A I don't recall a conversation to that effect.

15 Q Did you ask her to start hearing the cases again?

16 A I don't recall whether I asked her or not. I think
17 we've had a continuous substitute judge or acting judge.
18 I don't believe that -- don't know for a fact, so I can't
19 say whether she started hearing cases again, but I don't
20 think that she did.

21 Q Did Judge Coffey tell you the reason she couldn't was
22 that she anticipated bringing a lawsuit against Sea
23 Pines, specifically, for defamation?

24 A I don't recall that, no.

25 Q Did you tell your friend George Breed that Ms. Coffey

1 was going to bring a lawsuit against CSA and Sea Pines
2 Security?

3 A No.

4 Q When you negotiated with Judge Coffey, did you bring
5 a chart to the negotiations?

6 A I did, yes.

7 Q And was this designed to show her what other people
8 in comparable levels of employment by the Town were
9 making?

10 A Correct.

11 Q And is one consideration the fact that town employees
12 who aren't under contract are given stepped-up raises
13 annually, depending upon whether the money is available
14 and some proficiency, but isn't it basically a loyalty
15 reward?

16 A No. We have a merit-based system. We don't have a
17 cost-of-living, adjustment-based system.

18 Q But there are annual percentage increases for people
19 doing their job.

20 A Money is budgeted and for salary raises. And then,
21 employees are evaluated. Based on their performance,
22 they will receive more or less than some amount.

23 Q So someone who's on a fixed-amount contract, in the
24 third year of that contract, is probably not doing as
25 well as if she got stepped-up annually, even if it's only

1 a small amount. Is that correct?

2 A All I can say is that salaries are -- the amount of
3 salaries between the judge or the contract employee, the
4 town manager, for example, and the town council.

5 Q Did the amount of money that you increased Judge
6 Coffey's contract amount to the statutory minimum?

7 A Well, there is no statutory minimum. We -- Maureen
8 and I had sat down in my office, and we reviewed the last
9 several years of raises and not raises. Some -- some --
10 one or two years there was no raise. And arrived at a
11 number, a salary of 87,000. I also indicated to her that
12 she could go to council and discuss this with them.

13 Q Did you tell her that she could go to council and
14 discuss the fact that the duration of the contract had
15 been cut from three years to two?

16 A She could discuss any term, including the term of the
17 -- any term, provision in the contract, including her
18 term.

19 Q Mr. DeLoach, have you heard any sexual innuendos
20 about Judge Coffey and a law enforcement officer?

21 A I never have, no.

22 Q In your own experience, working for the Town of
23 Hilton Head Island, has there been a previous judicial
24 officer terminated, allegedly for having sexual
25 liaisons --

1 MR. HALIO: Objection, your Honor. I don't see
2 where this is relevant to anything having to do with this
3 case.
4 THE COURT: Okay. I don't know where the relevance
5 either, Mr. Mathison. Are you going to be able to tie it
6 up?
7 MR. MATHISON: I believe I will.
8 THE COURT: Do you want me to go off the record?
9 MR. MATHISON: May I approach.
10 THE COURT: Please.
11 OFF-THE-RECORD BENCH CONFERENCE,
12 OUT OF HEARING OF JURORS. PRESENT:
13 THE COURT, MR. MATHISON, MR. HALIO,
14 MS. JONES, MS. JOLLEY.
15 CONTINUE GREG DELOACH
16 DIRECT EXAMINATION, MR. MATHISON:
17 Q Excuse me, Mr. DeLoach. Was there once a magisterial
18 reporter or recorder working for the Town of Hilton Head
19 Island?
20 A I believe her title is associate judge, who's a non-
21 lawyer, but I think the term back then was associate
22 judge, but yes.
23 Q And she had worked for a judge, and then got elevated
24 from the recorder/reporter position to associate judge?
25 A She was essentially a -- a court administrator in the

1 municipal court, and then was appointed an associate
2 judge, yes.

3 Q And was her employment terminated?

4 A I believe that it was, yes. I don't recall what it
5 was specifically if it was a resignation, or it could
6 have been a termination.

7 Q Were there allegations at the time of the termination
8 that she was involved in one or more sexual liaisons with
9 law enforcement officers?

10 A I recall there was an allegation that -- many
11 allegations, but one of which was that she was having an
12 affair with a deputy at the Beaufort County Sheriff's
13 Office.

14 Q Were that to prove true with respect to Maureen
15 Coffey, would we expect her to be terminated, as well?

16 MR. HALIO: Objection. Speculation.

17 THE COURT: I think you can ask a hypothetical
18 question. I think he needs to word it properly.

19 BY MR. MATHISON:

20 Q Would that amount to termination for cause as set
21 forth in her contract?

22 A I -- I -- I don't know, because that -- that -- in
23 the case of a existing judge who has a contract with town
24 council, whether or not it would amount to a violation of
25 the terms of the contract. Ms. Churray (phonetic spell),

1 I believe, was --

2 Q I never used her name, so.

3 A Sorry.

4 Q You believe was what?

5 A Was terminated for failure to issue bench warrants
6 and things like that.

7 Q One moment, sir. I think I'm just about finished.
8 Did you base your decision that what Mr. Breed had said
9 about Maureen Coffey was more personal than professional
10 on what Mr. Breed had said to you, or on what was in the
11 letter?

12 A I'm sorry. Repeat the question, please.

13 Q Did you base your decision that what Mr. Breed had
14 said about Maureen Coffey, that it was personal and not
15 professional, did you base that on what Mr. Breed said to
16 you when he talked to you, or did you say -- base it on
17 what was in the letter?

18 A I never made a decision to or not to talk to Maureen
19 about the complaint. I simply concluded that this was a
20 complaint by a resident against her, and that the
21 Commission on Judicial Conduct would have to investigate
22 it.

23 Q So you never made a determination at all whether it
24 was personal or professional? Is that what you're
25 saying?

1 A I made -- made no such determination.

2 Q Are you, in addition to being friends with Mr. Breed,
3 also friends with Cary Kelley, the executive vice
4 president of Community Services Associates?

5 A Well, CSA does have business with the Town. I don't
6 have lunch with Cary. I don't think we've ever had lunch
7 before, or dinner. I see him at functions like golf
8 tournament functions, that sort of thing.

9 Q I'm handing you this document, which is an email
10 addressed to you from Cary Kelley.

11 A Um-hmm.

12 Q And ask whether you received that on or about
13 December 23, 2008.

14 A Correct.

15 Q Could you read the email to you on two days before
16 Christmas?

17 A *Greg, I thought you might want a copy of our response*
18 *to the subject suit. The 'Island Packet' will be running*
19 *a story on December 26. I wish you and your family a*
20 *Merry Christmas and a Happy New Year. Sincerely, Cary*
21 *Kelley.*

22 Q And what was attached to the email that I just handed
23 you?

24 A It's -- it's not here, but as I recall it was the --
25 well, it says in the subject, CSA answer to Coffey suit.

1 Q And I'm handing you what I believe is the attachment,
2 and asking you to tell me whether that's it.
3 A Yes.
4 Q That's a letter from Celeste Jones to the clerk of
5 court; isn't it?
6 A Yes.
7 Q Filing an answer. Is that right?
8 A Correct.
9 Q With specific allegations as to what they thought my
10 client's and her brother's failings were?
11 A I assume that. I've never read it.
12 Q So you didn't read that any more than you read the
13 letter from Mr. Breed?
14 A I read the email from Mr. Kelley to me, which I just
15 read. I did not read the complaint, their answers.
16 Q Do you know whether you ever did or said anything
17 that made you susceptible to the people at Community
18 Services administration, thinking that you might somehow
19 help them, or want to know what they were doing?
20 A No.
21 Q Yet, they were furnishing you information, in this
22 instance, two days before Christmas, gratuitously?
23 A I don't know why they sent it to me.
24 Q Do you know whether they had scheduled some kind of
25 press event, so that they would know three days in

1 advance that there was going to be an article run in the
2 *Island Packet*?

3 A No.

4 Q Did you read the article?

5 A No.

6 MR. MATHISON: Move the introduction of the letter
7 without the pleadings, Plaintiff's Exhibit 19.

8 THE COURT: Any objection?

9 MR. HALIO: Just the front page?

10 MR. MATHISON: Yes.

11 MR. HALIO: No objection.

12 THE COURT: Without objection.

13 COPY OF DOCUMENT REFERRED TO AS

14 LETTER WITHOUT THE PLEADINGS

15 MARKED PLAINTIFF'S EXHIBIT NUMBER 19,

16 ADMITTED AS EVIDENCE.

17 BY MR. MATHISON:

18 Q If you told Mr. Breed that you were not Maureen
19 Coffey's boss, why did he continue to communicate with
20 you?

21 A Communicate in which way?

22 Q Well, for example, by sending you pleadings in the
23 assumption that you were interested in the matter.

24 A That was sent by Mr. Kelley, and I can't tell you why
25 he sent it to me.

1 Q If this document was sufficiently remarkable that you
2 discussed it with your colleague, Mr. Coltrane, why
3 didn't you discuss it with Maureen Coffey?
4 A Which document are you referring to?
5 Q The letter that Breed sent to you or delivered to you
6 on or about June 6, 2008.
7 A The complaint letter?
8 Q Yes.
9 A I talked to Curtis about the matter for several
10 reasons. One, he employed Maureen Coffey in his practice
11 many years earlier. And two, I seek his advice on a
12 number of things.
13 Q Were you asking him -- did you ask him whether or not
14 the complaint was credible?
15 A I don't recall specific words. I don't recall that
16 specific word, no.
17 Q Did you ask him whether or not, based on his
18 understanding of Maureen Coffey's past conduct, she was
19 capable of what Mr. Breed had --
20 MR. HALIO: Objection to this line of questioning as
21 being hearsay.
22 MR. MATHISON: My next witness is Mr. Coltrane.
23 THE COURT: Well, we'll get to Mr. Coltrane, then.
24 BY MR. MATHISON:
25 Q Have you ever discussed Mr. Breed's letter with

1 Maureen Coffey?

2 A No, I don't believe we have.

3 MR. MATHISON: Please answer any question that
4 counsel may ask.

5 MR. HALIO: May it please the Court.

6 THE COURT: Yes, sir.

7 GREG DELOACH

8 CROSS-EXAMINATION, MR. HALIO:

9 Q Mr. DeLoach, in your position is assistant town
10 administrator. Is that correct?

11 A Assistant town manager.

12 Q Assistant town manager. You receive complaints about
13 public -- excuse me -- town employees?

14 A Yes.

15 Q And you may not be the designated complainant, but
16 you get them; don't you?

17 A Yes.

18 Q And you have received complaints about town judges
19 from time to time. Is that correct?

20 A We will occasionally have a disgruntled employee
21 who's had a case before a judge and didn't like the
22 verdict, but --

23 Q Disgruntled litigant.

24 A Well, these are town cases. I'm talking about a town
25 case, town ordinance violation.

1 Q Right. Somebody hadn't had their case come out
2 right, so they're mad with the judge, right?
3 A Yes. I've heard from an employee or two.
4 Q And you're a lawyer, also.
5 A Um-hmm. Yes.
6 Q Have you practiced in court?
7 A Very little.
8 Q But you know that judges are criticized all the time
9 for their decisions, right?
10 A Yes.
11 Q I mean, that's just the nature of the job when you're
12 sitting up on the Bench, and you're making decisions
13 about people's lives and liberty and money and things
14 like that, you're going to get criticism; aren't you?
15 A Yes.
16 Q And you mentioned the appearance of impropriety. A
17 judge, because of the position that's held by a judge,
18 the judge is held to a higher standard than anybody else,
19 right?
20 A Yes.
21 Q The judge cannot only not do something improper; the
22 judge has to avoid anything that appears to be improper.
23 Isn't that right?
24 A Correct.
25 Q And you describe what the letter that you received

1 that's been talked about, that you were asked about by
2 plaintiff's counsel, as a complaint by a citizen. Is
3 that right?

4 A That's what I said.

5 Q And every citizen has a right to make a complaint
6 about a public official, right?

7 A Yes.

8 Q And as the Town of Hilton Head is constructed, you,
9 as the -- you are the assistant town manager of the
10 plaintiff's department, right? The courts department.

11 A Correct.

12 Q So her department -- okay. So how many departments
13 do you have underneath you?

14 A There's about five.

15 Q And one of them is the courts.

16 A Yes.

17 Q And that's why Mr. Breed came to you in the first
18 place to find out about filing a complaint is because she
19 was one of the departments under your jurisdiction. Is
20 that right?

21 A Well, he just called me up. I don't know what
22 motivated.

23 Q That would be a reasonable assumption; wouldn't it?

24 A Yes.

25 Q If you're the manager of the courts?

1 Q The only thing that changes are the length, the
2 amount of money. Really that's the only that changed;
3 isn't it?
4 A For the most part.
5 Q Okay. And in addition to salary, Judge Coffey also
6 receives benefits, like other town employees, correct?
7 A Correct.
8 Q And would you tell the jury what those benefits are?
9 A Numerous health benefits, basically, which could
10 cover any number of services. I believe -- I believe she
11 gets a 401(k). I'm not positive, but I believe she gets
12 a 401(k) program.
13 Q She's gets a salary; she gets health benefits.
14 A Right.
15 Q And she gets a 401(k).
16 A Right. She gets vacation.
17 Q Vacation. Paid vacation?
18 A Right.
19 Q Which are essentially benefits that every town
20 employee receives. Is that right?
21 A Yes.
22 Q The first contract we mentioned was from -- was
23 executed December 11, 2000. To the best of your
24 knowledge, the plaintiff, Judge Coffey has been employed
25 by you continuously since that time. Is that correct?

1 A That's correct.

2 Q And her contracts come up for renewal when they
3 expire.

4 A Correct.

5 Q The length of the contract. Is that correct?

6 A Yes.

7 Q And she became full time in 2005, correct?

8 A That's correct.

9 Q Since then, since 2005, isn't it true that her
10 position has never been open to other candidates.

11 A That's correct. She's a full-time judge.

12 Q Her job has not been shopped out among the legal
13 community, right?

14 A Correct.

15 Q And that would include the most recent contract,
16 which was signed in 2011.

17 A February, I believe, of 2011.

18 Q All right. In the midst of this lawsuit, after the
19 complaint was filed, the Town of Hilton Head Island
20 didn't even ask anybody else, didn't even consider
21 anybody else, for her job; did they?

22 A Correct.

23 Q Did you know that she was complaining in this case
24 about the length of her last contract?

25 A The length of which contract?

1 in a year, and sometimes we re-negotiate some of those.

2 Q And generally what happens is, one side says I want

3 A; one side, the other side, says, I'll give you C. Then

4 you settle somewhere in the middle, right?

5 A Sometimes, yes.

6 Q Okay. Why was she given a raise of \$1,400.00 a year?

7 A She asked for a raise, and council and I recommended

8 that she be -- her contract be renewed. And council, as

9 I conveyed to her, was pleased with her performance.

10 Q Wait a minute. She was being -- she was given a

11 raise as -- for doing a good job?

12 A As part of -- as part of the renewal, and as part of

13 the renewal of the terms of the contract. And the terms

14 of the contract include her salary.

15 Q Well, were other town employees being raised during

16 the same period of time also in February 2011?

17 A We received a one percent increase for 2011, as I

18 recall.

19 Q We being?

20 A Town employees.

21 Q Does that include you?

22 A Yes.

23 Q And \$1,400.00 on an 85,6 contract is one point

24 something percent, right?

25 A Yes.

1 Q So she's received the same salary increase in 2011,
2 that all other town employees received, and if not
3 slightly more.

4 A For that year, correct.

5 Q And can you tell us why there was a one point --
6 approximately a 1.5 percent salary increase at that time,
7 as opposed to say, eight or ten percent?

8 A I believe that was just a number that she and I
9 arrived at, 87,000.

10 Q Did it have anything to do with town revenues?

11 A No.

12 Q Being down?

13 A If you go back several years, the typical merit
14 increase would be roughly four-and-a-half percent. Since
15 the economic downturn, going back three years, we haven't
16 had a adopted a budget just yet. It'll be adopted in a
17 -- in a few weeks. Going back to 2009, there was a zero
18 percent increase. 2010, I recall a one percent increase.
19 And 2011, a one percent increase.

20 Q Times have been kind of tough; haven't they?

21 A We've received less increases in salaries.

22 Q Did George Breed say or do anything to influence the
23 length of her salary or the amount of her raise?

24 A No.

25 Q Did your relationship with George Breed do anything

1 to influence the length of her contract or the salary of
2 her most recent contract?

3 A No.

4 Q That wouldn't be ethical on your part; would it?

5 A I wouldn't allow that to happen.

6 Q Now, what is the normal length of a contract for a
7 municipal judge?

8 A It can't be less than two, nor more than four years.

9 Q Where is that -- where does that come from?

10 A It's in the -- it's in the state code.

11 Q All right. And looking back over the six contracts
12 that she's had with the Town, and this would -- they
13 would go in this order, can you tell us what the length
14 of the contracts would be.

15 A December 11, 2000 to December 10, 2001.

16 Q So that was a year, plus?

17 A It was a year.

18 Q Okay. So the first contract was one year.

19 A These are not in order.

20 Q I'm sorry.

21 A That's all right. I will read them as you handed
22 them to me.

23 Q Could you put them in order for us?

24 A Sure.

25 Q I can tell you that the ones with the orange stickers.

1 A Correct.

2 Q And in fact, there was not even any discussions about
3 not renewing her last contract, correct?

4 A Correct.

5 Q You're the person that makes that recommendation. Or
6 you were asked to make a recommendation.

7 A If I am asked to make a recommendation, I make a
8 recommendation, and I recommended that her contract be
9 renewed.

10 Q And you recommended that she be re-hired the last
11 time, right?

12 A I don't know if it was the last time. I just -- I
13 can't tell you the number of times. But when asked, I
14 will give a recommendation.

15 Q And in the case of the plaintiff, you have been asked
16 on occasion if she should be re-hired?

17 A Yes, beginning with her original employment.

18 Q And every time you got asked, you've said okay,
19 correct?

20 A Correct.

21 Q And in fact, there haven't even been any discussions
22 in the office about finding a new judge; have there?

23 A None.

24 Q Now, you were asked about your relationship with Mr.
25 Breed. Do you speak with Mr. Breed?

1 A Yes.

2 Q Has Mr. Breed ever expressed any desire to see the
3 plaintiff lose her job?

4 A No.

5 Q Has he ever said anything derogatory to you about her
6 personal life?

7 A No.

8 Q Has he ever said anything -- strike that. The
9 letter, I think you told us that the letter you received,
10 a copy of which went to the Judicial Commission, you put
11 it in -- it was put in a file.

12 A Correct.

13 Q And that's where it sat for what, the last four
14 years, to the best of your knowledge?

15 A Best of my knowledge.

16 Q You don't recall giving a copy to anybody?

17 A I don't.

18 Q The only person you recall discussing it with is
19 Curtis Coltrane. Is that correct?

20 A That's correct.

21 Q And as I understand it from the testimony you've
22 given, the letter itself has had no effect on your
23 relationship with the plaintiff.

24 A None at all.

25 Q But the allegations in the letter, if they were true,

1 would give you some cause for concern; would they not?

2 A If a judge was not fair and impartial and couldn't do
3 their job, then yes, it would.

4 Q Well, what about the factual allegations regarding
5 becoming involved in the middle of the investigation of
6 her brother for a series of crimes in Sea Pines? Is that
7 something you think a judge should be doing?

8 A A judge should not be doing that.

9 Q And should a -- in your -- and should a judge be
10 stopping an officer on the road saying I'm the judge;
11 quit harassing my family?

12 A I don't believe a judge should do that.

13 Q How about using the town prosecutor as a personal
14 attorney. Do you think that a judge should be doing
15 that?

16 A No. I don't think it's appropriate for either one of
17 them to do that.

18 Q Why is that?

19 A Because the prosecutor prosecutes cases in the
20 judge's court. And if their relationship was soured by
21 personal representation, then that might -- might result
22 in negative consequences for the Town.

23 Q Well, what about if the opposite occurred, if, in
24 fact, the relationship between the plaintiff and her
25 attorney, the town judge and her attorney, was a good

1 THE COURT: Thank you.

2 MR. HALIO: One second, your Honor.

3 THE COURT: Ladies and gentlemen, strike that last
4 question.

5 BY MR. HALIO:

6 Q And one last thing on this email that we've talked
7 about. When you got the email, December 23, 2008, that
8 was after you read about the lawsuit in the press, right?

9 A It probably would have been. Um-hmm.

10 Q And you, as a lawyer, know that, when you get a
11 complaint, you're supposed to answer it, right?

12 A Correct.

13 Q And that's what was being transmitted to you, was a
14 copy of Sea Pines' answer to the lawsuit?

15 A Correct.

16 MR. HALIO: No further questions.

17 THE COURT: Anything further?

18 MR. MATHISON: Just a couple on re-direct, your
19 Honor.

20 GREG DELOACH

21 RE-DIRECT EXAMINATION, MR. MATHISON:

22 Q There is a minimum contract period of two years,
23 isn't that correct? For a municipal contract employee.

24 A That's correct.

25 Q And what she has now is a minimum contract here. Is

1 that right?

2 A That's right. That's correct.

3 Q Whereas, what she had before this event was a three-

4 year contract. Is that right?

5 A That's correct.

6 Q And to the best of your knowledge, you're not certain

7 why that happened. She didn't ask to have her contract

8 reduced; did she?

9 A She did not.

10 Q And can you sit here and tell me right now,

11 Mr.DeLoach, that her contract is going to be renewed next

12 February?

13 A That's up to council.

14 Q What are you going to recommend, Mr. DeLoach?

15 A Today, I'd recommend that it be renewed.

16 Q Mr. DeLoach, why would George Breed be coming to you

17 for advice about how to file a complaint with the

18 Commission on Judicial Conduct?

19 A He didn't come to me for that. He came to me to

20 complaint about Maureen. And I indicated that he could

21 complaint to town council. And he said, *Who else could I*

22 *complain to?* And I told him he could complaint to the

23 Commission on Judicial Conduct.

24 Q And when you say he came to you, that's metaphorical;

25 isn't it? He actually called you on the phone.

1 MR. MATHISON: The plaintiff would call Bobbie
2 Martin to the stand.

3 THE COURT: Come on forward to be sworn.

4 WITNESS SWORN.

5 BARBARA ANN MARTIN

6 DIRECT EXAMINATION, MR. MATHISON:

7 Q State your name for the record, please.

8 A Barbara Ann Martin.

9 Q Ms. Martin, how long have you been a security officer
10 at Sea Pines Security?

11 A Since March of 1988.

12 Q And while you were working there, did you have
13 occasion to work with Officer -- or Sergeant John Jolin?

14 A Yes, sir.

15 Q During June of 2008, did you assist Mr. Jolin in
16 preparing a resignation that he submitted to leave his
17 job at Sea Pines Security?

18 A It's possible. I've assisted a couple of people with
19 that.

20 Q Do you recall why Mr. Jolin decided to submit his
21 resignation?

22 A Well, there were several different reasons.

23 Q Well, was one of them the fact that he was concerned
24 about incident reports that had been either confused or
25 not correctly treated?

1 A That is possible. I -- I recall only one main thing.
2 Q Do you recall an event or an incident involving a
3 dog?
4 A I do.
5 Q Can you tell the jury exactly what you and Officer
6 Jolin did to figure out who the dog belonged to.
7 A Well, we were out on the back porch, which I --
8 wasn't even daylight yet. And there was a dog back there
9 that had a collar on. We wasn't sure if anybody had made
10 contact -- or I wasn't sure that anybody had called the
11 number on the collar, and Jolin decided to go ahead and
12 call the number with -- by -- with his cell phone while
13 we were out on the back porch.
14 Q And who was the call eventually made to?
15 A I can only say that Jolin said it was -- he found out
16 is was Coffey, Mrs. Coffey.
17 Q All right. Could you have made the same call.
18 A I could have.
19 Q And if you had made it, do you think that you would
20 still be working at Sea Pines, instead of Mr. Jolin?
21 A I do not -- well, yeah.
22 Q Did you participate in Mr. Jolin's second
23 resignation, or not?
24 A You know, I don't recall first or second as far as
25 when any of them happened, or participating in such.

1 Q Officer Martin, did George Breed complain to you
2 about a personal relationship between Officer Jolin and
3 Judge Coffey?
4 A No, sir.
5 Q Never?
6 A No, sir.
7 Q So you never told him that there was a personal
8 relationship that he was complaining about between Judge
9 Coffey and himself?
10 A I never told who, sir?
11 Q Mr. Jolin.
12 A No, sir.
13 Q You never heard it at all, right?
14 A The only time I heard anything about Jolin and Mrs.
15 Coffey was from Mr. Jolin.
16 Q Mr. Jolin said that?
17 A He -- the only time that I've heard anything about
18 Jolin and Mrs. Coffey, is Jolin told me that people were
19 saying him and Mrs. Coffey were having an affair.
20 Q Okay. But you never said that yourself?
21 A No, sir.
22 Q And you never said Mr. Breed said that they were
23 having an affair. Is that right?
24 A That's correct.
25 MR. MATHISON: Please answer any questions that

1 ask a question. I'll just --

2 MR. MATHISON: I'm going to object at this point. I
3 mean, Officer Jolin's reputation is not on trial here.

4 MS. JONES: I think it's admissible your Honor,
5 under Rule 608.

6 THE COURT: I think you can ask what his truth and
7 veracity was in the community. I think she said that she
8 couldn't say, but.

9 BY MS. JONES:

10 Q Lieutenant Martin, and what is the basis of your
11 knowledge of Mr. Jolin's reputation for truth and
12 veracity?

13 A He likes to embellish a lot.

14 MS. JONES: Thank you, lieutenant. That's all the
15 questions I have.

16 A You're welcome.

17 THE COURT: Mr. Mathison.

18 BARBARA ANN MARTIN

19 RE-DIRECT EXAMINATION, MR. MATHISON:

20 Q Have you discussed your testimony here with anybody
21 other than me and Ms. Jones just now?

22 A They had -- I guess, a --

23 Q How many people have you discussed your testimony
24 with?

25 A Just the attorneys.

1 Q Just the attorneys?

2 A Yes.

3 Q And which ones did you discuss it with?

4 A Our Sea Pines attorneys. They asked me questions; I
5 answered them.

6 Q When was that they asked you the questions and you
7 answered them?

8 A I really don't have a date, sir.

9 Q Well, when was it that Mr. Jolin supposedly told you
10 that he was *scared of Otis Coffey*?

11 A When he was still employed with Sea Pines.

12 Q Well, when was that, specifically, ma'am?

13 A I don't remember a date. Let me see here. It was
14 before he quit. As far as an exact date, I don't have
15 it.

16 Q Did he say it once or twice? Or was he, you know,
17 just terrified of Mr. Coffey?

18 A He told me he didn't want to have anything to do with
19 this case, because he knew Coffey and the people he hung
20 with, and he was afraid for his family.

21 Q I see. And you told the lawyers for CSA that on what
22 date?

23 MS. JONES: Objection, your Honor.

24 THE COURT: Basis?

25 MR. HALIO: Attorney/client.

1 MS. JONES: On the conversation she had with
2 counsel.

3 THE COURT: Okay. We aren't going to talk about the
4 subject of conversation and what you all discussed.

5 BY MR. MATHISON:

6 Q What date was it you told him?

7 A I have no clue, sir.

8 Q Was it last year, before they answered the
9 interrogatories to the plaintiff?

10 A I don't have a date, sir.

11 Q How often did you talk to Officer Jolin on the
12 telephone after he left --

13 A Not that often.

14 Q -- Sea Pines Security?

15 A Not that often.

16 Q When did he leave?

17 A I don't have a date on that, sir. I'm not that good
18 with dates unless it's, you know, has to do with my
19 birthday or something.

20 Q And if I understand your testimony correctly, you're
21 saying that Mr. Jolin told you that he had a personal
22 affair with Judge Coffey, and not the other way around?

23 A No, that is not what I said.

24 Q Pardon?

25 A That is not what I said.

1 Q Well, what was it that you said?

2 A He said that people were saying that he did have.

3 Q Okay. But you'd not -- you hadn't heard that. Is

4 that right?

5 A That's the first time I heard it was from him.

6 Q Okay. And do you know when he said that?

7 A It was after the incident that had to do with,

8 apparently, the chase.

9 Q Okay. And do you know when that was? Do you know

10 the year, ma'am?

11 A No, I don't know the year. This is what we've been

12 talking about all day.

13 Q Were you and Jolin friends?

14 A We were at one point.

15 Q And why would you be a friend to someone that, in

16 your opinion, had poor truth and veracity?

17 A I enjoyed his company. We played X Box; we played

18 Playstation; we played pool; we hung out.

19 MR. MATHISON: Thank you, Ms.. Martin.

20 A You're welcome.

21 MS. JONES: Nothing further, your Honor.

22 THE COURT: All right.

23 MR. MATHISON: She is released, your Honor.

24 THE COURT: Any objection to Ms. Martin being

25 released? You're released.

1 A Thank you, ma'am.

2 THE COURT: Defendant will call their next witness.

3 MR. MATHISON: May it please the Court. I'm going to

4 release Brian Baird. He's released from his deposition.

5 I'm going to call Curtis Coltrane.

6 THE COURT: He's released from his subpoena? Is that

7 correct?

8 MR. MATHISON: Subpoena, yes, correct.

9 THE COURT: Okay. All right. Sir, you are released.

10 Thank you. Come on up, Mr. Coltrane.

11 WITNESS SWORN.

12 CURTIS LEE COLTRANE

13 DIRECT EXAMINATION, MR. MATHISON:

14 Q State your name for the record, please.

15 A My name is Curtis Lee Coltrane.

16 Q Mr. Coltrane, where do you reside?

17 A 10 Watersedge Place, Hilton Head Island, South

18 Carolina.

19 Q And what's your line of work?

20 A Private practice law.

21 Q In the course of your private practice, did you once

22 employ my client, Maureen Coffey?

23 A I did.

24 Q Did you develop a personal relationship with her as a

25 consequence of working with her for a number of years?

1 A Yes. Judge Coffey and I worked together for a number
2 of years, and I consider her to be a friend.

3 Q Did you make a recommendation when the vacancy came
4 open with the municipal court job in 2000?

5 A I did.

6 Q And subsequently, you served some time on the Bench;
7 did you not?

8 A I did. I was master in equity for Beaufort County
9 from 2003 to 2007.

10 Q And thereafter, you became a town manager?

11 A I did. Assistant town manager for Community
12 Development with the Town of Hilton Head Island.

13 Q And during the time of the incident in question, that
14 is, in May and June of 2008, you were serving in that
15 capacity. Is that right?

16 A Yes.

17 Q Did you have occasion in June of 2008 to see what's
18 been marked as Plaintiff's Exhibit 4?

19 A I believe that I did.

20 Q And who brought you Plaintiff's Exhibit 4?

21 A As I previously testified, my recollection's a little
22 hazy on this, but I believe that, when Mr. DeLoach came
23 to see me about the complaint that had been filed
24 respecting Judge Coffey, that he brought this with him.

25 Q Did you read it?

1 A Yes.

2 Q Had he read it?

3 A I believe that he had. I mean, I --

4 Q Did you discuss the contents?

5 A We did.

6 Q Did you state whether or not you felt that what was

7 in the letter was descriptive of the Maureen Coffey you

8 know?

9 MS. JONES: Objection, your Honor. Calls for an

10 opinion and speculation.

11 THE COURT: Overruled. You can answer it.

12 BY MR. MATHISON:

13 A I don't recall the conversation verbatim, but you

14 know, certainly, that was my opinion when I read this.

15 So, probably.

16 Q Do you recall what Mr. DeLoach said about the letter?

17 A The reason for his bringing it to my attention was

18 that he had it; we were both management folks at the

19 Town; Judge Coffey is a management folk at the Town. And

20 this is, you know, a serious matter, and he thought that

21 I should be aware of it. So, I mean, if you're asking me

22 if he expressed an opinion as to whether or not he

23 believed any of this, I don't recall that he did.

24 Q Did you believe it?

25 A No.

1 Q Do you know whether Mr. DeLoach had shared that
2 letter with others at the Town, specifically, Steve
3 Riley, the town manager?

4 A I do not know that.

5 Q If it was a serious matter, as you've testified, why
6 not tell Maureen Coffey about it?

7 A Are you asking me that?

8 Q Yes, sir.

9 A Honestly, I believed she knew. I mean, I -- I know
10 how the office of disciplinary council and judicial
11 standards work. And when you get a complaint, they let
12 you know.

13 Q And the one you saw is the one you're holding in your
14 hand which has no receipt information on it.

15 A Yes. I mean, Mr. DeLoach brought me the one he had.

16 Q Okay. And to be specific, the one he had has now be
17 re-numbered as Plaintiff's Exhibit 18. I'm handing you
18 Plaintiff's Exhibit 18.

19 A I believe that to be the case. I mean, I saw this
20 letter once three years ago, maybe four.

21 Q But it didn't have the receipt indication on the
22 corner, indicating it had come from the Commission on
23 Judicial Conduct; did it?

24 A Well, no. And there certainly would have been no
25 reason for the Commission on Judicial Conduct to have

1 sent anything to Mr. DeLoach.

2 Q Did Mr. DeLoach ask you to keep confidential what he
3 handed you, or let you read?

4 A Probably not, but he didn't need to. I mean, he was
5 making me aware of an issue related to a senior town
6 person, so that I would know about it, which I think is
7 typical in organizations like that. It wasn't so that I
8 could go tell anyone; it was so that I would know.

9 Q Why wouldn't it have been typical to tell the person
10 about whom it was written?

11 A Well, I can't speak to Mr. DeLoach.

12 Q Well, why didn't you tell that person?

13 A As I -- I would honestly believe she would have
14 known.

15 Q Did Mr. DeLoach tell you where he got the letter?

16 A From Mr. Breed. I guess the answer was, yes, from
17 Mr. Breed.

18 Q Did you and Mr. DeLoach discuss whether the letter
19 ought to be confidential?

20 A I believe that I did mention that to him. Again, I
21 -- I know what the rules are.

22 COURT REPORTER: I know what the rules are?

23 A The rules are, meaning the rules governing complaints
24 to judicial conduct or the office of disciplinary
25 council.

1 Q Do you know how long Mr. DeLoach had had the letter
2 when he showed it to you?

3 A I do not.

4 Q Do you know how many other people to whom he'd showed
5 it before he showed it to you?

6 A I have no knowledge of that at all.

7 Q Did you show the letter to anyone else?

8 A No, I did not. He -- he --

9 Q Subsequently, did Maureen Coffey tell you that she
10 had received a grievance?

11 A She did.

12 Q Did she ask you to help her?

13 A She asked me for some advice on steps to take. She
14 didn't ask me to help her. I was not in a position where
15 I could help her.

16 Q Had Mr. DeLoach told you that he considered that
17 matter to be personal and not professional, that is, the
18 matter raised by the letter?

19 A I -- those -- I don't recall those words. I think
20 that the gist of the conversation that I had with him was
21 that the matter had been filed, and it would have to work
22 its way through the process at judicial standards.

23 Q Did you tell Ms. Coffey, when she contacted you
24 asking you for help, that you had already seen the
25 letter?

1 A I did.

2 Q What was her demeanor at the time that she first
3 spoke to you about the letter?

4 A Well, she was horrified. I mean, this is a very
5 upsetting thing to have happen to you.

6 MR. MATHISON: Please answer any questions that
7 counsel may have.

8 Excuse me, just one second.

9 THE COURT: Anything further, Mr. Mathison? All
10 right.

11 MR. MATHISON: Excuse me your Honor. I'm sorry. I'm
12 trying to listen to too many people simultaneously.

13 THE COURT: That's all right. Anything further?

14 MR. MATHISON: One thing.

15 BY MR. MATHISON:

16 Q Is the bar grievance committee a professional
17 committee?

18 A Yes.

19 Q Is the --

20 MS. JONES: Your Honor, I'm going to object to this
21 line of questioning, because he's fixing to ask him a
22 bunch of legal conclusion questions.

23 MR. MATHISON: No, I'm not.

24 MS. JONES: Okay.

25 THE COURT: You can object if he does.

1 Sheriff. I also am in the polygraph section, working on
2 internal affairs and special investigations for the
3 Sheriff.

4 Q And what is your rank, sir?

5 A I'm a master sergeant.

6 Q And how long have you worked for the Beaufort County
7 Sheriff's Office?

8 A Since December of 2001.

9 Q Master Sergeant, could you please tell me if, in
10 2004, you had an occasion to meet with the plaintiff in
11 this action, Maureen Coffey?

12 A Yes, ma'am, I did.

13 Q Okay. And could you please tell the jury the
14 circumstances that gave rise to your meeting with Ms.
15 Coffey.

16 A Yes, ma'am. I was working in the northern section
17 here in Beaufort as an investigator. There was a series
18 of -- of criminal activity in the Hilton Head area. And
19 at some point -- I believe he might have been a
20 lieutenant at the time, Lieutenant McSwain, had a
21 conversation with Judge Coffey. And I'm not sure what
22 transpired in that conversation. I wasn't privy to it.
23 But after that, the sheriff contacted me and asked me to
24 go meet with --

25 MR. MATHISON: Objection.

1 Q Isn't that correct?

2 MR. MATHISON: Excuse me, your Honor.

3 THE COURT: There's nothing hearsay about that, sir.

4 So, again, --

5 MS. JONES: I can ask him directly.

6 THE COURT: Answer the question.

7 BY MS. JONES:

8 A Yes, ma'am, I was.

9 Q Who directed you to go meet with Ms. Coffey, if
10 anyone?

11 A Sheriff Tanner.

12 Q Okay. And did you do that?

13 A Yes, ma'am, I did.

14 Q And what was the substance of your conversation with
15 Ms. Coffey when you met with her in 2004?

16 A I met with her subsequent to whatever transpired in
17 this other meeting with her and Lieutenant McSwain, to
18 insure that, because of her position as a municipal
19 judge, make sure that, you know, our relations were still
20 good, and make sure there was no complaint she wanted to
21 file against anyone within the sheriff's office.

22 Q And did you have any conversation with the plaintiff
23 regarding having her brother, Otis Coffey, take a
24 polygraph examination?

25 A I don't recall the exact basis of that conversation

1 while discussing it earlier with the counselor for the
2 plaintiff. He mentioned that. I do not recall for
3 certain. I -- my advice back then would have been if --
4 if your brother did -- did not do these, then he should
5 take a polygraph to clear himself. But I -- I don't
6 recall the depth of conversation on that.

7 Q Did you take to this meeting any case files or maps
8 concerning the series of burglaries and property crimes
9 that had taken place in the Sea Pines area?

10 A No, ma'am, I did not. I did not have any of the case
11 files. I was an investigator in the Hilton Head area,
12 and I would not have had access to those files and -- and
13 such.

14 Q And prior to this meeting, would you have reviewed
15 any of that information?

16 A No. My nature was to make sure that she didn't have
17 a complaint or an issue with somebody within the
18 sheriff's office.

19 Q Did you have any discussion with the plaintiff
20 regarding the fact that Otis was a suspect in those
21 crimes?

22 A I believe it did come up during the conversation.
23 And at one point, she mentioned she was in the process of
24 having him relocate to another area.

25 Q And where did Judge Coffey tell you she was having

1 Otis relocate to?

2 A My recollection was that it was the Columbia, South
3 Carolina, area, but during an earlier conversation with
4 her and her counselor, she said she believes she had told
5 me back then Tybee Island, Georgia, which is possible.

6 Q And did Ms. Coffey, did Judge Coffey, at the point in
7 time when you met with her, did she voice any objection
8 or concern over the fact that you had come to meet with
9 her?

10 A No, ma'am. She -- she was very cooperative.

11 MS. JONES: That's all the questions I have.

12 BRIAN MARK BAIRD

13 CROSS-EXAMINATION, MR. MATHISON:

14 Q Did you get a subpoena from me in this case, Mr.
15 Baird?

16 A Yes, sir, I did.

17 Q And did it require you to bring your calendars and
18 other evidence of when this meeting took place?

19 A It did. However, I do not have any such documents in
20 existence any longer.

21 Q Could you be incorrect about the date? Instead of it
22 being late 2004, could it be January or February of 2005?

23 A It's entirely possible.

24 Q Specifically, did you make an appointment to go see
25 Judge Coffey?

1 without describing it?

2 A What -- what I mentioned was the -- the thoughts that
3 he was involved in a series of burglaries or maybe even
4 car break-ins, or I think that was the nature of the
5 ongoing issue she had.

6 Q All right. And did she cooperate with you to the
7 extent that you were seeking cooperation?

8 A Yes, sir.

9 Q Did she offer, essentially, to go along with the
10 polygraph if you wanted a polygraph?

11 A That's what she had told me, and -- and I don't
12 recall if we went into that. I wasn't the actual case
13 investigator. She -- she would have been referred to a
14 case investigator to schedule that.

15 Q Did she call back subsequently and tell you, you
16 specifically, that he had changed his mind and would not
17 submit to the polygraph?

18 A She mentioned that earlier during our conversation
19 today. And I don't recall that she actually told me that
20 or if she would have told somebody else that.

21 Q Well, do you know, or not?

22 A I do not.

23 Q So it's possible she could have called.

24 A It's possible.

25 Q And because it wasn't your responsibility, it

1 we've ever had a conversation.

2 Q But I mean, the Beaufort County Sheriff's Office

3 wasn't having any problem with her; were they?

4 A Not that I was aware of.

5 Q So why did you go down there?

6 A To insure that there wasn't a problem brewing.

7 Q Okay.

8 A And she told me there was none.

9 Q So I guess the point is, what did she do, if

10 anything, to interfere with the Beaufort County Sheriff's

11 Office investigation of her brother?

12 A I have no idea what she may or may not have done,

13 sir.

14 Q But nothing, as far as you know.

15 A Not that I'm aware of, sir.

16 Q Do you think that it would have inhibited your

17 ability to investigate Mr. Coffey, if, instead of being

18 at Hilton Head Island he was in Tybee Island?

19 A I was --

20 Q Ten miles away by boat.

21 A Well, like I said, sir, I didn't do any of the

22 investigation, but yes, if he was that far away, it may

23 have made it more difficult to arrange for possible

24 meetings or interview or such, but nothing that couldn't

25 be dealt with.

1 MS. JONES: Have a good time.

2 THE COURT: Mr. Mathison. Witness.

3 MR. MATHISON: Yes, ma'am. The plaintiff would call

4 William Waxel.

5 THE COURT: Come on forward, Mr. Waxel.

6 WITNESS SWORN.

7 WILLIAM ARNOLD WAXEL

8 DIRECT EXAMINATION, MR. MATHISON:

9 Q State your name for the record, please.

10 A William Arnold Waxel.

11 Q Mr. Waxel, where do you live?

12 A Woodlake Villas, Hilton Head Island.

13 Q And by whom are you employed?

14 A Currently CSA Security.

15 Q And how long have you worked at CSA?

16 A Five years and three months.

17 Q Were you working for CSA when John Jolin was working

18 for CSA?

19 A I was for about a year.

20 Q And have you continued working there since he left?

21 A I have, yes, sir.

22 Q Have you heard anyone at CSA describe a sexual

23 relationship between John Jolin and Maureen Coffey?

24 A Yes, sir.

25 Q And who is that person?

1 A That would be Randy Woods.

2 Q That's Lieutenant Randy Woods?

3 A Yes, sir.

4 Q Did he say it to you directly, or did he say it

5 through other people?

6 A No. We talked directly.

7 Q And what is it that he said that Sergeant Jolin and

8 Maureen Coffey had done?

9 A Just having a general affair. He would stay behind

10 late at court, and he'd be like the last one to leave.

11 Just general stuff.

12 Q Did you, in fact, tell John Jolin about these

13 statements?

14 A Not at first I didn't, no.

15 Q How long did you keep from Mr. Jolin the fact that

16 you had heard these statements being made about him?

17 A After about the third time, I was really getting

18 upset about it, because I knew it wasn't true, and I told

19 John.

20 Q Do you know what year this was that you heard those

21 statements?

22 A Probably two or three years ago.

23 Q When you told him, had he -- did he acknowledge to

24 you that other people had said the same thing?

25 MR. HALIO: Objection, your Honor.

1 A He said he heard it, yes, sir.

2 MR. HALIO: Hearsay.

3 COURT REPORTER: I'm sorry. I didn't hear your
4 answer.

5 A He said --

6 THE COURT: Okay. He's already testified. Do you
7 need to go back and look at his testimony?

8 MR. MATHISON: He actually testified that a number of
9 people had told him, your Honor.

10 THE COURT: Which is what I recall. Okay. Keep
11 going.

12 BY MR. MATHISON:

13 Q Did he tell you, when you advised him of this, that
14 other people had told him that the same statements were
15 being made, or essentially the same statements, by
16 personnel at Sea Pines Security?

17 A Yes, sir.

18 Q You, in fact, know Mr. Jolin reasonably well; don't
19 you?

20 A I've known him since he first moved to Hilton Head.

21 Q You and he are both, I think, from the same state;
22 aren't you?

23 A Him and my son went to school together.

24 Q I understand. Do you share Bobbie Marin's opinion of
25 Mr. Jolin's reputation for veracity, or not?

1 A No, I don't.

2 Q Have you ever met a more honest man than John Jolin?

3 A Not to my knowledge, I haven't, no.

4 MR. MATHISON: Neither have I. Thank you.

5 MR. HALIO: Objection. Move that that be stricken.

6 THE COURT: Ladies and gentlemen, that was an

7 inappropriate comment. It's stricken from the record.

8 That are to disregard it.

9 MR. HALIO: May it please the Court.

10 THE COURT: Yes, sir.

11 WILLIAM ARNOLD WAXEL

12 CROSS-EXAMINATION, MR. HALIO:

13 Q Mr. Waxel, in fact, you've been sitting next to Mr.

14 Jolin today, yesterday. You guys really are close;

15 aren't you?

16 A Yes, sir.

17 Q Okay. You're aligned, so to speak. Would you agree?

18 A I did not -- what was the question again?

19 Q You and he are aligned. You all are aligned in

20 thinking.

21 A No, I don't believe so.

22 Q Do you consider yourself a father figure to Mr.

23 Jolin?

24 A Sort of. Yes, sir.

25 Q You don't think he ever -- and you say he's the most

1 Q Sitting out in the audience.

2 A Yes, sir.

3 MR. HALIO: Excuse me one second, your Honor.

4 THE COURT: Okay.

5 BY MR. HALIO:

6 Q All right. You said that you heard the statement

7 from Randy Woods, but you did not hear it from George

8 Breed. Is that correct?

9 A No, sir.

10 Q Or Mr. Kelley?

11 A No, sir.

12 Q And you knew -- strike that. And you don't recall

13 exactly when you heard, right?

14 A It's been off and on for the last three or four

15 years.

16 Q The first time. Do you remember the first time?

17 A Probably about three years ago. No, I don't remember

18 exactly.

19 MR. HALIO: All right. Thank you. No further

20 questions.

21 THE COURT: Anything further, Mr. Mathison?

22 MR. MATHISON: No, your Honor.

23 THE COURT: All right. You may step down, sir. You

24 are excused.

25 MR. MATHISON: The plaintiff would call Randy Woods

1 to the stand, your Honor.

2 THE COURT: Come on forward, sir.

3 MR. MATHISON: May we approach?

4 THE COURT: You may.

5 OFF-THE-RECORD BENCH CONFERENCE,

6 OUT OF HEARING OF JURORS. PRESENT:

7 THE COURT, MR. MATHISON, MR. HALIO.

8 WITNESS SWORN.

9 RANDALL BRUCE WOODS

10 DIRECT EXAMINATION, MR. MATHISON:

11 Q State your name for the record, please.

12 A Randall Bruce Woods.

13 Q Mr. Woods, where do you reside?

14 A Old Carolina, Bluffton, South Carolina.

15 Q What do you do for a living?

16 A I'm a lieutenant for Sea Pines Security.

17 Q How long have you worked for Sea Pines Security?

18 A Twenty-nine -- excuse me -- 29 years.

19 Q So you've been there, actually, longer than Mr.

20 Breed. Isn't that correct?

21 A Yes, sir.

22 Q Kind of go with the facility. Is that right?

23 A I've been through three -- excuse me -- I've been

24 through three different directors.

25 Q Did you have a telephone conversation with John Jolin

1 a little bit more than two years ago, during which you
2 apologized to him?

3 A Apologize? No, sir.

4 Q Did you have a telephone conversation during which
5 you told him that you regretted certain things that you
6 heard said at Sea Pines?

7 A No, sir.

8 Q Have you heard at Sea Pines, from other Sea Pines
9 officers, the rumor or statement that Mr. Jolin had had a
10 sexual relationship with Judge Coffey?

11 A No, sir.

12 Q Not at all? Not once?

13 A No, sir.

14 Q Have you ever said it yourself, sir?

15 A I have not, sir.

16 Q Did you hear Mr. Waxel testify that you said it?

17 A I did, sir.

18 Q Did you hear Mr. Jolin testify that you, basically,
19 called him up and apologized for saying it?

20 A I did, sir.

21 Q And you're saying that's not correct. Is that right?

22 A The statement is not correct, sir.

23 Q Have you ever heard George Breed talk about a
24 personal relationship between Mr. Jolin and Ms. Coffey?

25 A No, sir.

1 Q Have you been with Sea Pines Security longer than Mr.
2 Campbell?
3 A Yes, sir.
4 Q Have you been there longer than Mr. McNeill?
5 A Yes, sir.
6 Q With whom have you discussed your testimony before
7 you came here, initially, on Tuesday?
8 A Nobody, sir.
9 Q So I'm the first person, basically, to ask you any
10 questions?
11 A Pretty much so, yes, sir.
12 Q Did you ever call Mr. Jolin and tell Mr. Jolin that
13 if he wanted to come back to work, you would take him on
14 your shift, and *take care of him*?
15 A I did, sir.
16 Q When was that?
17 A I do not know, sir. It was from a call that Mr.
18 Waxel come to me and said Mr. Jolin wanted to come back
19 and work for us.
20 Q And was it prior to the time that his deposition was
21 taken in this case?
22 A Yes, it was. Actually, it was last year, 2011.
23 Q And do you know whether Bobbie Martin made calls to
24 Mr. Jolin before his deposition was taken in this case?
25 A I do not know, sir.

1 Q Why was it necessary for you to protect Mr. Jolin if
2 you were going to take him back?

3 A Mr. Jolin wanted to come back to work for Sea Pines
4 Security. He didn't want to go to third shift. I had an
5 opening on night shift, which is second shift. I told
6 him to come back and we would work together.

7 Q So, if I understand the testimony, what you're doing
8 is, you're telling me that you wanted to have Mr. Jolin
9 back after he, basically, quit because he didn't like the
10 way you all did business. Is that right?

11 A He called us, sir.

12 Q Right. But you had no -- you wanted him back. It
13 wasn't a question of having to take him. Is that right?

14 A No, he could have come back on his own, sir.

15 Q And you would have taken him. Is that right?

16 A It was not up to me. It was up to Mr. Breed.

17 Q Well, why were you telling him he could be on your
18 shift?

19 A He called me, sir.

20 Q Okay. And would you have taken him if he was the
21 person of low character, as was testified by Bobbie
22 Martin?

23 A No, sir.

24 Q Do you believe that he is a person of low character?

25 A I don't know him that well, sir, not personally.

1 Q Okay. Have you said anything about a personal
2 relationship between Judge Coffey and John Jolin to
3 anybody?
4 A I have not, sir.
5 Q Have you heard anybody else, including people not
6 working for Sea Pines Security?
7 A I have had people try to ask me questions about it,
8 and I -- I don't answer their questions, sir.
9 Q People who have tried to ask you questions about it?
10 A Yes, sir.
11 Q And what people are those?
12 A One of them is Mr. Waxel.
13 Q Who else?
14 A Mike Ryan.
15 Q Who else?
16 A Robert Hahn.
17 Q In other words, people that are no longer in the
18 employ of Sea Pines Security. Is that right?
19 A Correct, sir.
20 Q And do you know why people who are in their employ
21 have one view of this, and people who aren't in the
22 employ of Sea Pines Security have another?
23 A I have no idea, sir.
24 Q Could it be that Mr. Breed has an influence on your
25 thinking, Mr. Woods?

1 A No, sir, he does not.

2 MR. MATHISON: Thank you. No further questions.

3 RANDALL BRUCE WOODS

4 CROSS-EXAMINATION, MR. HALIO:

5 Q Mr. Woods, you said that you have been working at Sea

6 Pines for how long?

7 A Twenty-nine years, May 28th of '83.

8 Q How many bosses have you had during that period of

9 time?

10 A Three directors.

11 Q And what is the mission of the security department at

12 Sea Pines?

13 A To maintain the safety of the people.

14 Q Did you have a conversation with Mr. Jolin concerning

15 the events of May 20, 2008?

16 A The --

17 Q The chase?

18 A The chase. Yes, sir, I did.

19 Q Tell us about that conversation.

20 A I don't know the exact time. It was after everything

21 was over and done with, 2:00, 3:00, 4:00 o'clock in the

22 morning. John calls me up, and he says, *I got him*. I

23 said, *Who do you have?*. And he says, *I got -- I got Otis*

24 *Coffey*. I said, *You got Otis Coffey*. He goes, *Well, I*

25 *didn't get him*. He said, *I chased him*. I said, *Okay*.

1 He proceeds to tell me the story, same story, that
2 he chased him; he went down the beach walk; went to south
3 beach on -- sorry -- he had Sergeant Fryman at the time.
4 I think he was corporal. Had him go down behind Gadwall.
5 They and -- Frank, Frank Fryman, observed the same-
6 clothed individual go up the stairs.

7 Q So that was three or four hours after it happened.

8 A Yes, sir.

9 Q And the next thing you heard -- well, strike that.

10 Did you go to court with Mr. Jolin on occasion?

11 A Yes, sir.

12 Q To the municipal court?

13 A Yes, sir. On Hilton Head. Yes, sir.

14 Q To Judge Coffey's court?

15 A Yes, sir.

16 Q To handle tickets in front of Judge Coffey?

17 A Correct, sir.

18 Q Did you go there with Judge -- with Mr. Jolin?

19 A Yes, sir.

20 Q Did you ever see Mr. Jolin do anything unusual in
21 connection with his court cases?

22 A Unusual? No, sir.

23 Q Well, did he ever talk to the Judge? Did he ever
24 hang around the courtroom? Anything like that?

25 A He -- a couple of times he had stayed after court to

1 talk to the Judge.

2 Q Did you have any conversations with him about that?

3 A Not about that. Just the statements that had -- he
4 had said about why we were in court.

5 Q Did you have any statements to -- did you make any
6 statements to him about hanging around court afterwards?

7 A I -- no, sir, I did not.

8 Q Did he make any statements about the plaintiff?

9 A Yes, he did, sir.

10 Q What did he say?

11 A We were in court when the Judge would walk in. He
12 would lean over to me and tell me how pretty she was. I
13 had other people, probably 10, 12, maybe 20 other
14 officers in there, defendants and other. I, basically,
15 told him he needed to be quiet and not say anything like
16 that.

17 Q All right. And so you did not tell anybody that Mr.
18 Jolin was having an affair with the plaintiff; did you?

19 A No, sir, I did not.

20 MR. HALIO: Thank you, Mr. Woods.

21 A Thank you.

22 RANDALL BRUCE WOODS

23 RE-DIRECT EXAMINATION, MR. MATHISON:

24 Q I just want to make sure I got this correct. You
25 like your job; don't you? I mean, you had it for a long

1 MR. HALIO: May we excuse the client?

2 THE COURT: Absolutely. You are free to go.

3 THE COURT: All right. I think, Ms. Jolley, you're
4 the one, it looks like, doing the designation, because I
5 saw your name signed on them. Or is that not correct?

6 MS. JOLLEY: Yes. Yes, your Honor.

7 THE COURT: Okay. All right. Well, let's get
8 going, then. The first objection I saw that you have is
9 Mr. Kelley's deposition was on Page 70, Line 10, and
10 through 71, Lines 5. And I think it talks about
11 incorrigible children and evicting some people is what I
12 understand. Any of your citings you think are relevant?

13 MS. JOLLEY: Yes, your Honor.

14 THE COURT: Mr. Mathison.

15 MR. MATHISON: Let me look, your Honor. Hold on one
16 second, please. What I was trying to do in this instance
17 is, he had made a statement about his bridge reports.

18 THE COURT: Um-hmm.

19 MR. MATHISON: Specifically, he wasn't certain what
20 they were. Mr. Breed wasn't certain what they were
21 either, or who they went to. First, Mr. Breed testified
22 that he prepared this bridge report, and to one copy of
23 the bridge report that's dated June 11th, 2008. That
24 letter is attached.

25 THE COURT: Okay.

1 MR. MATHISON: And he said, *I gave it to Mr. Kelley.*
2 *I don't know what he did with it.*

3 Then Mr. Kelley proceeded to tell me that he didn't
4 know what he did with it. He didn't know whether it ever
5 got published anywhere, and effectively, that first one
6 that went out was not confidential. It wasn't marked
7 confidential or anything. From there on in, there was a
8 succession of bridge reports, and I put a number of them
9 in and discussed the materials that was in them, trying
10 to figure out what character of -- what quality these had
11 that you could figure out the audience that received
12 them. All right?

13 THE COURT: Um-hmm.

14 MR. MATHISON: They looked like general information.
15 It doesn't look like something that necessarily would go
16 just to directors. And to be honest with you, I still
17 don't know what the distribution list is, because they
18 don't know what they do with this report that they
19 generate at least once a month.

20 But at least one time in a bridge report on June
21 11th, down at the bottom, there's a statement saying
22 effectively this:

23 George Breed has been hampered in his ability to
24 prosecute these burglaries by the fact that there's been
25 interference, and here are the reasons in this letter.

1 That's what it says. I don't think I need the eviction
2 of tenants to prove that. I don't think the eviction of
3 tenants necessarily goes to state of mind of George
4 Breed. So I'm not wedded to that, necessarily.

5 THE COURT: So you're finally taking it out?

6 MR. MATHISON: It doesn't bother me.

7 THE COURT: All right. Let's go ahead and take it
8 out.

9 MR. MATHISON: But I'm trying to tell you, I want
10 some of them to stay in, just so that they can see how
11 often they came out. And if they're not doing anything
12 with them, they're going to look -- it's an amazing waste
13 of time and effort to produce a monthly, and then,
14 basically, just have Kelley and Breed share. I mean,
15 they could walk down the hall and talk about this stuff.

16 And the only place we've got these two, I might add,
17 is not from them, but from Steve Birdwell. He produced
18 them.

19 THE COURT: Okay. All right. Doesn't sound
20 relevant. Let's go to Page 102. This all has to do with
21 the identification, and I've ruled so far, and as of
22 right now, I'm still sticking with it, is that the
23 indemnification is not coming in by the board.

24 MS. JOLLEY: Okay. Thank you, your Honor.

25 THE COURT: So all of that goes down. Now we're

1 back down to --

2 MR. MATHISON: Your Honor, wait just a minute.

3 THE COURT: Yes, sir.

4 MR. MATHISON: I think Birdwell is going to have to
5 -- you have to look at this issue through the prism of
6 Birdwell's testimony.

7 THE COURT: Um-hmm.

8 MR. MATHISON: Birdwell's going to testify that,
9 at no point did anybody advise him or other members of
10 the board that the complaint filed by Breed against
11 Maureen --

12 THE COURT: Had been dismissed. And I think he
13 absolutely can testify to that.

14 MR. MATHISON: Okay. In addition, he's going to say
15 -- and this strikes me as incredible, but he's going to
16 say it nevertheless. He's already said it. That there
17 was not a single word of discussion at all by any member
18 of the board from June 24th when they had a meeting at
19 which the letter of Breed was discussed.

20 THE COURT: Um-hmm.

21 MR. MATHISON: From then until the meeting on
22 January 8, 2009 when they voted to indemnify Mr. Breed.
23 I think that that is critical evidence. The fact that it
24 was never disclosed that the thing had been dismissed;
25 and there was never any discussion of it; and without any

1 discussion at all, no inquiry being made, the bona fides
2 never being checked, 17 people voted unanimously,
3 basically, to pay George Breed's judgment or settlement
4 costs. I think that that's an incredible statement. And
5 essentially, it proves that there was a suppression of
6 this, to the extent that either Mr. Breed and Mr. Kelley
7 deceived their board, or the board is deceiving this
8 court. It's impossible to believe that that happened,
9 but that's what he said happened.

10 MS. JOLLEY: Your Honor, there is no evidence to the
11 contrary about any of that. And quite frankly, again,
12 all he's trying to do is say that the indemnification
13 decision is a ratification by the board of Mr. Breed's
14 complaint. And that does not come in under the rules.

15 MR. MATHISON: I'm sorry, but it doesn't come in
16 under what rules?

17 MS. JOLLEY: Doesn't come in under Rule 411.

18 MR. MATHISON: They objected to it on relevancy,
19 your Honor. They didn't object to it on --

20 MS. JOLLEY: No. Your Honor, we've also objected to
21 on Rule 411.

22 MR. MATHISON: I've got their motion right here.
23 It's relevancy.

24 MS. JOLLEY: If you had read under Rule 402 and 403.
25 We also discussed indemnification at the Bench, and we

1 submitted case law.

2 MR. MATHISON: May it please the Court. I'm looking
3 at what they say, and it's under *Rules 402 and 403*, and
4 it's clearly not irrelevant.

5 MS. JOLLEY: We have also already discussed in the
6 courtroom the fact that this is indemnification, this is
7 being presented as indemnification, and that's under the
8 rules.

9 MR. MATHISON: You handed up a case circuitously
10 from your iPad to the clerk. CC'ing us with it, knowing
11 that we're not sitting here with computers. And
12 basically, I think that that case was then brought out
13 here by Allison to the Judge. But we haven't debated
14 your case. And if you look at the case, it doesn't say
15 what you want it to. There's an headnote that says that,
16 but the case doesn't say that.

17 THE COURT: I don't know. Let me sleep on it some
18 more. I guess my concern -- there is the agency issue in
19 this case, is what my understanding is. You've sued
20 George Breed, but you also sued CSA. And I guess they're
21 admitting that he was acting in the course and scope of
22 his employment.

23 MR. MATHISON: I don't --

24 THE COURT: If that became an issue in any way,
25 then, I would think, absolutely, the indemnification

1 would come in. I mean. And I think you're entitled to
2 sue George Breed directly, as well, but I'm not saying
3 that.

4 MR. MATHISON: Your Honor, may it please the Court.
5 We think the ratification is an indication that the board
6 -- not the ratification -- we think the minutes of June
7 8, 2009 are a strong indication that the board believed
8 what Mr. Breed said; and that, notwithstanding anything
9 else to the contrary, the only way to shake that belief
10 was the lawsuit; that for either reasons of indifference
11 -- and God knows community association boards are often
12 indifferent -- or reasons of concealment on the part of
13 Mr. Breed and Mr. Kelley, they didn't know enough to make
14 a decision. All right. And consequently, having made
15 one, it's an endorsement, if not the ratification that I
16 want it to be. You don't agree to pay somebody's
17 judgment amount if you think he's made a mistake unless
18 you have to.

19 THE COURT: Except for when he's made a mistake in
20 the course and scope of his employment, which that
21 happens.

22 MR. MATHISON: Well, they've also made another
23 mistake, and we think we can demonstrate through the
24 covenants that, at the time they voted to indemnify him,
25 the covenants only permitted the indemnification of board

1 members.

2 THE COURT: Oh, no. I think there is going to be a
3 very real breach of fiduciary duty case. If you get a
4 big verdict against these people, I assure you -- well, I
5 don't need to assure you of this. I can bet that Mr.
6 Mathison, as a homeowner, and probably a member, that
7 you're going to turn around and file that suit yourself.

8 MR. MATHISON: No, I don't think I --

9 THE COURT: So, and he's a lawyer. My point, though
10 being is, if there is a big verdict against them, there's
11 no question that there's going to be a breach of
12 fiduciary duty suit brought.

13 MR. MATHISON: What I'm saying is that --

14 THE COURT: There's too many lawyers in Sea Pines.

15 MR. MATHISON: This passes the test of relevance,
16 your Honor, and I don't believe there's an insurance
17 issue raised here. And consequently, this is not
18 insurance; this is a big company agreeing to pay the
19 expense of an individual, simple as that. And I don't
20 think the big company would agree to pay the expense if
21 they didn't believe the individual had done something
22 that was at least defensible.

23 THE COURT: Either that, or they didn't do their due
24 diligence before.

25 MR. MATHISON: Yes. But you know, that's the next

1 case. I don't have that one.

2 THE COURT: I know. Okay. Let's go beyond that. I
3 will go ahead and sleep on it again and think of it.

4 Okay. I don't know how you're using it is to show that
5 it was a ratification of his actions. Because, you know,
6 I think there's a real argument as to whether or not Mr.
7 Breed telling his employers, the Board, what he has done
8 or what he has complained, I mean, you know, their guys
9 are charging qualified privilege, and there certainly can
10 be a qualified privilege.

11 The problem he has in this case is giving it to
12 DeLoach. I mean, I think we all clearly know that.
13 That's where the problem lies.

14 MR. MATHISON: I think that if he needed the
15 approval of the board before he wrote the letter, that
16 unquestionably, there would be a privilege. But his
17 testimony is he didn't need the approval. And Kelley
18 backed him up and said it was an operational decision, so
19 that --

20 THE COURT: I know. But he did talk to Kelley about
21 it. And Kelley had no problem with it, which is why you
22 have a problem with civil conspiracy. So again, I
23 actually can tell you, I was surprised by Cary Kelley's
24 testimony. He knew it was coming down the pike. He
25 certainly ratified it. He certainly didn't tell him not

1 to.

2 MR. MATHISON: Well, I surmise that some -- one or
3 more of them might have had misgivings if they'd known it
4 had been dismissed, and if they'd known, effectively,
5 what it said is there is no evidence. Not having
6 reviewed the evidence by the preponderance, it's --

7 THE COURT: Um-hmm.

8 MR. MATHISON: But no evidence. That's what the
9 letter says. I think that would have given a reasonable
10 man notice.

11 MS. JOLLEY: Respectfully though, this doesn't have
12 anything to do with the ratification issue, which is what
13 we're talking about in this case.

14 THE COURT: Um-hmm.

15 MS. JOLLEY: There is no case law that says an
16 indemnification decision by a board is ratification of
17 any act of that employee.

18 THE COURT: Or can be.

19 MS. JOLLEY: Or can be.

20 THE COURT: The question is, can it be evidence.
21 Okay. Well, if you can find any. Again, I, you know,
22 obviously, as cases unfold, you learn more and you hear
23 more testimony, things can change. I still, right now,
24 am not comfortable with it. So, as of right now, the
25 indemnification portion is not coming in.

1 Number 142 -- or Page 142, the objection about
2 testimony about restitution collected. That's already
3 been testified to, so I don't see any harm. It's already
4 there.

5 Line 162. There still is the outstanding issue, and
6 correct me if I'm wrong, Mr. Mathison, that Jolin says
7 that everything coming out of CSA Security is taped. And
8 of course, we don't have tape. And I understand you all
9 have an explanation for it, but of course, the case was
10 40(j'd). Although I agree, I don't think that -- that
11 doesn't mean you can get rid of evidence or not have
12 evidence.

13 But my point is, is that this testimony about taping
14 a conversation with Judge Herring, I don't think it
15 matters whether or not it was legal or illegal.
16 Obviously, you're not supposed to do it. But the point
17 was, you're trying to show that they tape things
18 routinely, correct?

19 MR. MATHISON: I am. And I'm trying to show that
20 they kept them, and Breed -- if you -- by now, you've
21 read both iterations of the deposition, and you realize
22 that he denied it right up until the point that the
23 Klippel deposition was handed to him.

24 THE COURT: Right.

25 MR. MATHISON: And when he was confronted with what

1 he'd said before, he proceeded to admit that deputies
2 calls for routinely -- or officers calls were routinely
3 recorded to a database.

4 THE COURT: Um-hmm.

5 MR. MATHISON: All right? But he said his weren't.
6 And that's why I used Herring's letter.

7 THE COURT: Gotcha.

8 MR. MATHISON: That's one of the reasons.

9 THE COURT: Okay.

10 MR. MATHISON: That's why he used Herring's call.

11 THE COURT: Okay.

12 MR. MATHISON: I think it's a different --

13 THE COURT: Well, I am going to go ahead and allow
14 that. I think that is an issue in this case, is why we
15 don't have the recordings of some of these.

16 The next one is the testimony exchanged between
17 Breed and Birdwell. You're saying it's hearsay. It's
18 the whole thing about the Calvert disappearance and
19 peeping Tom incidents. I've a big concern about the
20 hearsay portion of it, but I think it goes -- I think
21 what Steve Birdwell was trying to say and do was, listen,
22 you know, it's obviously not good for business for there
23 to be break-ins, for there to be the Calverts
24 disappearing. I don't see any of it so objectionable. I
25 mean, I'm assuming Mr. Birdwell's going to testify. Is

1 that correct?

2 MR. MATHISON: Yes. He is.

3 MS. JOLLEY: That's our point, your Honor. If Mr.
4 Birdwell can testify about it, and Breed can testify
5 about it, there's no need for that to come in, in Mr.
6 Kelley's deposition.

7 THE COURT: Well, I don't know if Breed is going to
8 testify to it or not.

9 MS. JOLLEY: Well, I believe that the deposition
10 designations.

11 MR. MATHISON: May it please the Court.

12 THE COURT: Okay.

13 MR. MATHISON: It's just -- it's kind of like
14 Colonel Weir. He's their witness, and they're trying to
15 keep out his document. I don't know at this juncture
16 whether they will let me put Birdwell's deposition
17 testimony on, in lieu of putting up a live Birdwell. I
18 think it's their call. I'll do either one.

19 THE COURT: Um-hmm.

20 MR. MATHISON: But I think that this is relevant for
21 the following reason, and it goes back to that bridge
22 report. Mr. Birdwell was upset about the seeming
23 lawlessness at Sea Pines. And a lot of this was dictated
24 by the interpretation of the statute sent out by Mr.
25 Weir. It changed everything on Hilton Head. Everybody

1 started reporting all their cases.

2 THE COURT: Um-hmm.

3 MR. MATHISON: So, all of the sudden, the *Island*
4 *Packet* started filling up with crimes, or incidents. if
5 not crimes, that never got reported before.

6 THE COURT: Right.

7 MR. MATHISON: Because they didn't get to BCSO.
8 That's bad for business. All right. So there's an
9 interplay inside the plantation do we report or do we not
10 report. Business interests don't want it reported. The
11 sheriff's office wants everything reported.

12 I think what Birdwell was saying is let's get busy,
13 guys; let's solve these things so we can shut down the
14 bad coverage. All right.

15 Within, literally, two weeks or three weeks, you
16 have the Coffey incident. The same night you have the
17 Coffey incident. And then you have Breed writing his
18 letter on June 6th. And then you have him taking that
19 letter and attaching to this bridge report that says,
20 specifically, this is the reason I haven't been able to
21 catch these guys. It's her fault. All right.

22 THE COURT: Okay.

23 MR. MATHISON: That's what it says. Read my letter.

24 THE COURT: It's his excuse. It's his excuse.

25 MR. MATHISON: Exactly. And I think it's crucial

1 evidence, because it follows logically as a response to
2 Birdwell's exhorting him to get busy and solve the
3 crimes. I'm not trying to compare Otis Coffey to the
4 Calverts, but I --

5 THE COURT: I can tell you that it's pretty
6 innocuous. It's such a small line that he is talking
7 about, the peeping Toms, the burglaries, and the
8 disappearance of the Calverts. I'm going to go ahead.
9 I'm going to let it in. I'm assuming Steve Birdwell's
10 going to testify to it, so.

11 MS. JOLLEY: And I'd like to note for the record
12 that we are going to require Mr. Birdwell to testify
13 live.

14 MR. MATHISON: That's fine.

15 MS. JOLLEY: We're not putting his deposition in

16 THE COURT: Okay.

17 MR. MATHISON: That's fine. It doesn't bother me at
18 all.

19 THE COURT: And the last portion, all these board
20 minutes about talking about what is produced, and whether
21 or not there's a final copy, and whether or not there's a
22 posted copy. My question is, are you alleging that they
23 are changing or doctoring the minutes? Is that what
24 you're suggesting?

25 MR. MATHISON: No. Your Honor, as of the last

1 effort, Kelley brought us the -- or gave me the official
2 approved minutes what, day before yesterday?

3 MS. JOLLEY: No, your Honor. I gave Mr. Mathison
4 the official approved minutes of the summary judgment
5 hearing on C.D., in response to his request at the
6 deposition. He then subpoenaed them again this past
7 week. And we handed those over -- I don't know what
8 today is.

9 MR. MATHISON: What I've got is a certification that
10 these are the right ones.

11 THE COURT: Okay.

12 MR. MATHISON: And to be honest, this is the third
13 different set that I've had, and I don't have the -- I
14 don't, literally, have the stamina to read through them
15 all again.

16 THE COURT: Okay. Well then, I'm not going to let
17 it in, because I don't think this jury has the stamina to
18 listen to four pages about documents. They're having to
19 do enough, quite frankly, so.

20 MR. MATHISON: I'm not just complaining about the
21 minutes, though, I'm afraid. As to the minutes, I think
22 that we've got the real minutes now. I am --

23 THE COURT: I mean, you go, literally, through four
24 pages complaining about the minutes. So if that's
25 resolved. All right. We're moving on, you all. I think

1 it's getting late.

2 Let's go through George Breed. It's actually quite
3 short, because, apparently, he doesn't say much. So the
4 objections aren't great. Okay. Let me just make sure
5 I've got them. All right.

6 Help me understand, Mr. Mathison, your objection on
7 Page 39, of Volume 1 to George Breed's deposition.
8 Basically, you're impeaching him from his deposition
9 testimony in the Klippel case. But I still am not clear,
10 based on this deposition and based on your questioning,
11 did he testify at trial in the Klippel case?

12 MR. MATHISON: I honestly --

13 MS. JOLLEY: He did. He did.

14 THE COURT: He did. But you don't know, still.

15 MS. JOLLEY: I don't know.

16 MR. MATHISON: I believe that he didn't, because I
17 don't see how they could have used his deposition -- if
18 you remember, I asked him.

19 THE COURT: Yes.

20 MR. MATHISON: And because the deposition was made
21 part of the record, it had to be for impeachment if he
22 was live at the trial. So I --

23 THE COURT: Well, you could have read the deposition
24 in, though. So that's why I'm not sure of the answer.

25 MR. MATHISON: He initially testified that he did

1 not testify at that trial.

2 THE COURT: I can tell you, that really kind of is
3 much ado about nothing. I understand why you're trying
4 to use it, but again, it really isn't relevant to this
5 case. I think you need to get to the meat of this. And
6 I think you've got so many other instances where he is
7 not forthcoming, is what I'll -- that's how I'll put it,
8 not forthcoming, that this is, well, maybe just one more.
9 It goes on and it's too confusing, I think, for the jury,
10 and I just don't think they're going to understand it.

11 MS. JOLLEY: Your Honor, the next one's, again,
12 Judge Herring. And I'd just like to go on the record
13 that we'd ask the Court to look at 37, about
14 electronically stored information. I certainly
15 understand plaintiff's contention that these tapes or
16 this hard copy recording of the telephone calls and video
17 somehow went missing, but the testimony is actually
18 consistent that in both times in 2000 -- before 2008 with
19 the old system, and after it was replaced, think, around
20 the beginning of 2010, that it went to a hard drive that
21 eventually taped over itself.

22 True, no one's quite sure at what point it tapes
23 over itself or what the volume is, but there's no
24 question that it taped over itself. So, so far the only
25 video tapes that have gone missing have been the ones Mr.

1 Jolin admitted he destroyed. There's no question that
2 anyone intentionally destroyed any emails; no question
3 anyone intentionally destroyed any phone call
4 conversations or video recordings.

5 THE COURT: Well, I think, obviously, that goes to
6 whether or not there's a spoliation charge, but I do
7 think as far as this point.

8 MS. JOLLEY: I mean, he admitted that he taped Mr.
9 Herring's call, but and saved it to a disk, but that's
10 not really an issue in this case.

11 MR. MATHISON: I think it's - I think it is an
12 issue. You've got an important call, and you know it's
13 important, and you keep it. That's what he did. I think
14 the call that was made out of Sea Pines Security offices,
15 definitely by Ms. Florencio, is a call that should have
16 been kept. There wouldn't be any argument about what was
17 said or by whom if that call had still been available.
18 And there's no reason not to -- I mean, it's the only --
19 her testimony was that that's the only time she ever did
20 that.

21 MS. JOLLEY: Her testimony was that it didn't seem
22 to be out of the ordinary. Jolin seemed scared. He
23 stated to her what he thought should go into the report,
24 and she put it in. There was no reason at that time to
25 save that call.

1 THE COURT: What are we on what page that we're
2 talking about the recording, because I am now looking at
3 an objection -- or Page 77. It isn't talking at all
4 about the recording of it, at least so far that I've
5 looked at.

6 THE COURT: This is where -- you're trying to allege
7 that he's asking Judge Herring for some accomodation in
8 some way.

9 MS. JOLLEY: I may have written -- mis-written my
10 objection on my copy, your Honor.

11 THE COURT: Well, which page am I -- which page are
12 you objecting to?

13 MS. JOLLEY: I thought I was objecting to Page 77,
14 where I had --

15 THE COURT: Yes.

16 MS. JOLLEY: -- down that it was the letter. But if
17 it was something else, I apologize.

18 THE COURT: Is that the letter? Okay. And so, this
19 is the letter that basically says thank you for helping
20 accommodate us?

21 MR. MATHISON: Yes. I'd asked him before whether
22 he'd ever asked for accommodation. He denied it. And
23 then, I showed him the letter. Then he didn't admit it,
24 either. He said that --

25 THE COURT: I just don't think there's any

1 relevance. I mean, Judge Coffey knew. She has private
2 attorneys walk into her courtroom, and she tries -- she
3 tries to get rid of them first.

4 MR. MATHISON: Your Honor, it --

5 THE COURT: Out of courtesy, because that's how they
6 make their money.

7 MR. MATHISON: It goes to show that he had a decent
8 relationship with the court at some juncture. He
9 communicated both in writing and verbally with Judge
10 Herring. He liked Judge Finger so much he used him to
11 bring his defamation action. And with respect to my
12 client, Maureen Coffey, instead of saying, hey, look, I
13 have a problem, because your brother may be involved in
14 these burglaries, what can we do to make sure everything
15 doesn't work out; instead, according to the testimony, he
16 calls his friend at town hall and gets the address for
17 the Judicial Conduct Commission and reports her.

18 I mean, it goes to the quality of relationship that
19 he had with other judges, as compared to this one. It
20 gets to his state of mind, I think, directly. The state
21 of mind with respect to Jim Herring is I write you a
22 letter and say thank you, good job. With respect to this
23 judge, just the opposite. The letter goes to the
24 Judicial Conduct Commission.

25 THE COURT: Okay. I really don't think it --

1 MR. MATHISON: There's another letter in there
2 that's a follow-up, which is to town council. We think
3 they go together.

4 THE COURT: Saying what?

5 MR. MATHISON: It's all right. Your Honor, let me
6 see how to phrase this. There is an issue here about
7 exactly what they were doing when they contacted Mr.
8 DeLoach. My belief is that, at the time the contact was
9 made, he believed that DeLoach was, in fact, in charge of
10 the court and could fire Maureen. All right. Although
11 the evidence hasn't come out that way yet, that's what I
12 think happened.

13 THE COURT: He contacted DeLoach because he's
14 friends with him.

15 MR. MATHISON: Well, the truth of the matter is, he
16 knew who the judge worked for, because the letter he
17 wrote complimenting Mr. Herring was copied to Mr.
18 Herring. It was sent to town council. So he knew who
19 the judge was employed by back then; why not now? I will
20 say --

21 THE COURT: You're trying to use this to show that
22 he had good relationships with Herring and Finger.

23 MR. MATHISON: Well, at one point in the deposition
24 I asked him why he just didn't just call up Judge Coffey
25 and say, hey, look, I've got a problem. Because that,

1 obviously, is something he'd had done with Mr. Herring.
2 And obviously, --

3 THE COURT: That's not the -- but again, his filing
4 a complaint is not the problem with the case; it's the
5 actual publication to Mr. DeLoach about it. That's what
6 the problem is. He can complain all day long, any way he
7 wants, on any specific judge, but the problem is, him
8 going to DeLoach and doing it the way he did it.

9 MR. MATHISON: Well, --

10 THE COURT: I mean, that, I think, could be an
11 indication of saying, yeah, he's trying to get her fired.

12 MR. MATHISON: There's no question about it. That's
13 what I'm -- that's my argument. And I want to show that
14 there's two ways to approach everything, and one way was
15 his old way, which was, you know, you go to the judge and
16 say, hey look, this might be a good idea. And the other
17 way is you go behind the judge's back, and go to somebody
18 that you think can twist the knife without you getting
19 identified as the culprit, and that's what he did.

20 THE COURT: The problem is he's entitled to do that,
21 though. He's entitled to file the formal complaint. He
22 just -- he is.

23 MR. MATHISON: I understand.

24 THE COURT: Okay.

25 MR. MATHISON: What I'm saying, go behind his back,

1 I'm talking about going to DeLoach. That's what I think
2 is furtive. It's not the confidential stuff.

3 THE COURT: Well, if what he was saying was not
4 defamation, if what he was just saying was I think she's
5 unfair and biased and wasn't getting certain things, I
6 still think he could do that.

7 MS. JOLLEY: That's a comment, quite frankly.

8 THE COURT: I just -- I think -- and Mr. Mathison,
9 of course, you know, I'm sure you're going to do a lot in
10 your closing argument with you are going to ram that one
11 out, too. I can't imagine your closing argument's going
12 to be any less than ten hours. That is one of your last
13 things that you're going to have to link up for a jury.
14 So I can tell you right now, that ain't going to be
15 obvious to them.

16 MR. MATHISON: Around what act, your Honor? I'm
17 sorry. I'm not following.

18 THE COURT: That you're going to say, look how he
19 treated the other judges. He liked Judge Finger. Blah,
20 blah, blah. You know, asked him to bring a lawsuit on
21 his behalf. Judge Herring is writing him letters. It
22 just -- it's just a little far fetched.

23 MR. MATHISON: Maybe I'm being too defensive here,
24 but I don't think it's -- I don't think it's foolish for
25 me to believe that Mr. Breed is not going to take the

1 stand, and I'd like to -- if he did take the stand, I'd
2 like to have the ability to cross-examine him, depending
3 upon which way he goes. But I don't think he's going to
4 take the stand. And consequently, I need to get in
5 whatever I got.

6 THE COURT: Well, I can tell you, that part is --
7 it's really irrelevant to that. So I think it's a
8 stretch.

9 All right. Your next objection was 134, Page 134,
10 as to investigations.

11 MS. JOLLEY: I'm sorry, your Honor. Have we been
12 through 85, 90, 92, and 95?

13 THE COURT: I thought it was all the same thing.

14 MS. JOLLEY: Okay.

15 THE COURT: I didn't exactly draw a line, but.

16 MS. JOLLEY: I'm just not sure what the Court's
17 ruling is on all of that.

18 THE COURT: Well, I'm not sure what you objected to,
19 reading this.

20 MS. JOLLEY: Okay.

21 THE COURT: So you tell me. I only looked at Lines,
22 literally, Page 77, Lines 8, through Page 83, Line 22.
23 And that's coming out. But as far as 85 or 89, is that
24 all a part of this, too?

25 MS. JOLLEY: The next thing, your Honor, is we've

1 objected to the nol pros, which was 85 to 89.

2 THE COURT: 85 to 89. Okay. Let's look at it.

3 MR. MATHISON: It's already in, your Honor. I mean,
4 the door's been opened.

5 MS. JOLLEY: He testifies throughout that he has no
6 idea what he's talking about, and the testimony hasn't
7 been, so far, linking Breed to this at all. It goes to
8 Officer Campbell.

9 MR. MATHISON: Your Honor, may it please the Court.
10 They may put 50 witnesses on the stand that say that
11 George Breed doesn't know what's going on at Sea Pines
12 Security, but none of those people are telling the truth
13 if they say that. I mean, it's obvious that they're all
14 going to say that, but at some point, the sublime becomes
15 ridiculous.

16 THE COURT: Do you have a letter from Mr. Breed,
17 offering to do exactly what was going on in Bluffton?

18 MR. MATHISON: No. But Mr. Herring would testify.
19 If he'd said something, Mr. Herring was going to testify,
20 but he just kind of kept bobbing and weaving, and said he
21 didn't know anything about anything.

22 MS. JOLLEY: Mr. Herring?

23 MR. MATHISON: No, no. Mr. Breed.

24 THE COURT: Okay. I'm just -- I'm having a hard
25 time. You're talking about the nol pros. 85, 2 through

1 89, 7.

2 MR. MATHISON: May it please the Court, your Honor.
3 In the last paragraph of the letter that Mr. Breed sent
4 to Judge Herring, the first paragraph is, *Thank you very*
5 *much*. The last paragraph says that he would like to see
6 greater efficiency introduced into the Hilton Head Island
7 Municipal Court, and that his suggestion is that they
8 adopt a system that's used throughout the county by
9 magistrates.

10 And I asked Mr. Herring what he was talking about,
11 because I had no idea what that was, and he said that
12 what he was talking about, according to subsequent
13 telephone calls, was the fact that he wanted to adopt a
14 course of, basically, taking state citations and trading
15 them for local citations, with the points being lost for
16 the driver.

17 THE COURT: And Herring testified to this; that
18 that's what he was asking for?

19 MS. JOLLEY: No, Herring never testified, I don't
20 think.

21 MS. JONES: Herring's never testified.

22 MR. MATHISON: He didn't testify at all. That's
23 what he told me the conversation was about.

24 THE COURT: That's what Herring told you the
25 conversation was about?

1 MR. MATHISON: And that's why I asked him whether he
2 knew whether this whether this nol pros situation was
3 going on, and he denied any knowledge of it. He didn't
4 know anything about it.

5 MAUREEN COFFEY: And I know that's what they talked
6 about, too, but. I was there.

7 MS. JONES: Mr. Herring has never been a witness in
8 the case. He's never been named as a witness in the
9 case. There's no testimony, affidavits, statements from
10 Mr. Herring.

11 THE COURT: I just think that's -- that's --

12 MR. MATHISON: There's a letter from Mr. Herring,
13 and he would be a rebuttal witness if there had been an
14 answer there, that he'd said, no, I don't --

15 THE COURT: There isn't, so it's not coming in,
16 unless he comes and testifies and says he was asking, you
17 know, if this is the way we could do it.

18 MS. JOLLEY: Page 90 through 91, your Honor, is,
19 again, about the Judge Herring letter; why he sent a copy
20 of that to town council.

21 THE COURT: Why?

22 MS. JOLLEY: Why Mr. Breed sent a copy of the letter
23 to Judge Herring, to Town council.

24 THE COURT: Okay. I need to see the letter.

25 MR. MATHISON: Got it?

1 MS. JOLLEY: It's right here, your Honor. I believe
2 this is it.

3 THE COURT: On 23. I can tell you, I've already
4 read this portion of it.

5 Okay. From this letter, that is where you are
6 extrapolating the efficiencies?

7 MR. MATHISON: Well, that's what he said, and
8 Herring said --

9 THE COURT: That's what Herring says to you
10 personally, and hasn't testified, and hasn't given an
11 affidavit, and hasn't done anything along those lines.

12 MR. MATHISON: I asked Herring what he meant by
13 that, if he knew. And he said he knew as a result of
14 having a telephone call about it; that is was discussed
15 at the Town; and the Town decided not to get that
16 adventurous. And if you recall, the city of Bluffton did
17 do this.

18 THE COURT: I understand that. So why don't you
19 bring Herring?

20 MR. MATHISON: Well, I could, but I don't think this
21 is necessarily part of my case in chief, except to damage
22 to show that George Breed is not teller of the truth.

23 THE COURT: Is that what you're trying to do the
24 entire trial? I mean, isn't that your entire claim?

25 MR. MATHISON: Well, it is, but I would say that

1 this is not as directly relevant, certainly, as the
2 things like the indemnity and stuff like that.

3 THE COURT: He wants to do something unlawful. We
4 all agree that he can't do that. That's illegal. That's
5 bad. And I can tell you that, if that were going on and
6 there were testimony to that, I'd be turning it over to
7 the solicitor's office. So that's bad. I don't know any
8 other way to say that.

9 MR. MATHISON: Well, I understand, your Honor.

10 THE COURT: It's unethical, clearly. It's illegal,
11 too, I'm pretty sure. You can't do that. All right.
12 Look, you just need to decide whether or not you want to
13 bring Mr. Herring in or not.

14 MR. MATHISON: I don't think that I want to.

15 THE COURT: Because as it stands right now, I can
16 tell you, I understand that that's what you know to be
17 the background. It's hard for someone looking at this.
18 I'm looking at it as he's thanking them for, you know,
19 only making the Sea Pines people come and pull their
20 tickets a day or two a week. And also, I know that they
21 do this. I know Judge Coffey does this in her courtroom
22 at the beginning of. If anyone wants to get going;
23 whoever wants to plead guilty to their charge; come on
24 up; I'll take your plea; I'll listen to your case. And
25 it's on an expedited process, and usually, she gives them

1 a point break. But she certainly doesn't allow them to
2 plea to a different charge, so, or contribution, so.
3 Anyway. And I just don't know that.

4 And I believe what you're saying, but I just think
5 it's a stretch, and I think you need -- I think you need
6 Jim Herring's testimony to be able to get that in.
7 Again, I guess it's easier for us to understand because
8 we're lawyers, but I think that's going to be hard for
9 this jury to be following that. I think you want them to
10 see the, I guess, the bad stuff, not just the little
11 allegations of I guess all. But I understand you're
12 looking for a cumulative effect. I'm sorry. Why don't
13 you go ahead and give that back to them.

14 MS. JOLLEY: 92 through 96, your Honor, are about
15 the Weir memo that you've already -- you ruled as part of
16 our motion in limine was not coming in.

17 MS. JONES: The SLED memo.

18 THE COURT: The SLED memo. Okay.

19 MR. MATHISON: I think --

20 THE COURT: I told you I'm going to charge the law
21 that was appropriate. I thought it was entertaining. On
22 the end of that memo, Weir states that, if he finds
23 anyone violating the law, SLED is going to prosecute
24 them. I thought that was funny. SLED doesn't prosecute
25 anybody. But anyway, that tells you his extent of being

1 able to impart any legal opinion.

2 MR. MATHISON: When Jolin testified yesterday about
3 confusion among the officers, --

4 THE COURT: Um-hmm.

5 MR. MATHISON: -- that's what he was referring to.
6 If you recall, a memo was sent to all the security
7 offices on Hilton Head. And it was sent out because it
8 was solicited by Sheriff Tanner, because he was tired of
9 having to send his deputies out to find out what was
10 really going on.

11 THE COURT: Right.

12 MR. MATHISON: And when I got around to taking Mr.
13 Breed's deposition, if I used the word investigation, he
14 wouldn't say it, except in connection with the Beaufort
15 County Sheriff's Office.

16 THE COURT: Right.

17 MR. MATHISON: Whereas, he was not nearly as careful
18 when he wrote the letter.

19 THE COURT: Okay.

20 MR. MATHISON: So I think he was confused at the
21 time about exactly where the cut line was.

22 THE COURT: Well, we all know what that fight is.
23 It's the fight of, you know, rent-a-copy versus real cop.
24 You know, that's been going on forever on the Island, as
25 you all know. I mean, you could go on with the debate of

1 if they carry guns, which some people are, of course,
2 horribly opposed to. And I think that's just an ongoing
3 battle. Okay. We're not going to go into that.

4 I am going to charge the law on what they are able
5 to do, and what is their authority under the statute and
6 the regulation. I think that's absolutely appropriate.
7 I think the jury needs to know what they're boundaries
8 are.

9 MR. MATHISON: And that will allow me to argue that
10 any investigation of these crimes by Sea Pines --

11 THE COURT: Sea Pine authority. You can argue
12 anything you want. It's argument.

13 MR. MATHISON: Well, I didn't get to open any way I
14 wanted, so just want to make sure.

15 THE COURT: Okay. What else, Kelly, on the end of
16 this? What about --

17 MS. JOLLEY: Yeah. We're going to withdraw our
18 objection on the illness.

19 THE COURT: Okay.

20 MS. JOLLEY: I mean, we've objected to them bringing
21 an illness up, but we know you are going to let that in.

22 134, 9 through 14, that about investigations, but
23 it's fine.

24 THE COURT: It's coming in.

25 MS. JOLLEY: It's coming in.

1 THE COURT: Okay.

2 MS. JOLLEY: I believe, then, the next one, the next
3 objections are in Volume 2.

4 THE COURT: Got it. Page 36? Okay. Let's go on to
5 the next one.

6 MS. JOLLEY: 36 through 41, your Honor, is Mr.
7 Breed's defamation case, the one that he brought as a
8 plaintiff.

9 MR. MATHISON: I think that's key. That shows that
10 he knows the value of a reputation, and what he did was
11 willful. I think that that's key. I think that I'm
12 entitled to get that in. In addition, he didn't remember
13 that he had been in a defamation case when he testified
14 the first time. If you'll remember --

15 THE COURT: Is that the one that Terry Finger
16 represented him on?

17 MR. MATHISON: Yes.

18 MS. JOLLEY: Yes, your Honor.

19 MR. MATHISON: That was the --

20 THE COURT: Who did he say defamed him?

21 MR. MATHISON: Pardon?

22 THE COURT: Who did he say defamed him? I know
23 nothing about it.

24 MS. JOLLEY: A neighbor who said that he stole a
25 Menorah.

1 THE COURT: Okay.

2 MS. JOLLEY: Yeah.

3 MR. MATHISON: They had a -- believe it or not, this
4 is an outdoor Menorah. All right.

5 THE COURT: Right.

6 MR. MATHISON: He had a Menorah in his yard to
7 celebrate Hanukkah.

8 THE COURT: Right.

9 MR. MATHISON: And this guy accused Mr. Breed of
10 stealing it. And Mr. Breed testified that he sued him
11 and got \$20,000.00.

12 THE COURT: Well, that is actually kind of
13 interesting. Accusing him of being an anti-Semite,
14 rather than just being offensive and -- I don't know.
15 You all, I'm going to think about that one. I'm not so
16 sure.

17 MR. MATHISON: I think it goes to his state of mind,
18 in that, he would understand that somebody would have an
19 interest in protecting his reputation, by virtue of
20 having brought the same kind of litigation. He certainly
21 can't say, you know, who would care about reputation.

22 THE COURT: Well, I assume he still stands by he
23 believes everything he wrote in that letter is true,
24 right? Even though I couldn't quite figure that out from
25 his deposition, but.

1 MR. MATHISON: I can't tell what he says. I mean,
2 -- I mean, --

3 THE COURT: Right. But that's their position. I
4 think the defense position for sure.

5 MS. JOLLEY: Well, that goes both ways. He gave it
6 to DeLoach. He didn't put it -- do a letter to the
7 editor.

8 THE COURT: Right.

9 MS. JOLLEY: I mean. Previously the judge -- the
10 court had ruled the only -- only the fact that he was
11 sued for slander and received money damages can come in.
12 Is that ruling being changed?

13 THE COURT: Well, I don't know. I mean, what did it
14 say? It does go to what he understands is harmful.

15 MR. MATHISON: And it will --

16 THE COURT: It would certainly be relevant if he got
17 up here and he said, you know, I really didn't know it
18 was going to hurt anything.

19 MR. MATHISON: It would be relevant for that
20 purpose, and it might curtail the argument that I think
21 is going to be made that, you know, damn the torpedoes;
22 whatever goes; shoot your arrows at public officials; it
23 matters not.

24 THE COURT: Or kill-them-all-and-let-God-separate-
25 them theory?

1 MR. MATHISON: Well, yeah. Because, I mean, he's as
2 close to being a public official as my client is, and he
3 managed to bring his action and got paid, so.

4 THE COURT: Well, that's a legal opinion, and that's
5 not necessarily what I share, but. Anyway. Okay.
6 That's another thing. Let me think about that as far as
7 it goes to -- the only thing that makes me concerning
8 what I'm understanding from you, Mr. Mathison, is that it
9 can go to the actual malice portion of it.

10 MR. MATHISON: And I don't mean to put anything that
11 suggests that religion or, you know.

12 THE COURT: Right. We can take out the Menorah
13 issue. We can just say that, in fact, he did bring a
14 case for defamation himself. He understands, and he
15 believes that, you know, obviously, it had some value.
16 He received some money, I mean.

17 MR. MATHISON: Yes. That's exactly what I would use
18 it for. I don't want to rile up the jury by bringing
19 religion into this case --

20 THE COURT: Right.

21 MR. MATHISON: -- after having gotten close to
22 politics.

23 THE COURT: Considering our foreperson is a pastor,
24 I think we are there. Anyway, I'm sure they're all going
25 to pray before they render a verdict. So, anyway.

1 MAUREEN COFFEY: Pray it ends.
2 THE COURT: Okay.
3 MS. JOLLEY: 46.
4 THE COURT: Okay. Let me think about it. It will
5 be, obviously, scrubbed if I do allow it. But it still
6 concerns me, because, you know, you all have insisted on
7 the heightened standard of the actual malice, and --
8 MS. JOLLEY: That's the law.
9 THE COURT: I know. I know. It's a hard burden for
10 them to have to prove. And so, I don't want to tie their
11 hands. Anyway. Okay. Now were back to Page 46.
12 MS. JOLLEY: This is the Judge Herring telephone
13 call that I jumped the gun on before, your Honor.
14 THE COURT: Okay. And that's the one that's been
15 going into why there is no recording; him saying he
16 records thing.
17 MR. MATHISON: Yes.
18 THE COURT: I just don't understand why he thought
19 it was important in the deposition, but apparently.
20 MR. MATHISON: Well, I know a little bit about it.
21 The reason the Klippel case unfolded the way it did is
22 that both sides thought they enjoyed the support of Mr.
23 Breed.
24 MR. HALIO: Your Honor, I object. Really, do we
25 have to go into the whole Klippel case. It's 6:00 p.m.

1 THE COURT: I know. It's 6:00. I know.

2 MR. HALIO: And I don't mean to cut Mr. Mathison
3 off, but we've all got to get home tonight at some point.

4 THE COURT: I know.

5 MR. HALIO: And I don't need to hear about the
6 Klippel case.

7 THE COURT: Okay. Yeah. That's okay. I can tell
8 you, we've talked about it. I'm going to allow it for
9 the point that they did record it; they have the ability
10 to; he has; and they're not there. You can argue what
11 you want with it. You can argue that, you know, they
12 record over each other. I mean, this reminds me of every
13 video case that there's a slip-and-fall in a grocery
14 store, inevitably, there is never a video. It's never
15 there, and it's always because it's gotten re-recorded
16 over. But of course, the plaintiffs make hay about it.
17 So, same difference. Okay.

18 MS. JOLLEY: The last thing, your Honor, is the
19 Fugate issue about where they're claiming that Mrs.
20 Fugate negotiated for her son to make restitution.

21 THE COURT: I thought they already testified to
22 that.

23 MR. MATHISON: Part of it. We put the ticket in,
24 but we haven't gone all the way.

25 MS. JOLLEY: We haven't gone into the whole

1 background of the case. Only the ticket's been put in.
2 MR. MATHISON: Mr. Jolin --
3 THE COURT: Is this the same kid that was kicking
4 the lights?
5 MS. JOLLEY: This is the light-kicking case.
6 MR. MATHISON: Yes.
7 THE COURT: Okay.
8 MR. MATHISON: It's the same light kicking, the 3002
9 [sic].
10 THE COURT: So we've gotten the ticket in. We got
11 what they did.
12 MS. JONES: What was --
13 MR. MATHISON: The \$3,250.00 worth of lights.
14 THE COURT: Okay.
15 MR. MATHISON: That's what the --
16 MS. JONES: That part has been in evidence. It's
17 just that Mr. Jolin wrote a ticket for a young man, and
18 charged him with malicious destruction of property.
19 MR. MATHISON: And my plan is to use that against
20 Mr. Campbell, who I believe will testify.
21 THE COURT: That he not proessed it, based on a
22 payment of?
23 MS. JONES: No. They prosecuted him.
24 MR. MATHISON: That they had an agreement not to
25 prosecute, based on getting the money.

1 THE COURT: Okay.

2 MR. MATHISON: And then, they got the money, or at
3 least the first two months' payment. And somebody went
4 in and prosecuted, and got what is a judgment in
5 absentia, and --

6 MS. JONES: That's the testimony that has never been
7 testified to yet by anyone.

8 THE COURT: Okay. So my question is, what happened
9 then? So he got a judgment. Was it a criminal -- it was
10 a criminal conviction.

11 MS. JONES: Um-hmm.

12 MR. MATHISON: Yes.

13 THE COURT: And was part of that an order to pay the
14 money, as well, so.

15 MAUREEN COFFEY: No.

16 THE COURT: No.

17 MAUREEN COFFEY: The deal was made --

18 MR. MATHISON: No.

19 THE COURT: Right.

20 MAUREEN COFFEY: -- in his office, prior to the
21 ticket, but the grandmother said that the second ticket
22 she didn't even receive, and that's the ticket that
23 Haynes came in and testified to.

24 THE COURT: There's two tickets.

25 MS. JONES: But that's -- there is what -- what Ms.

1 Coffey just said, there is no witness who has testified
2 linking those things up like that. All we have is Mr.
3 Jolin testifying that he wrote the ticket.

4 THE COURT: Well, he wanted to show other than they
5 reached this deal, and then they went back on it. But of
6 course, there could be an explanation of, you know,
7 anything; (a) he didn't pay the restitution, and so they
8 went forward. And that could that, you know, obviously,
9 that could be more than a deal. And quite frankly, they
10 have the right to nol pros if he pays restitution. I
11 mean, they have that authority.

12 MAUREEN COFFEY: They didn't nol pros it. They
13 convicted. They tried it.

14 THE COURT: That's what I mean, though. And we
15 don't know why. We don't know if they went ahead and
16 went to court because they didn't pay the restitution.

17 MR. MATHISON: Your Honor, if --

18 THE COURT: Do we know?

19 MS. JOLLEY: I don't know.

20 MR. MATHISON: Your Honor, if I don't --

21 THE COURT: You should be able to know, because it's
22 your people.

23 MS. JOLLEY: Frankly your Honor, it hasn't come up
24 in the case.

25 THE COURT: Yes.

1 MS. JOLLEY: And from our understanding, there were
2 two tickets. And one was nol prossed, restitution. And
3 there was another ticket. He was convicted on that.

4 There's been nothing that's come in showing there's --

5 THE COURT: So what was the second ticket for? If
6 the first one's for malicious injury to property, what
7 was the second ticket for?

8 MR. MATHISON: The other ticket, it looks to me to
9 be unrelated. I didn't put it in, because Jolin didn't
10 write it. McNeill wrote it. All right. And what they
11 did is, the initial ticket, I think, went through and
12 resulted in a conviction. And because Jolin wasn't
13 there, they had nobody to go to court on the second. In
14 the interim, this agreement was reached, and the child --

15 THE COURT: Is this the one where you say an officer
16 came in and lied; that he really didn't witness anything?
17 Is that the one, or no?

18 MS. JOLLEY: That's the one.

19 MR. MATHISON: Yes, this is the one.

20 THE COURT: This is the one.

21 MR. MATHISON: Yes.

22 THE COURT: So basically, someone said go in.

23 MS. JOLLEY: Um-hmm.

24 THE COURT: This other officer; testify to what you
25 know; and he, obviously, couldn't and didn't have any

1 independent knowledge.

2 MS. JONES: Actually, what Mr. Jolin testified to in
3 his direct examination is that the child, the young man,
4 confessed, and admitted that he had kicked out the lights
5 and destroyed them, to he, Jolin, and another officer.

6 MR. MATHISON: Oren Dunn.

7 MS. JONES: Yeah. Oren Dunn. He said yeah, he
8 confessed to me and Oren Dunn that he had, you know,
9 kicked the lights out and destroyed the path lights.

10 THE COURT: So I'm still -- I'm still --

11 MAUREEN COFFEY: Haynes -- Haynes prosecuted the
12 case, not Jolin or Oren Dunn.

13 MR. MATHISON: The officer that showed up was
14 Haynes. And Haynes --

15 THE COURT: To prosecute it.

16 MR. MATHISON: And Haynes said that he was
17 personally present and --

18 MS. JONES: There is no testimony in that regard.

19 THE COURT: So you're saying that Haynes has lied.
20 Okay.

21 MS. JONES: Which makes it tenuous and irrelevant.

22 THE COURT: Well, what judge was it in front of?

23 MR. MATHISON: It was in front of Ned Tupper, I
24 believe.

25 MAUREEN COFFEY: I was recused.

1 THE COURT: Obviously.

2 MR. MATHISON: Fortunately.

3 THE COURT: Okay. I really think we're chasing a
4 lot of rabbits. I just -- you're going to have a hard
5 time putting this all together for a jury.

6 Do we have any evidence that Breed in any way
7 directed them to prosecute and do this? Do you have any
8 testimony from anyone that says Breed told them to go in
9 there and do this and act this way?

10 MR. MATHISON: No, and we're not likely to get that,
11 based on the evidence that came from the stand today.

12 THE COURT: Okay. Okay.

13 MR. MATHISON: So, to be entirely candid with you,
14 if I had to get Haynes to admit that he was directed by
15 Breed to do anything, he wouldn't.

16 THE COURT: He ain't going to do it, no.

17 MR. MATHISON: No.

18 THE COURT: All right. It's not coming in. It's
19 not coming in. That's just too far fetched.

20 COURT REPORTER: I'm sorry. I didn't hear you,
21 Judge.

22 THE COURT: It's too far-fetched. I'm sorry. Okay.
23 Anything else? And you're going to bring Birdwell in
24 tomorrow, correct?

25 MR. MATHISON: Yes.

1 CONFERENCE, OUT OF PRESENCE OF

2 JURORS. PRESENT: THE COURT, MR. MATHISON,

3 MS. JONES, MR. HALIO, MS. JOLLEY:

4 THE COURT: Do we need to wait on anyone else? Are
5 we okay, then?

6 MR. MATHISON: My client's having car trouble, your
7 Honor.

8 THE COURT: Okay.

9 MR. MATHISON: She said please go ahead without her.
10 She's on her way.

11 THE COURT: Okay. I know there were two things I
12 took under advisement yesterday that I said I'd sleep on.
13 And the first one was the defamation lawsuit brought by
14 George Breed with a neighbor. I think it's actually
15 relevant to the point that -- and I'm not going to --
16 we're not going into what it was the cause or anything
17 along those lines. It can be only that he had brought a
18 defamation suit, and it's to show -- it's relevant to
19 show that he understands the value of a reputation, a
20 professional reputation. And I do think it goes toward
21 showing actual malice. That, knowing all that, he still
22 allegedly made those statements.

23 So, for what it's worth, again, we're not going to
24 talk about what the cause of it is. We're not going to
25 even talk about a settlement or anything along those

1 lines, my assuming is that there isn't any settlement
2 payment. We're just going to say it's been brought. And
3 you can say he brought a defamation suit. Okay?

4 And that goes to whatever that portion -- I haven't
5 looked specifically, again, where that portion was in his
6 deposition, but whatever it is, that yes, he brought a
7 defamation suit; that again, we're not going to talk
8 about what it is or what any money settlement was or
9 anything like that.

10 Robert Mathison: I will parse the facts in the
11 resolution.

12 THE COURT: You got it. Okay. What was the second
13 thing? What was the second one that I had under
14 advisement? Can anyone?

15 Robert Mathison: I think you're still considering
16 the indemnity and whether or not --

17 THE COURT: Well, yeah. In addition to that,
18 though, there was something else. Is there something
19 major with Mr. Birdwell, that he's here and is going to
20 testify?

21 MR. MATHISON: He is here.

22 THE COURT: Okay.

23 MR. MATHISON: That is Mr. Birdwell right there.

24 THE COURT: I do see him.

25 MS. JOLLEY: Your Honor, I don't see anything other

1 MS. JONES: If --

2 MR. MATHISON: And Andy --

3 MS. JONES: Oh. Sorry.

4 MR. MATHISON: And Andy checked this morning to make
5 sure there aren't any new ones.

6 THE COURT: Okay. He double-checked, he looked at
7 her file this morning?

8 MS. JONES: Yes.

9 THE COURT: Very good. Okay. Very good.

10 MS. JONES: And we just want to renew our objection,
11 because she was not listed as an expert witness in the
12 answer to interrogatories. We were given no notice of
13 it. And we, you know, we do have copies of her notes
14 from the sessions that she had with the plaintiff, but we
15 do not have any expert report or notice or information
16 concerning the scope or basis of any opinion she may be
17 asked here in the trial.

18 So we renew that objection. And on that basis,
19 believe that she should not be allowed to testify.

20 THE COURT: Okay. Well, respectfully, we're in
21 state court. You're not entitled to a report. Okay. It
22 would be nice to have one, a little notice, and have her
23 listed as an expert witness.

24 MS. JONES: Right. And I misspoke. We did not get
25 any answer to the interrogatory even after the order

1 compelling the complete answers --

2 THE COURT: Okay.

3 MS. JONES: -- as to what, you know, she would
4 testify to and the basis of the opinion.

5 THE COURT: Did you not list her, Mr. Mathison? Was
6 she not a part of the catchall in your answers to
7 interrogatories?

8 MR. MATHISON: Your Honor, may I -- I'd like to make
9 my 32-page answers to interrogatories a court exhibit.

10 THE COURT: I think that's a good idea.

11 MR. MATHISON: And I'm going to put the originals
12 in, --

13 THE COURT: Okay.

14 MR. MATHISON: -- since they're the ones that are
15 most handy. And what I did is, as I've said before,
16 because they asked for it, put every physician and
17 medical provider that my client had seen for the previous
18 five years. I also stated in narrative form what they
19 had treated. In addition, I sent everything I knew about
20 each one of them. There's over eight pages of medical
21 experts. And at the bottom of my listing of witnesses --
22 admittedly, this is the mandatory listing of witnesses,
23 not expert witnesses -- I said that any one or more of
24 the people listed in the medical answer to interrogatory
25 may be called to testify.

1 THE COURT: Okay.

2 MR. MATHISON: And Ms. -- excuse me -- Dr. Geiger is
3 definitely disclosed.

4 THE COURT: What type of doctor is Dr. Geiger?

5 MR. MATHISON: Clinical psychologist.

6 THE COURT: Okay.

7 MR. MATHISON: I'd like to -- they're the originals.

8 THE COURT: Let's go ahead and mark it. That's
9 fine. Go ahead and give it to Wanda and she can mark it
10 as a court's exhibit.

11 MR. MATHISON: Thank you.

12 COPY OF DOCUMENT REFERRED TO AS 32-PAGE
13 ANSWERS TO INTERROGATORIES MARKED
14 COURT'S EXHIBIT NUMBER 2.

15 THE COURT: All right. Are we ready to go this
16 morning? Everyone ready? You all ready? We can go
17 bring them in?

18 MS. JONES: Can I have a continuing objection based
19 on the fact that --

20 THE COURT: To her entire testimony.

21 MS. JONES: Correct, yes.

22 THE COURT: Absolutely. Absolutely.

23 MS. JONES: Thank you.

24 THE COURT: Okay. Let's bring them in.

25 JURORS ENTER COURTROOM 9:15 A.M.

1 BAILIFF: Jurors entering, your Honor.

2 THE COURT: Thank you.

3 BAILIFF: The jury is seated, your Honor.

4 THE COURT: Thank you. Good morning, ladies and
5 gentlemen of the jury.

6 RESPONSES FROM JURORS.

7 THE COURT: Welcome back. At this time we're going
8 to go ahead and continue the plaintiff's case. Mr.
9 Mathison, will you call your first witness for this
10 morning.

11 MR. MATHISON: Excuse me, your Honor, one second.

12 BAILIFF: May I approach, your Honor?

13 THE COURT: You may.

14 OFF-THE-RECORD DISCUSSION, THE COURT

15 AND BAILIFF:

16 THE COURT: Oh, yes, about the newspaper articles.
17 Thank you. Sorry. Ladies and gentlemen, before we do
18 begin this morning, I did forget. There has been an
19 article in the newspaper. There was one run yesterday in
20 the *Island Packet*. And I'm not sure about *Beaufort*
21 *Gazette*, but I'm sure of the *Island Packet* both yesterday
22 and today.

23 Ladies and gentlemen, under the oath that you took
24 at the beginning of this case, please raise your right
25 hand if you did, in fact, read that article.

1 Thank you very much. I note for the record that no
2 one raised their hands. I appreciate it. Again, ladies
3 and gentlemen, it wouldn't be factual. You have had all
4 the evidence in this case. Of course, to make your
5 decision, you may use only what you have gotten here in
6 this courtroom during this week and over the next couple
7 of days. All right? Thank you, ladies and gentlemen. I
8 appreciate it.

9 All right. Now, Mr. Mathison, you may call your
10 first witness.

11 MR. MATHISON: Thank you, your Honor. The plaintiff
12 calls Dr. Lynn Geiger to the stand, please.

13 WITNESS SWORN.

14 DR. LYNN E. GEIGER,

15 DIRECT EXAMINATION, MR. MATHISON:

16 Q State your name for the record, please.

17 A Dr. Lynn E. Geiger.

18 Q Dr. Geiger, where do you live?

19 A I live at One Red Maple Road, Hilton Head.

20 Q And are you married?

21 A Yes.

22 Q And who's your husband?

23 A My husband is Robert Stevens.

24 Q What is your occupation, Dr. Geiger?

25 A I'm a clinical psychologist.

1 Q I have made available to my colleagues a copy of your
2 curriculum vitae. And I'm going to hand it to you and
3 ask if you can identify as reflecting your credentials.
4 A It does. My employment history doesn't have my
5 current employment address on it, but the rest of it is
6 accurate.
7 Q And what is your current employment address?
8 A 19 Executive Park.
9 Q Okay. When did you graduate from college?
10 A 1974.
11 Q You actually had two undergraduate degrees, didn't
12 you?
13 A Yes.
14 Q Forgive me, but that's not quite right. You had a
15 master of arts. Is that right?
16 A That's correct, 1975.
17 Q And what institution was that?
18 A Colgate University.
19 Q And subsequently, did you go to school again to
20 specialize in a particular scientific field?
21 A Yes, I did.
22 Q And what was that?
23 A Clinical psychology.
24 Q Where did you go to school to obtain your master's
25 degree in clinical psychology?

1 A Syracuse University.

2 Q And did you thereafter follow up by obtaining a

3 doctorate from Syracuse University?

4 A Yes, I did.

5 Q What year was that, ma'am?

6 A 1982.

7 Q Since then, have you been continuously involved in

8 one position or another, in practicing clinical

9 psychology?

10 A Yes, I have.

11 Q So my rough calculation is that you're a 30-year

12 veteran, in round numbers. Is that right?

13 A I would agree.

14 MR. MATHISON: Okay. Is that sufficient? Does it

15 qualify her?

16 THE COURT: Do you all want to ask any questions?

17 MS. JONES: No, your Honor.

18 THE COURT: Okay.

19 MS. JONES: I don't think the witness has been

20 offered in any particular area. I was waiting on that.

21 THE COURT: Right.

22 BY MR. MATHISON:

23 Q Are you an expert in clinical psychology?

24 A Generally, across the whole field, yes.

25 Q And do you propose to offer an opinion as to the

1 cause of certain conditions experienced by Maureen Coffey
2 in 2008 and afterwards?

3 A If I'm asked, yes.

4 Q Dr. Geiger, did Ms. Coffey come to you complaining of
5 stress?

6 A Yes.

7 Q She had, in fact, been seen by you as a patient prior
8 to 2008; had she not?

9 A Correct.

10 Q And what was her concern when she first came?

11 A She was concerned about work stress, marital stress,
12 and co-parenting conflict.

13 Q All right. And initially, did her husband, Mr. Edri,
14 come with her?

15 A To the second appointment, yes, he did.

16 Q And how did she adjust to your counseling, her with
17 respect to her initial problems?

18 A Through June of 2008, she was showing marked
19 improvement and much-improved coping.

20 Q What would you classify Maureen Coffey's parenting
21 skills as being?

22 A Really good. Very, very good.

23 Q Was her problem that she was harried, basically
24 having to work on the Bench and take care of three
25 children?

1 A I think it was much more complicated than that.
2 There were more complicated family dynamics.

3 Q I understand. But she was coping with that?

4 A She was, I would say, having difficulty when she
5 initially came to see me. And I think that, with some
6 parental guidance, that she began to -- she was then
7 coping thereafter much better with that.

8 Q What happened in June of 2008 that upset the apple
9 cart, if you will?

10 A I think it was more of what she told me in July of
11 '08.

12 Q And what did she tell you in July of '08?

13 A She indicated to me that she had received -- I'm not
14 quite sure the exact -- the correct term, but a -- a
15 disciplinary action against her, which led to a lot of
16 stress.

17 MS. JONES: Objection, your Honor. This testimony
18 related to that matter is immune and privileged.

19 THE COURT: Overruled. Just go.

20 BY MR. MATHISON:

21 Q Did she indicate what had happened to the letter,
22 other than its being submitted to the Commission of
23 Judicial Conduct?

24 A I'm not sure what letter you're referring to.

25 Q The complaint, as you refer to it.

1 A Thank you. So, one more time, could you repeat that
2 question.

3 Q Did she indicate where else the complaint had been
4 sent or disseminated?

5 A She indicated to me that she had received this
6 letter, this complaint, pursuant -- obviously, she
7 indicated that it had gone to the legal parties. Then
8 she indicated that -- that she believed it had been
9 shared with other people with whom she worked.

10 Q Specifically, at the Town of Hilton Head Island.

11 A That would be my understanding, yes.

12 Q What condition was she in when you saw her in July?

13 A Extremely anxious. She's a great thinker, so that,
14 you know, she's, you know, constantly thinking how to
15 solve the problem, what's going on. So, a lot of
16 rumination. Increased -- trying to manage the -- all the
17 different pressures that she had, work, family, this
18 additional stressor, those things.

19 Q What was the date that you first saw her where she
20 expressed stress about the complaint or letter that had
21 been circulated by -- do you know who actually signed it
22 or, who circulated it?

23 A Not to my recollection, no.

24 Q What was the date that she first expressed her stress
25 about this fact?

1 A It was the appointment in July. I saw her on a
2 monthly basis most often. So it was the appointment in
3 July of 2008. To the best of my recollection, July 7. I
4 could be off on the day.

5 Q Could it possibly be July 8th? Do you have a
6 clinical note that you brought with you from July 8th?

7 A Yes.

8 Q Is that the date or do you know?

9 A To the best of my recollection, that's the date.

10 Q Okay. And did she subsequently develop physical
11 symptoms which ultimately required treatment by someone
12 else?

13 A Yes, she did.

14 Q Did she have headaches?

15 A She reported headaches.

16 Q Did she have facial numbness or neuropathy?

17 A I don't have a clinical note on that. I have a
18 recollection that she did.

19 Q Did she begin to experience problems with weight
20 gain?

21 A Yes.

22 Q Can you say that, most probably, the headaches from
23 which she was suffering were, in fact, caused by the
24 stress that she reported to you in July?

25 A Well, we all know that stress is caused by multiple

1 factors, and I think that it would be inappropriate to
2 say that one can't -- one cannot eliminate all the other
3 factors. I think that, given the up-and-down nature of
4 how she was functioning, you know, better or worse over
5 the course of the next several years, that pattern really
6 seems to -- to respond more to the stress -- the stress
7 of this issue, and significantly less so to stress of
8 home life, relationships with other family members.

9 Q So would it be safe to say that the stress resulting
10 from the complaint and the related matters transcended
11 other stresses in her life?

12 A Well said.

13 Q And consequently, was the stress she was suffering
14 most probably more than likely caused by the stress of
15 the complaint?

16 A Yes, that would be my opinion.

17 Q What about the weight gain that she had; can that be
18 caused by increased stress?

19 A Yes. You know, we -- we know that the effect that
20 stress has on the body is a very complex issue. You
21 know, I think that we're beginning to get little parts of
22 it. We all know that -- not we *all*, but we generally
23 know that stress creates an increased cortisol levels,
24 and that has a huge effect on deteriorating health of the
25 body. But we also know that stress interrupts sleep, and

1 so that contributes to many other factors. I think we're
2 getting a lot of really good studies now that indicate
3 when you have poor sleep, you're likely to gain weight.
4 So there's a number of factors in there.

5 You know, later, she became concerned that she had a
6 thyroid condition. You know, I think many of us would
7 rather have a clear medical cause of a problem, and not
8 sort of a psychological cause of a problem. But we also
9 know that that adrenal --

10 Q Ma'am, please don't address the thyroid. I believe
11 there's a ruling on that. We can't go into that.

12 A Okay. Sorry.

13 Q Can you say most probably the weight gain was the
14 result of the stress that she was suffering?

15 A That would be my report, given -- that would be my
16 opinion, giving her report of the efforts she put into
17 diet and exercise.

18 Q And I believe you said she also suffered from facial
19 numbness or neuropathy. Is that correct?

20 A She reported that, yes.

21 Q Would that most probably be the result of stress,
22 acute stress, induced by the problems she encountered in
23 June and July of 2008?

24 A I don't believe I have the level of expertise to
25 answer that question.

1 Q With respect to the facial numbness.

2 A Correct.

3 Q Is that right? Can you say that, most probably, the
4 stress from the event of having this complaint sent
5 places that she didn't believe was appropriate caused the
6 weight gain and the headaches?

7 A If I understand, your question is did the stress
8 contribute or -- I would agree with that, yes.

9 Q Did you continue to treat Maureen after the summer of
10 2008?

11 A Yes.

12 Q How did she respond to the therapy that you
13 presented?

14 A She had a very high level of compli -- she had a high
15 level of compliance with the treatment plan in terms of
16 practicing coping strategies, using relaxation skills,
17 using cognitive behavioral strategies. And I -- I think
18 she did a -- a -- a good job, given the level of stress
19 she was attempting to cope with.

20 Q Did she also, while she was following your
21 prescription for relieving the stress, seek out medical
22 doctors in order to rule out truly physical, as opposed
23 to psychological or psychiatric reasons for some of the
24 symptoms?

25 A That's what she reported to me, yes.

1 Q And did anyone find anything other than stress that
2 was the cause, with the possible exception of the
3 thyroid?

4 MS. JONES: Objection. No foundation.

5 MR. MATHISON: I'll withdraw the question.

6 THE COURT: Thank you. Ladies and gentlemen,
7 disregard the last question.

8 BY MR. MATHISON:

9 Q Over time, did she, that is, Maureen Coffey, have an
10 alleviation of the headaches that had afflicted her, most
11 seriously in 2008?

12 A My impression is they -- they continued to appear and
13 come and go.

14 Q Do you know whether the weight-gain problem had
15 subsided or not?

16 A At this time, I do not know.

17 Q Did you charge Ms. Coffey for your services?

18 A Yes, I did.

19 Q And were you charging her \$150.00 a month [sic] to
20 see her?

21 A A session, yes.

22 Q And would it be safe to say that, approximately once
23 a month, for three years, you saw Maureen Coffey?

24 A Approximately three years, yes, that would be
25 correct.

1 Q I believe, to be exact, you saw her 36 times, Doctor.
2 And on one occasion, Ms. Coffey was not heavy-laden with
3 funds, and you had a free session for her.

4 MS. JONES: Your Honor, I object to the leading
5 nature of this.

6 THE COURT: Okay.

7 BY MR. MATHISON:

8 Q Did you charge her 35 times and not the 36th time?

9 A I think I saw her a total of 48 times. I think 36
10 times is after the July 2008 appointment.

11 Q Okay. But you only charged her the 35?

12 A I would believe I charged her for almost all.

13 Q And that would be roughly \$5,250.00. Is that
14 correct?

15 A I'm bad at math, but that's probably correct.

16 MR. MATHISON: Thank you. Please answer any
17 questions that counsel may have.

18 A Okay.

19 DR. LYNN E. GEIGER,

20 CROSS-EXAMINATION, MS. JONES:

21 Q As part of your testimony in coming to this case, we
22 asked you for, and you gave us, copies of your clinical
23 notes. Is that correct?

24 A Yes, it is.

25 Q And is that the official medical record that you

1 maintain on all your patients?

2 A At that time, yes. I've since switched to an

3 electronic medical record.

4 Q But for purposes of your testimony here today and the

5 time period that you were seeing Ms. Coffey, your

6 clinical notes are the only records that you have

7 concerning your treatment of her. Is that correct?

8 A Absolutely correct.

9 Q And of course, I think everybody knows this, is that,

10 when you are preparing your clinical notes, everything

11 that is significant that transpires during one of your

12 sessions, you attempt and it is your goal to make a

13 record of that in your notes. Is that correct?

14 A Given a broad range of significance, yes.

15 Q Okay. And I think that, if you look at your clinical

16 notes, Ms. Coffey first came to see you November the 7th,

17 2007. Is that correct?

18 A Yes, it is.

19 Q All right. And what was the -- according to your

20 notes at that point in time, she came to see you for what

21 reasons?

22 A Marital stress, work stress, co-parenting conflict.

23 Q And at the point in time, was she separated?

24 A Correct. Yes, I believe so.

25 THE COURT: Ms. Jones, the jurors are having a hard

1 time seeing you're writing on the board.

2 MS. JONES: Oh. I'm sorry.

3 THE COURT: So, if we can angle it a little better.
4 Thank you. Thank you. There we go. Is that all right,
5 everyone? Okay.

6 BY MS. JONES:

7 Q November 7, 2007 is when your treatment began.

8 A Correct.

9 Q And your record indicates that Ms. Coffey was
10 separated at that time, correct?

11 A Yes.

12 Q And that she came in because she had anxiety due to
13 work stress, marital stress, and co-parenting. What did
14 she tell you the work stress was?

15 A Heavy work load, long hours, judicial responsibility.

16 Q And how long had she been separated at that point in
17 time?

18 A I don't know.

19 Q Your record, I believe, indicates that the duration
20 is four to twelve months on your intake sheet. Is that
21 correct?

22 A Not the duration of separation. The duration of
23 those symptoms.

24 Q Okay. The duration of the symptoms.

25 A Correct.

1 Q And the symptoms were anxiety -- tell me what the
2 symptoms were again.

3 A The symptoms were anxiety.

4 Q Do you have your records with you?

5 A I do.

6 Q Please refer to your records.

7 A Thank you. Mild sleep disturbance, family conflict,
8 anxious mood.

9 Q Okay. All right. And at that point in time, did you
10 discuss with her a treatment plan?

11 A Yes.

12 Q Okay. And did your treatment plan, at that point in
13 time, in November of 2007, include four points?

14 A Correct.

15 Q And the third item in your treatment plan states:
16 *Decrease over-functioning on behalf of co-parent, and*
17 *promote his responsible parenting behavior.*

18 A Yes.

19 Q Okay. And then the fourth one says: *Clarify*
20 *reasonable boundaries and expectations for co-parenting,*
21 *and decrease mixed signals regarding parenting*
22 *responsibilities and appropriate co-parenting behavior.*

23 A Yes.

24 Q You saw Ms. Coffey again -- you saw her on November
25 the 14th, 2007, and the 26th, 2007.

1 MR. MATHISON: 26th of when?
2 Q November, 2007. Correct?
3 A Yes.
4 Q December the 12th, 2007.
5 A Yes.
6 Q January the 9th, 2008. Correct?
7 A Yes.
8 Q January the 30th, 2008.
9 A Yes.
10 Q February the 7th, 2008.
11 A March 7th.
12 Q Okay. Okay. I guess -- what is this -- okay. I
13 guess she canceled the appointment on February the 7th.
14 A 27th, yes.
15 Q 27th.
16 A Yes.
17 Q 27th.
18 A Yes.
19 Q Okay. February 27th. Excuse me. These are
20 handwritten notes, and you have small handwriting.
21 A It's very old-fashioned. I'm sorry.
22 Q So it's the 27th, 2008. And then on March the 7th,
23 2008.
24 A Correct.
25 Q And throughout the course of all these notes and --

1 well, and it goes on, the 20th of -- what month is that?
2 A March.
3 Q March the 20th. And then what's the next one that's
4 the 15th?
5 A April.
6 Q April. April the 15th, 2008. Then May the 13th,
7 2008. And then what's the next one?
8 A 6-10.
9 Q June the 10th?
10 A Yes. 2008.
11 Q 2008. Okay. And for that -- all of these sessions
12 that you saw her for, there was a lot of -- the level of
13 improvement in her work stress, co-parenting, and marital
14 stress was what?
15 A Good.
16 Q Okay. So you said she was having good improvement.
17 A Yes. I thought -- I thought, okay, we're ending
18 treatment here. She looks good.
19 Q Well, let's just go through some of them. Now, in
20 your session in November of 2007, you record that Ms.
21 Coffey's, I guess it says her spouse. Were they still
22 separated at that point in time?
23 A That's my understanding.
24 Q Is it your understanding that they'd been separated
25 since at least November the 7th, 2007?

1 A Correct.

2 Q When she first came to see you?

3 A Correct.

4 Q And there's never been any reconciliation there?

5 A My understanding is that there has never been any
6 reconciliation, although at times he has been at the
7 house.

8 Q Okay. And at times, he has returned to living
9 somewhere on the property where she lives.

10 A That's my understanding.

11 Q Okay. And she -- was it some apartment underneath
12 the house or somewhere below her house where he was
13 living for some period of time?

14 A My understanding is it's like an open garage.

15 Q An open garage.

16 A Under the house.

17 Q And he lived there for a period of time.

18 A That's my understanding.

19 Q And that created some stress and issues.

20 A Absolutely.

21 Q Okay. And there was one incident where there was --
22 there was the law enforcement had to be called.

23 A Yes.

24 Q And what effect did that have on her?

25 A Created a lot of stress.

1 Q And there was also a lot of stress, because she was
2 going without any child support.

3 A Correct.

4 Q And there was a lot of confusion and arguments over
5 the children's visitation schedule and holiday schedules.

6 A Correct.

7 Q Now, there was also some allegations that the
8 husband, from time to time, or her spouse, from time to
9 time, would make comments to the children that Ms.
10 Coffey, as a judge, could put him in jail. And I'll
11 refer you to your June 10th, 2008, note, specifically.
12 June the 10th, 2008.

13 A Correct.

14 Q But your testimony is, is through all of that, you
15 think that her stress level was improving.

16 A Yes. I think it's notable on that June the 10th
17 note. My note is she presents with remarkable coping
18 throughout this.

19 Q And then you note in July, July the 8th, 2008, there
20 is the first mention. And in that note -- read that note
21 to the jury.

22 A *Met with Ms. Coffey for one hour this date. She*
23 *reports modestly improved relationship with spouse,*
24 *reportedly due in part to his increased stability while*
25 *living with her brother.*

1 *She reveals presentation with a grievance, which*
2 *creates enormous stressors. Focus on positive coping,*
3 *increased positive self-maintenance, also, emphasis on*
4 *positive self-cognitions throughout this ordeal.*

5 Appointment 8-12-08. That means the next
6 appointment.

7 Q All right. And then she returned on December the --
8 well, on August the 12th, '08..

9 A Correct.

10 Q And then the next appointment she has with you is
11 June the 10th, '08?

12 A September the 8th.

13 Q September the 8th? When did -- is this not the next
14 note?

15 A We already went through -- oh, that's my -- those are
16 the treatment plans. Treatment plan updates.

17 Q Oh, treatment plan updates. Okay. All right. Okay,
18 so these are just treatment plan updates. These aren't
19 notes of visits.

20 A Correct.

21 Q All right. That was the confusion there.

22 A Sorry.

23 Q So the next visit was June the -- I mean, September
24 the 8th?

25 A Correct.

1 Q I want to make sure I make a note of this. July the
2 8th, 2008. And that was when she told you about the
3 filing of the complaint. Okay. Now, then she reports to
4 you on is it September the 7th, 2008, that the complaint
5 had been dismissed, which significantly decreased her
6 stress? You see that?

7 A That's October 7th.

8 Q October. Is it October?

9 A Yes, ma'am.

10 Q Okay. So how many times did you see her between July
11 the 8th, 2008, and October the 7th, 2008?

12 A Four times, including those beginning and end dates.

13 Q So there were -- including these two, there's a total
14 of four visits.

15 A Correct.

16 Q Okay. And she reported to you then that she had
17 significantly decreased stress. Is that correct?

18 A Well, what I -- what I'm saying is, she presented
19 with significant improved functioning.

20 Q Okay. All right. And then you have two visits with
21 her on November the 4th and December the 2nd of 2008.
22 And in those visits, the focus is concerning her family
23 situations. Is that correct?

24 A Yes, it is.

25 Q And there is no mention of any issues concerning

1 anything to do with any complaint.

2 A That is correct.

3 Q Then, I think your next visit is on January the 7th,
4 2009.

5 A Yes, ma'am.

6 Q And on that visit, what did Ms. Coffey report to you?

7 A Extremely stressful holiday, family issues, local
8 publicity about the litigation, and further litigation
9 against her is highly stressful.

10 Q All right. So your note says -- and if you would
11 please, just read your note to the jury.

12 A 1-7-09, met with Ms. Coffey for one hour this date.
13 She reportedly -- she reports extremely stressful
14 holiday, with children with father for extended time due
15 to his interpretation of separation agreement, and with
16 her and children's concerns while in his care.

17 In addition, local publicity regarding litigation
18 and further litigation against her is highly stressful.

19 Emphasis on promoting improved coping. She is
20 increasing positive self-maintenance behaviors, including
21 diet and exercise. And therapist recommends increased
22 breathing and relaxation strategies.

23 Appointment, 2-4-09.

24 Q So she says there's the local publicity regarding the
25 litigation. Now, did Ms. Coffey tell you that the local

1 publicity concerning the litigation was a lawsuit that
2 she actually had filed?
3 A Yes.
4 Q Okay. So she told you she had commenced that
5 litigation.
6 A Correct.
7 Q Okay. All right. And then the other issues on that
8 occasion related to the children and the holidays and the
9 issues with her -- with her spouse.
10 A Yes.
11 Q And then she said there was some other further
12 litigation against her?
13 A That's what my notes reflect, correct.
14 Q Okay. So there was other litigation against her.
15 And this other litigation against her doesn't have
16 anything to do with -- that doesn't have anything to do
17 with this complaint that had been filed and dismissed
18 already.
19 A To tell you the truth, I have no -- I have no
20 recollection what that is -- or was.
21 Q So you don't know what this other litigation filing
22 against her is?
23 A Yes. Three-and-a-half years ago. I -- I don't know
24 that.
25 Q Okay. And the reason I'm asking you all these

1 questions is because, you know, the questions that were
2 put to you by the plaintiff's attorney, you know, asking
3 you if you can relay, based on a reasonable degree of
4 medical certainty, which of these stressors was the most
5 efficient cause of the symptoms that she had. That's
6 what I want to try to parse out with you.

7 A Absolutely.

8 Q Okay.

9 A I understand.

10 Q So we've got -- we know that there was -- there were
11 four visits here, in this period of time. And then we've
12 got local publicity about litigation that she had
13 brought, correct?

14 A Correct.

15 Q All right. And then other litigation against her.
16 Okay. All right. And then we go on. And your next note
17 on March the 24th, 2009, has no mention of anything to do
18 with any litigation. Is that correct?

19 A Yes, that's correct.

20 Q Okay. And then in the next note, which is -- I think
21 it's April the 21st, 2009, but my --

22 A It is.

23 Q Okay. All right. In that note, she actually -- the
24 only litigation she talks about in there is threats of
25 litigation from her husband. And just read to the jury

1 that one sentence about where she reports the spouse's
2 frequent threats.

3 A *She reports spouse's frequent threat to quote,*
4 *'destroy her,' close quote, in a family court litigation*
5 *increases her anxiety, especially given concerns with the*
6 *impact upon her professional reputation.*

7 Q Okay. And that's the only mention in that note of
8 any litigation stress --

9 A Correct.

10 Q -- or complaint of stress.

11 A Correct.

12 Q Okay. All right. And then we go on to the next note
13 in -- where is it?

14 A April 19.

15 Q April the 19th. And she does generally make a
16 comment on April the 19th of constant stress with work,
17 litigation, co-parenting conflict, financial issues, and
18 child management issues, correct?

19 A That would be my summary of her statements, correct.

20 Q Okay. And can you tell us, as we sit here today,
21 what litigation she was referring to on that particular
22 date and visit?

23 A No, I cannot.

24 Q Okay. So you cannot testify that it was related to
25 this complaint that had been dismissed or any of this

1 other stuff that was mentioned.

2 A That's correct.

3 Q Because she's got all this other stuff going on.

4 A Correct.

5 Q All right. Then, the next time you see her is June
6 the 16th, 2009.

7 A Yes.

8 Q Is that correct? And that's the occasion when she --
9 that your note says, *She presents with significant*
10 *increase in anxiety after a series of conflicting --*

11 A Conflictual.

12 Q -- *conflictual situations with spouse, culminating in*
13 *his arrest at the family residence.* Correct?

14 A Yes.

15 Q All right. And she had some issues then with her
16 children, as well, at that point in time. But there's no
17 mention of any litigation in that visit; is there?

18 A No.

19 Q Or any stress related to that.

20 A Correct.

21 Q And then the next one is July the 14th, 2009. And
22 again, there is no mention of any concerns regarding
23 litigation.

24 A Correct.

25 Q All right. And then August the 11th, 2009 is the

1 next visit.

2 A That's correct.

3 Q Okay. And there is no mention of any concerns with

4 any litigation in that visit, except for she says that

5 the victims' assistant advocate is promoting some type of

6 mutual counseling between she and the spouse, correct?

7 A Yes, that's correct.

8 Q And of course, that doesn't have anything to do with

9 this professional complaint; does it?

10 A Correct.

11 Q Okay. And there's no mention in that note or that

12 treatment session that has anything to do with the --

13 this complaint, correct?

14 A Yes.

15 A All right. And then the next visit is September the

16 8th, 2009. And again, there is no mention of any issue

17 related to any kind of litigation, and that it's all

18 related to her family, the children, the husband, the

19 house, financial issues and such.

20 A Yes.

21 Q Okay. All right. And then we go to October the 6th,

22 2009. And again, there is no mention of any stress

23 related to any type of litigation or anything in that

24 regards. It's all about the children and the husband and

25 the holidays, and managing all of that.

1 A I think that's not accurate.

2 Q Oh, okay. I'm sorry. If I missed it, please point
3 it out.

4 A I believe there's a sentence that says stress
5 regarding litigation remains.

6 Q Okay. All right. Okay. Good. Good. I'm glad you
7 pointed that out. And which litigation was that?

8 A I can't tell you.

9 Q Okay. You don't know which one it was. You don't
10 know if it was this -- the action that she brought or the
11 other litigation against her or this complaint.

12 A Correct.

13 Q Okay.

14 A Well, my impression was that complaint had been
15 dismissed.

16 Q Right. Right.

17 A Yes.

18 Q So, at this point in time, she had brought a lawsuit
19 that you know of, and then there's some other litigation
20 against her that you don't remember the details about.

21 A Correct.

22 Q Okay. And then, of course, there was the litigation
23 with the spouse, concerning the victim advocate and the
24 incidences that occurred at her home.

25 A My impression is there was no litigation on that. My

1 impression was that we were back to threats of
2 litigation.

3 Q Oh, threats of litigation. Okay. And so, okay. So
4 we got 10-6-09 there's a mention of stress with the
5 litigation. But as we stand here today, you cannot
6 state, with a reasonable degree of medical certainty, --
7 well, not -- you can't say factually what litigation
8 you're talking about.

9 A Correct.

10 Q All right. And then the next visit has a similar
11 notation. I think that's November of 2009?

12 A Yes.

13 Q And again, it says, *Focusing on coping with ongoing*
14 *stress of spouse and litigation.*

15 And again, can you state what litigation she was
16 talking about?

17 A I would certainly think if it were some other
18 litigation, I would have a good memory of that. That
19 would be --

20 Q Well, I mean, you know, go back. What was the other
21 litigation against her?

22 A Well, I would -- well, that's what I'm saying. I
23 think that if it were -- if that were the repeated theme,
24 I would think, after all that time, I would remember
25 that. So, --

1 Q But can you tell me what it is? Do you remember?
2 Yes or no?
3 A No.
4 Q Okay. All right. And then, in the next visit, which
5 I believe is the 1st of December?
6 A Correct.
7 Q 2009?
8 A Correct.
9 Q There is no mention of anything related to any
10 litigation.
11 A Correct.
12 Q Or any complaint against her. And then the next one,
13 is that January the 5th, 2010?
14 A Correct.
15 Q All right. And again, in that note, there is no
16 mention of any stress related to any -- not only any
17 litigation, but no complaint about her.
18 A Correct.
19 Q And then February of 2010, February the 2nd of 2010,
20 is that your next visit?
21 A Yes.
22 Q Okay. And in that visit, she reported to you that
23 there had been no progress regarding her court
24 litigation, and no response from her attorney, despite
25 repeated efforts to contact him. Is that correct?

1 A That's the note, yes.

2 Q Okay. And so, the stress that she reported to you in

3 February 2010 had to do with no progress. And is that

4 the litigation that she initiated, or do you know?

5 A I'm assuming it's this litigation that -- that you

6 all are in right now.

7 Q Yes, ma'am. And but, I'm asking you if you can tell

8 us what litigation it was.

9 A This litigation.

10 Q You think it was this lawsuit here?

11 A Yes, ma'am.

12 Q Okay. Do you have any knowledge about when this

13 lawsuit was filed or commenced?

14 A No.

15 Q Okay. And she's reported here that her stress is

16 related to no response from her attorney, despite

17 repeated efforts to contact him.

18 A Correct.

19 Q Okay. All right. And then, in March of 2009, is the

20 next visit. And she said --

21 MR. MATHISON: I think you mean 2010.

22 Q I mean 2010. Thank you. March the 9th, 2010. Is

23 that correct?

24 A Yes.

25 Q And in that note, she reports to you not only some

1 issues with her spouse, and in this note it says,
2 *Continues to be homeless and is now residing under her*
3 *house in a basement-like area?*

4 A Correct.

5 Q But also it says, *Stress regarding the lawsuit and*
6 *changing attorneys.*

7 A Correct.

8 Q Okay. All right. And then, in April of 2010, you
9 have a session with her. And I don't believe that there
10 is any notation in that session concerning anything
11 related to any litigation or lawsuit.

12 A Correct.

13 Q Okay. And then, in May of 2010, again there is a
14 session with you, and there is no mention of any issues
15 concerning any litigation. That note relates to, again,
16 issues with the confrontations with her spouse.

17 A Yes.

18 Q And the June 1st, 2010 note, likewise, has no mention
19 of any litigation or complaint about her, but relates to
20 issues with her children.

21 A Correct.

22 Q And then July the 6th, 2010, same thing.

23 A Correct.

24 Q No mention of any litigation; just issues with the
25 spouse and the children.

1 A Correct.

2 Q Okay. And then, in the next one, I cannot read the
3 date at the bottom.

4 A August 3.

5 Q August the 3rd?

6 A Yes, ma'am.

7 Q Okay. Thank you. And the mention there of the
8 litigation says that, *also an increase*. Something with
9 attorney. Do you know what that says?

10 A Assertive behavior.

11 Q *Assertive behavior with attorney to clarify*
12 *boundaries and time lines regarding -- time lines, issues*
13 *regarding litigation*. Correct?

14 A Yes.

15 Q All right. And then November, the next one is
16 November 2010. No mention of the litigation; just issues
17 concerning her family.

18 A Correct.

19 Q All right. October 2010 there's one notation about a
20 conversation with her attorney about the lawsuit, but
21 nothing else.

22 A Correct.

23 Q Okay. November 2010, the only notation is that there
24 was recent newspaper articles regarding the case and her
25 stresses increases. Was that with the newspaper

1 articles?

2 A Well, there's also the sentence before that.

3 Q There is a sentence before that, that relates to a
4 relationship with her attorney, correct?

5 A Correct.

6 Q Okay. All right. And then it talks about recent
7 newspaper articles.

8 A Yes.

9 Q Okay. And she has increased stress. What she
10 reported to you there, was the increased stress
11 concerning the relationship with her attorney and the
12 newspaper articles?

13 A No, just the newspaper articles.

14 Q Just the newspaper articles.

15 A Correct.

16 Q Okay. So that was just the newspaper articles. All
17 right. And then February of 2010, there --

18 A No, that's -- that's December.

19 Q Oh, December. I'm sorry. My -- one, my copies
20 aren't --

21 A Sorry.

22 Q Okay. Sorry. December of 2010, there's a notation
23 about continuing problems with her spouse and her
24 children, but nothing about any litigation or problems
25 with an attorney or newspaper articles.

1 A Correct.

2 Q Then, in 2011, there are -- you saw her in 2011, one,
3 two, three, four, five, six times.

4 A Yes.

5 Q Correct? Six times.

6 A Yes, ma'am.

7 Q All right. And you have not seen her -- your last
8 visit with her was June the 7th, 2011.

9 A Yes.

10 Q June the what?

11 A 7th.

12 Q Now. And on the six visits in 2011, she discusses
13 with you, or at least in five of them, she discusses with
14 you that she has stress from the husband, the children,
15 financial issues, litigation issues, and -- and I think
16 that's all. Is there anything else in there?

17 A Medical issues.

18 Q And medical issues. And she reports to you what
19 other health care people that she's been to see.

20 A Yes.

21 Q And the other health issues that she discusses with
22 you is a possible insulin disorder?

23 A Yes.

24 Q And some other medical issues that -- that are, you
25 know, throughout here. But anyway. Which I won't make

1 public, but.

2 So, after having gone through your notes, we know
3 that the professional complaint against her, she saw you
4 from July of 2008, until October of 2008, before this, it
5 was dismissed, and she reported decreased stress, right?

6 A Could you repeat that question, please.

7 Q Your first note about filing of a complaint related
8 to her professional status as a judge was July the 8th,
9 2008. Your note says it was dismissed in October of
10 2008. She had decreased stress at that point in time.
11 But during that time period, you saw her on four
12 occasions.

13 A Yes.

14 Q Right? All right. Then we know that there is a
15 notation about local publicity about litigations that she
16 commenced. Correct?

17 A Yes.

18 Q All right. And other litigation against her, but
19 we're not sure. You don't recall the details of that.

20 A Correct.

21 Q All right. And you last saw her on June the 7th,
22 2011.

23 A Yes.

24 Q Now, as we stand here, having reviewed your notes in
25 detail, can you tell the court, based on a reasonable

1 degree of medical certainty, which litigation stress you
2 believe is the most efficient cause of the problems she
3 was having?

4 A No.

5 Q Okay. And can you tell the court, after having
6 reviewed the notes in detail, based on a reasonable
7 degree of medical certainty, whether or not the
8 litigation stresses outweighed her family and marital
9 stresses to cause her symptoms, based on a degree of
10 reasonable medical certainty?

11 A Well, I think you've done an excellent job of
12 indicating the content of each of those sessions. And I
13 think that you've really clearly noted there's many
14 stressors. You didn't include in that what -- how were
15 her anxiety symptoms going up and down during those
16 different times. And I think that that's the piece that
17 I'm using to come to my conclusion. Because, for the
18 most part, it's not a perfect match up. But for the most
19 part, when she's talking about the family issues, her
20 stress has been noted to be decreased. And then, for the
21 most part, when she's talking about the litigation,
22 professional reputation issues, the stress increases. So
23 I think it's that mix is what I'm using to come to my
24 conclusion on. So it's not simply what did she talk
25 about; it's how is she reacting to that.

1 And I want to repeat, it's not a perfect one-to-one
2 match-up. But it's -- it's -- it's a pretty strong
3 pattern.

4 Q Then what you just described, can you show me where
5 that is reflected in your notes?

6 A Sure.

7 Q Okay.

8 A It's generally the second sentence. If you look at,
9 like, February of -- of -- 1st of 2011, you know, she
10 presents with improved coping. Or if you go to, you
11 know, June --

12 Q Wait a minute. February the 1st, 2011.

13 A So I'm tracking -- you know, I talk about how she
14 coped or her anxiety or a symptom.

15 Q Okay. In that note, February the 1st, 2011, you say
16 that she presents with decreased anxiety after phone
17 contact with husband?

18 A Well, I'm going to --

19 Q It says with him. Is that the spouse?

20 A I'm going to the second sentence there. She --

21 Q Okay.

22 A She presents with improved functioning.

23 Q Okay. Related to her overall situation? Improved
24 functioning?

25 A Correct.

1 Q Okay. And that would include -- because there is a
2 notation on that date about the litigation.

3 A Correct. Did you want me to read that whole note?

4 Q What I'm trying to -- what I'd like for you to point
5 me to is where your notation where she presents with
6 improved functioning. It doesn't -- your note doesn't
7 say what that's related to. It doesn't relate it to one
8 item or another, the family situation or some other
9 situation; does it?

10 A I think that it's -- it's generally clustered, if you
11 look at the whole note. I use this way because it's like
12 a paragraph. It's -- I have that sentence about a
13 symptom, and then I have what the content is. And that's
14 what I'm matching up, the symptom and the content.

15 Q Okay. You're matching up the symptom and the
16 content. But the content in this note speaks to
17 everything. It speaks to all the stresses in her life.

18 A Yes.

19 Q Doesn't it?

20 A Yes, it does. But it -- it notes that some of them
21 are going better than others.

22 Q Okay. So, is your testimony that your notes are not
23 specific in regard to what you recorded contemporaneous
24 with the visit as to the improvement?

25 A I'm not sure that's what I'm saying. Could you

1 repeat that.

2 Q Your note says she presents with improved
3 functioning. Is that word functioning?

4 A Yes, correct.

5 Q Okay. She presents with improved functioning, but
6 the note recites information concerning the litigation,
7 information concerning the spouse who is out of the
8 country, and other things. But your notes -- I guess
9 your testimony is you don't keep medical records in such
10 a way that you relate the improved functioning to any
11 particular item?

12 A Correct. I -- you know, I'm not to create a -- you
13 know, I'm not trying to create a document to say, okay, I
14 can prove this or that. That's not what I'm doing at the
15 time. I'm simply trying to document what I saw and the
16 content of what was discussed.

17 Q Let me ask you. Let me ask you a couple of specific
18 questions. Where, in your notes, did -- or when in your
19 notes did Ms. Coffey first indicate to you that she had
20 any headaches? What was the date?

21 A I'm looking. The -- March of 2009.

22 Q And that's the first time she noted reporting that
23 she had any headaches. Or is that the only notation of
24 headaches? And is that the March?

25 A 24th one.

1 Q March 24. Okay. In the March 24, 2009 note, where
2 she tells you she's having headaches, there is no report
3 in that visit concerning any litigation issues; are
4 there? Is there?

5 A No. I just note marked increased stress.

6 Q But on that visit, when she told you she had
7 experienced some headaches, there was no indication from
8 her of issues related to a complaint or litigation.

9 A And while that's accurate, it also indicates how in
10 the other areas she's doing well.

11 Q Okay. And is there any other occasion where she
12 reports that she's experiencing headaches?

13 A I don't believe I have that specifically documented
14 on other dates. We discussed it intermittently, and I
15 think, again, there might -- but I don't see easily here
16 that I have it specifically documented.

17 Q And the only other -- the other item that you were
18 asked about was weight gain. And when did Ms. Coffey
19 indicate to you she was experiencing any weight gain?

20 A I will need to take a minute here.

21 Q You don't have it in your notes?

22 A I do, but I haven't marked it ahead of time.

23 Q Oh, I'm sorry. I can tell you the one place I found
24 it.

25 A Great.

1 Q March the 3rd, 2011. I don't want to, you know,
2 testify for you, but that's where I see it is March the
3 3rd of 2011.

4 A Great. I --

5 Q May the 3rd. 5-3-11.

6 A Great. I know that we're, you know, we're focusing
7 on the exercise prior to that, so I don't -- but I didn't
8 actually indicate the weight gain. I indicated the focus
9 on exercise.

10 Q But I didn't see it any other time.

11 A I am happy to trust your reading the notes.

12 MS. JONES: Thank you. That's all the questions I
13 have.

14 DR. LYNN E. GEIGER

15 RE-DIRECT EXAMINATION, MR. MATHISON:

16 Q Dr. Geiger, I just have a couple on re-direct. First
17 of all, how long is the session that you have with Ms.
18 Coffey, or any other patient, for that matter?

19 A Generally, the -- after the first session, sessions
20 are 45 to 60 minutes.

21 Q And do you attempt to write down everything that you
22 discuss in a 45-to-60-minute period?

23 A No.

24 Q In a clinical note?

25 A No.

1 Q How many words are in your typical clinical note?
2 Fifty?
3 A I would say that's correct.
4 Q So you distill, and must distill, for matters of
5 efficiency, an hour's worth of conversation into 50
6 words. Is that right?
7 A Correct.
8 Q So is it entirely possible that, in every single
9 session, there was a discussion of a stressor which you
10 did not get a name that was either complaint or
11 litigation?
12 A Yes, absolutely correct.
13 Q And what I asked you to do was determine what was the
14 greatest stressor for Ms. Coffey during this period.
15 Isn't that correct?
16 A Yes.
17 Q And how did you do that?
18 A I did it two ways. I did it, one, in, you know, just
19 re-reading all the notes and re-looking at the whole
20 thing, and coming up with it. And then I also sort of
21 more scientifically went back and looked at all of the,
22 you know, 48, or specifically, 36 sessions, and tracked
23 symptoms related to content.
24 Q Among the different stressors in Ms. Coffey's life,
25 do you have an opinion during this period which was the

1 most acute?

2 MS. JONES: Objection, your Honor. Improper
3 question.

4 THE COURT: Overruled. You can ask.

5 BY MR. MATHISON:

6 A Explain what way you mean acute.

7 Q The worst.

8 A The worst. Concerns about litigation, concerns about
9 her reputation.

10 Q Can you say that, most probably, that was the worst
11 concern?

12 A Yes, I would say, most probably, that those were the
13 worst concerns.

14 MR. MATHISON: Thank you. I don't have any further
15 questions.

16 MS. JONES: That's all. Thank you, your Honor.

17 THE COURT: All right. Any objection to Dr. Geiger
18 being excused from anyone? You are excused.

19 A Thank you, your Honor.

20 THE COURT: Ladies and gentlemen of the jury, I
21 think we're going to take a very short recess. Again, do
22 not discuss the case. It would be inappropriate to do so
23 at this time. Go back, have coffee, and we'll be with
24 you shortly. Thank you.

25 JURORS LEAVE COURTROOM 11:02 A.M.

1 Birdwell.

2 WITNESS SWORN.

3 STEVEN P. BIRDWELL

4 DIRECT EXAMINATION, MR. MATHISON:

5 Q State your name for the record, please.

6 A Steven P. Birdwell.

7 Q Mr. Birdwell, where do you reside?

8 A 12 Governor's Lane, in Hilton Head Island, South

9 Carolina.

10 Q Married, single?

11 A Married.

12 Q How old are you?

13 A Fifty-three.

14 Q Do you hold a position with Sea Pines Resort?

15 A I do.

16 Q What exactly is your position?

17 A President.

18 Q In the course of this litigation, have I previously

19 taken your deposition?

20 A Yes, you have.

21 Q And is that because, at one juncture, Sea Pines was,

22 in fact, a party in this case?

23 A Sea Pines Resort was, yes.

24 Q Do you recall that the deposition was taken on or

25 about April 5th of this year?

1 A I believe it was.

2 Q I'm going to hand you a document, which is meeting
3 minutes from May 20, 2008 board meeting, and ask if you
4 can identify those as the minutes of the meeting that you
5 attended on or about that date.

6 A It appears that they are the -- the approved minutes
7 from the May 20th, 2008 board meeting.

8 Q When we took your deposition, what I had at the time
9 was the minutes that you'd supplied that were in draft
10 form; isn't that correct?

11 A That's correct.

12 Q And isn't it true that you, through Sea Pines Resort,
13 supplied in excess of a thousand documents in response to
14 our production request?

15 A Yes, we did.

16 Q Didn't you have the most extensive and elaborate
17 collection of documents generated during a three-year
18 period of anybody in the case?

19 A I don't know about that.

20 Q Can you tell me whether those are the final minutes,
21 as opposed to the draft minutes?

22 A Well, they're signed by the secretary. I assume they
23 are the final -- a copy of the final minutes.

24 Q Now, as the president of Sea Pines Resort, LLC, are
25 you entitled to sit on the board of directors of

1 Community Services Associates?

2 A No, not as a -- a condition of my employment with --
3 with Sea Pines Resort.

4 Q How many directors are there on the board of
5 Community Service Associates?

6 A I believe there are a total of 17.

7 Q How many of those directors, as a function of the
8 applicable covenants, must be selected by Sea Pines
9 Resort, LLC, as the developer?

10 A Four.

11 Q Are you one of those directors?

12 A Yes, I am.

13 Q And do you select the others?

14 A With approval from our ownership.

15 Q Meaning the people that own Sea Pines Resort?

16 A That's correct.

17 Q Which is a subsidiary of another company known as
18 Riverstone. Is that correct?

19 A The Riverstone Group, yes.

20 Q Are there other commercial directors, that is,
21 commercial directors selected from among folks who have
22 interests that are commercial, inside Sea Pines that are
23 not affiliated with your company?

24 A Yes, there are. There are four other commercial
25 directors.

1 Q So that accounts for eight. Are there, in addition
2 to that, directors who come from what's known as the
3 Association of Sea Pines Plantation Property Owners?

4 A Well, there's nine residential directors that are --
5 that are nominated by, I believe, a nominating committee
6 that is a collaboration between CSA and ASPPPO.

7 Q For sake of convenience, we'll call the Association
8 of Sea Pines Property Owners and the advisory board
9 ASPPPO. Is that correct?

10 A That's correct.

11 Q Are some of the members of that board members or
12 directors of ASPPPO, as well?

13 A Yes, they are.

14 Q Is that a matter of covenant? Do they have a high-
15 right service on the board, or is it just a matter of
16 actually running for the seats?

17 COURT REPORTER: I'm sorry. What?

18 Q Running for the seats.

19 A I don't believe it's -- it's by right. I think that
20 the nominating committee many times has nominated people
21 to serve on both boards. And they've been elected to
22 both boards.

23 Q And what, exactly, is the function of the ASPPPO
24 within the hierarchy of the operation at Sea Pines?

25 A Best I understand, ASPPPO is to represent the

1 residential directors.

2 Q Do they engage in covenant enforcement?

3 A Yes, they do.

4 Q Causing the properties inside the plantation to

5 adhere to the codes.

6 A That's correct.

7 Q And is that their primary function?

8 A I believe representing the residential community and

9 -- and covenant enforcement is the primary

10 responsibility.

11 Q And what does Community Services Associates do,

12 besides operating the security company?

13 A Well, they operate not only security, and then

14 provide all the maintenance throughout the plantation.

15 And then other services that -- that owners can -- can

16 utilize.

17 Q So, if I understand correctly, Community Service

18 Associates has a number of functions. They're separate

19 from those that the association Sea Pines Plantation

20 Property owners has. Is that correct?

21 A That's correct. CSA represents all owners within Sea

22 Pines, and provides all the -- all the maintenance,

23 security, and all the other functions available.

24 Q And that means all owners, both residential and

25 commercial.

1 A That's correct.

2 Q And you all are the largest commercial.

3 A I assume we are.

4 Q At least until last right.

5 A I mean, there's some other large commercial

6 operators.

7 Q The minutes that I handed you, do they make reference

8 -- I believe it's on the second page -- to a conversation

9 that you had had with Mr. Breed previously?

10 A Yes, they do.

11 Q Would you read to the jury what the comment is that

12 I'm referring to?

13 A The minutes say, *He had met --*

14 MR. HALIO: Object. I think we need to approach.

15 THE COURT: Okay. Just a moment.

16 OFF-THE-RECORD BENCH CONFERENCE,

17 OUT OF HEARING OF JURORS. PRESENT:

18 THE COURT, MR. MATHISON, MS. JOLLEY,

19 MR. HALIO.

20 END BENCH CONFERENCE.

21 BY MR. MATHISON:

22 Q Mr. Birdwell, please continue. Just read the

23 provision that are in the minutes of the meeting.

24 A Regarding my discussion of meeting with Mr. Breed.

25 Q Yes, sir.

1 A The minutes read he had met with Mr. Breed, director
2 of security, to discuss these and other issues. The
3 resort is considering an installation of additional
4 security cameras in the golf cart storage areas and other
5 high-traffic areas in Harbor Town. The cameras -- the
6 cameras are portable and can be relocated at any problem
7 -- problem areas as needed. The cameras will be
8 monitored by current security personnel, so no additional
9 staff will be needed.

10 Q What I wanted you to do is read the entire first
11 sentence in, so it was clear what you and Mr. Breed were
12 discussing.

13 A Mr. Birdwell said he was concerned about recent
14 security issues that had arisen, such as the missing
15 couple and peeping Tom.

16 Q Did that comment cause any stir or discussion during
17 the meeting in question, the minutes of which you have in
18 your hands?

19 A I don't believe it did.

20 Q Subsequently, was there an email exchange between you
21 and Mr. Breed about whether or not your comment had, I
22 believe the term was, were you actually busting his
23 chops, meaning Mr. Breed's chops. Do you remember that
24 email?

25 A I do remember it.

1 Q And was his concern and yours that maybe Mr. Kelley,
2 who is the executive vice president of Community Services
3 Associates, felt that you were *busting the chops of Mr.*
4 *Breed?*

5 A I don't know. I think Mr. Breed sent that to me
6 sarcastically.

7 Q What we're talking about is a series of emails, which
8 are marked in your deposition as Plaintiff's Exhibit 10.
9 And I'm handing you those documents. Are those the
10 emails about which we were talking?

11 A Yes, they appear -- they appear so.

12 Q And were you kind enough to produce those documents
13 as Numbers 1,104 and 1,105?

14 A Yes.

15 Q The conversation you had with Mr. Breed, was that a
16 source of your concern about what may have been perceived
17 as a certain lawlessness or reported rash of burglaries
18 or peeping Toms? Is that what you were discussing?

19 A In the board meeting?

20 Q When you talked to him in the conversation before the
21 board meeting.

22 A Our discussions were really more about the security
23 cameras and where they should be located, and -- and the
24 -- potential cost of the cameras.

25 Q These emails having to do with whether you were

1 busting Mr. Breed's chops, I'd like them marked
2 collectively as Plaintiff's Exhibit 20.

3 COPIES OF DOCUMENTS REFERRED TO AS
4 EMAILS MARKED PLAINTIFF'S EXHIBIT
5 NUMBER 20, ADMITTED INTO EVIDENCE.

6 Q That board meeting took place on May 20th, 2008; did
7 it not?

8 A Yes, it did.

9 Q When was the meeting between you and Mr. Breed where
10 you discussed problems with incidents such as breaking
11 and entering and peeping Tom inside the Plantation?

12 A I don't recall the date. It was some time before May
13 20th.

14 Q Do you think it was a week before or the day before?

15 A It was some time in the first part of May, probably.

16 I -- I don't -- it was -- it was -- it was some time
17 recent. Within -- within the last, you know, few weeks
18 of this -- of this board meeting.

19 Q When the incident took place where there was a black
20 male contacted on the early morning of May 20th, were you
21 aware of that?

22 A I was not.

23 Q Was it a coincidence that this black male was
24 encountered on May 20th --

25 MR. HALIO: Objection. Calls for speculation. He

1 didn't know anything about it.

2 THE COURT: You can ask can you account for, or you
3 just can rephrase it.

4 BY MR. MATHISON:

5 Q Do you know whether, in fact, the effort to
6 encounter the black male on May 20th was in response to
7 your conversation with Mr. Breed about your concern about
8 the lawlessness of the community?

9 A I don't -- I don't think so, no.

10 Q Mr. Birdwell, did you know anything about what's been
11 marked as Plaintiff's Exhibit 4 prior to its having been
12 conceived and mailed?

13 A No, I did not.

14 Q Did anybody on the board of directors of Community
15 Service Associates, that you're aware of, know that that
16 letter existed before June 24, 2008?

17 A Not that I'm aware of.

18 Q You certainly didn't know it; did you?

19 A No, I didn't.

20 Q Did anyone come to the board, with or without the
21 letter, prior to the date of that letter on June 6th, and
22 ask for the authority or permission to send the letter to
23 the Conduct -- Judicial Conduct Commission?

24 A No one talked with me about it prior to -- to -- to
25 mailing it.

1 Q And you were fairly religious in your attendance at
2 these meetings; were you not?

3 A I certainly try to attend, you know, any time I can.

4 Q In point in fact, I think we established that you
5 attended every meeting in 2008, with the exception of
6 that which took place in September; isn't that right?

7 A I believe so.

8 Q And we put a list of those meetings into your
9 deposition if I recall correctly.

10 A That's correct.

11 Q Do you know whether Mr. Breed was required to get the
12 authorization of the board before sending that letter to
13 the Commission on Judicial Conduct?

14 A I do not.

15 Q But he didn't do it, if he was required; is that
16 right?

17 MR. HALIO: Objection. He's already said he doesn't
18 know.

19 BY MR. MATHISON:

20 Q He didn't do it.

21 A There wasn't any board approval as far as I know.

22 Q Did the board approve of Mr. Breed, or someone on his
23 behalf, delivering a copy of the letter to
24 representatives at the Town of Hilton Head Island?

25 A I wasn't aware of it.

1 Q Was it ever discussed at the meetings that you
2 attended in May or June?
3 A I don't believe it was.
4 Q In point of fact, the letter was, in fact, handed out
5 to the board on or about June 24th, 2008; isn't that
6 correct?
7 A At the June board meeting. Right, that's correct.
8 Q I'm handing you your deposition, sir. Actually, it's
9 a copy. And directing your attention to what, in that
10 deposition, is marked as Plaintiff's Exhibit 3.
11 A Okay.
12 Q Is that the meeting in which you found out that this
13 letter had been sent?
14 A Yes, I believe it was.
15 Q And is there a description of what happened when the
16 letter was presented?
17 A There are minutes relating to that part of the
18 meeting.
19 Q And the minutes that you're looking at specifically
20 are those that you produced in draft form. Is that
21 correct?
22 A That's correct.
23 Q And if you scroll through those minutes, isn't it
24 true that there is a copy of the letter attached?
25 A I don't think that there was a copy attached.

1 Q Excuse me. Let me see what we've got. I'm handing
2 you this document and asking you whether or not the copy
3 of Mr. Breed's letter was attached.

4 A Well, this is a copy of the letter. It's -- it's not
5 the signed copy. And I don't recall when -- when I
6 received it. But I -- I don't believe that the letter
7 was distributed until the September 24th -- June 24th
8 board meeting.

9 Q Okay. Well, but isn't that -- aren't those the
10 minutes of the June 24th meeting?

11 A I don't know, you know, they're a different exhibit
12 number. And I don't know when, you know, when this --
13 this copy of this letter was received. This is the one
14 that's not on the letterhead, unsigned.

15 Q Okay. Well, look at the minutes of the June 24th
16 meeting and see what they say about the letter.

17 A Okay.

18 Q Please read to the jury what the minutes of the
19 meeting say to the --

20 A Minutes read: *Security issues. A copy of the -- a*
21 *confidential letter from Mr. George Breed was distributed*
22 *at the meeting. This correspondence is in connection*
23 *with the recent case in Sea Pines. Discussion was held,*
24 *and acknowledgment of receipt has been received, but not*
25 *a formal response.*

1 Q And this is the Breed letter that is Plaintiff's
2 Exhibit 4. Is that correct? That's what's being
3 discussed?

4 A That's correct.

5 Q And is it your testimony that a copy of the letter
6 was, in fact, handed out at that meeting?

7 A Copies were distributed at the meeting, and I believe
8 they were collected before the meeting was concluded.

9 Q Now, do you recall whether a package of materials was
10 delivered to you at your office some number of days
11 before the meeting?

12 A Normally, and I assume that in June of 2008, a
13 package was delivered to my office prior to the meeting.

14 Q Isn't it true that, as a matter of routine, before
15 these meetings, officers with Sea Pines Security would
16 deliver packages to all the board members, either at
17 their houses or at their places of business, if they were
18 employed?

19 A That's correct.

20 Q Do you know whether or not the letter was in the
21 package of materials that was delivered to you before the
22 board meeting on June 24th?

23 A I don't believe it was.

24 Q Mr. Birdwell, do you know what bridge report is?

25 A It's a -- a report summarizing the security issues

1 that have occurred during a particular period of time.

2 Q And do you know who prepares the report?

3 A I believe Sea Pines Security would have to prepare
4 the report.

5 Q Do you know to whom it's delivered?

6 A I believe it's prepared for the -- it was prepared
7 for the, you know, the board of directors. But I don't
8 know who else receives it.

9 Q Is the bridge report something that is customarily
10 passed out with the materials that are delivered in
11 advance for board meetings so that you can look and see
12 the summary of what's occurred in the interim since the
13 last one?

14 A It generally has been.

15 Q I'm handing you this document, which is a bridge
16 report dated June 11th, 2008. That is to say, six days
17 after Mr. Breed's letter to the Commission. Asking if
18 you could identify that for me, please.

19 A It appears to be a copy of a memorandum from Mr.
20 Breed to Cary Kelley.

21 Q And does it, without elaborating, recite a number of
22 incidents that had taken place inside Sea Pines
23 Plantation from a security aspect, and how Mr. Breed has
24 dealt with them?

25 A Yes, it does.

1 Q And you're saying that goes to all the directors. Is
2 that right?

3 A I believe that it -- that it is.

4 Q And in addition, it's delivered some time before the
5 board meeting on a monthly basis. Is that right?

6 A That's correct.

7 Q Several days, as the rule, beforehand.

8 A A few days before the meeting.

9 Q And in that letter, on the second page, at the
10 bottom, isn't there a description of the letter that Mr.
11 Breed sent to the Commission on Judicial Conduct?

12 A There is a -- an acknowledgment at the bottom of the
13 letter.

14 Q And would you read the acknowledgment to the jury.

15 A The whole paragraph?

16 Q Please.

17 Q It reads: *Confidential. This security department*
18 *has, is, and will always be diligent in its pro-active*
19 *and reactive services and resources to protect the*
20 *residents and visitors of this community. Along with*
21 *these responsibilities comes various constraints that*
22 *must be adhered to and parameters that must be followed.*
23 *What one would like to do and what the law allows are at*
24 *many times in conflict. As well, what one may discuss in*
25 *a public forum would not be counterproductive and*

1 *imprudent.*

2 *That said, I am attaching a letter that was sent to*
3 *the South Carolina Judiciary Complaint Commission that*
4 *may speak to a few of the hurdles that we have faced*
5 *concerning our recent, but negated, burglaries and*
6 *peeping Tom reports.*

7 Q All right. And do you recall whether there was a
8 copy of Mr. Breed's letter of June 6th, 2008, attached to
9 that report when you got it?

10 A I don't believe that it was.

11 Q Can you identify as the report that you received?

12 A It appears to be a copy of the -- of the report that
13 I received.

14 Q Okay. And can you identify the minutes as being
15 accurate from the May 20th meeting?

16 A They -- they appear to be the -- the May 20th.
17 minutes.

18 Q And can you identify the minutes from the June 24th
19 meeting?

20 A Yeah, I have a -- you know, what you've given me here
21 is -- is the draft. It's the, you know, the -- wouldn't
22 have been yet approved by the board. So it's the
23 unsigned version.

24 Q I understand, and I anticipated the problem. And
25 therefore, I am delivering what I think are final

1 minutes.

2 Now, having seen what are the signed minutes, are
3 those the June 24th meetings?

4 A It appears that they are.

5 Q And they are signed. Is that correct?

6 A They are signed, right.

7 Q And there's no material change among them in terms of
8 the provisions or passages that we've read.

9 A No.

10 Q Thank you. Move the introduction of the May 20th
11 minutes as Plaintiff's Exhibit 21. The May 20th --
12 excuse me -- the June 24th meeting minutes as Plaintiff's
13 Exhibit 22.

14 THE COURT: Generally, if you object to anything
15 specifically, you need to let me know.

16 MR. HALIO: I will.

17 COPY OF DOCUMENT REFERRED TO AS MAY 20TH
18 MEETING MINUTES MARKED PLAINTIFF'S
19 EXHIBIT NUMBER 21, ADMITTED AS EVIDENCE.
20 COPY OF DOCUMENT REFERRED TO AS JUNE 24,
21 2008 MEETING MINUTES MARKED PLAINTIFF'S
22 EXHIBIT NUMBER 22, ADMITTED AS EVIDENCE.

23 BY MR. MATHISON:

24 Q And the so-called bridge report dated June 11th,
25 2008, is Plaintiff's Exhibit 23.

1 MR. HALIO: We have an objection to 23.
2 THE COURT: You all, is this something we can do on
3 a break?
4 MR. HALIO: I would certainly think so.
5 THE COURT: Thank you.
6 MR. HALIO: As long as it's not published to the
7 jury, we can take care of it.
8 THE COURT: All right. Let's keep going.
9 MR. MATHISON: I'm going to substitute the second
10 page of this one with the other one.
11 THE COURT: All right. Let's go, you all.
12 BY MR. MATHISON:
13 Q Mr. Birdwell, what was the purpose of submitting the
14 letter of June 6th, 2008, to the CSA board on June 24th?
15 A You would have to ask Mr. Kelley or Mr. Breed. I
16 assume they wanted to inform the board.
17 Q Did you vote at that meeting on anything having to do
18 with the letter?
19 A We did not.
20 Q Other than discussing the letter, did you discuss the
21 possibility of retracting it?
22 A We did not.
23 Q Did anyone discuss whether what was in it was true or
24 plausible?
25 A I don't recall discussion like that.

1 Q But it was discussed, because the June 24th minutes
2 say it was discussed. Is that right?

3 A Very, very brief discussion. The letter was handed
4 out, and we -- we informed.

5 Q The letter had already gone wherever it was going by
6 the time you knew about it; isn't that correct?

7 A I believe it was. Yes, correct.

8 Q You couldn't unfire a gun at that point, could you?

9 A The letter would -- had been -- the letter had been
10 mailed and filed.

11 Q Did you suggest that it might be a good idea to have
12 -- strike that. Did you see a lawyer or consult a lawyer
13 about the letter and its significance when you got it?

14 A I did not.

15 Q Do you think it would have been wise for Community
16 Service Associates to do so?

17 MR. HALIO: Objection. Speculation. Irrelevant.

18 THE COURT: Come here for a second, you all.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 OUT OF HEARING OF JURORS. PRESENT:

21 THE COURT, MR. MATHISON, MS. JONES,

22 MR. HALIO, MS. JOLLEY.

23 BY MR. MATHISON:

24 Q Mr. Birdwell, do you think it would have been wise
25 to consult with a lawyer once the letter was shown around

1 at the meeting of the CSA Board?

2 A I didn't give that a thought at the time.

3 Q How about in retrospect?

4 A Certainly, in retrospect --

5 MR. HALIO: I don't see where retrospect has anything
6 to do with it.

7 THE COURT: It's overruled. He can ask it. Go
8 ahead.

9 BY MR. MATHISON:

10 A Certainly, in retrospect, it -- it would've been
11 wise to have -- seek -- seek counsel on -- on -- on the
12 letter.

13 Q And do you know which publication yet another copy of
14 the letter appeared? I'm handing you a document which is
15 Mr. Breed's letter, June 6th, 2008. And it's marked at
16 the top: *Confidential, Do Not Disseminate*.

17 Was that letter in that version, with the
18 confidential marked on it, was that what was attached to
19 Mr. Breed's bridge report, or do you know?

20 A I don't know.

21 Q Was that version of the letter attached to the
22 minutes of the June 24th meeting, or do you know?

23 A June 24th. I don't -- I don't believe that it was
24 attached to the minutes.

25 Q Didn't you tell me that the copies of the letter that

1 were handed out at the June 24th meeting were, in fact,
2 collected or taken up?

3 A I believe that they were. That's my recollection.

4 Q Then, how is it that -- that letter has a document
5 stamp at the bottom right corner indicating that you
6 produced it from your records; that it didn't come from
7 CSA.

8 A Somewhere, I received a copy of it during -- during
9 that time frame.

10 Q So, either they didn't collect it at the meeting, or
11 you received a copy other than at the meeting. Is that
12 correct?

13 A I received it somewhere. I would have received it
14 from CSA in -- in one of their packages.

15 Q Well, how many other people received it, if you know?

16 A I don't know.

17 Q Again, looking at what's been marked as a bridge
18 report, specifically in the portion that you read, do you
19 know what hurdles that the writer of that report had to
20 jump over in order to -- what hurdles are referred to
21 there?

22 A I don't know. You'd have to talk to Mr. Breed.

23 Q Did he prepare it, or did Mr. Kelley prepare it, or
24 do you know?

25 A Well, it says it's from Mr. Breed, so I assume that

1 he prepared it.

2 Q Or Mr. Kelley?

3 A Yes.

4 Q Did what he put in the June 6th, 2008 letter amount
5 to a hurdle or an excuse for not arresting people as you
6 would have liked?

7 A I don't know what hurdles he was talking about, and I
8 wasn't aware that we were about to arrest anybody.

9 Q In point of fact, at this stage of the proceedings,
10 you didn't know who Otis Coffey was; did you?

11 A I did not.

12 Q And no one discussed that at these meetings; did
13 they?

14 A No, they did not.

15 Q So the only way anyone would know anything about Otis
16 Coffey is reading that letter of June 6th. Isn't that
17 correct?

18 A That's correct.

19 Q And isn't a fact that that letter states, in one form
20 or another, that my client, Maureen Coffey, was somehow
21 obstructing or interfering with an investigation of Mr.
22 Coffey?

23 A That's what the letter says.

24 Q Is that the hurdle that you understood Mr. Breed to
25 be discussing?

1 A I assume that it -- that it is. He speaks to a few
2 of the hurdles, and then he has a -- a more detailed
3 letter.

4 Q At any point in May or June, did you know, Mr.
5 Birdwell, that Mr. Breed had delivered the letter to
6 someone other than the person to whom it was addressed?

7 A No, I did not.

8 Q Had you known that he had delivered the letter to
9 someone else, would it have caused you some concern?

10 A You know, it didn't -- I didn't know, so I don't know
11 what I would've done if -- and whether it would have
12 caused concern or not.

13 Q Were the contents of the letter such that they caused
14 you concern?

15 A Well, certainly, I was concerned about the contents
16 of the letter.

17 Q Did you believe the letter? Mr. Birdwell, did you
18 believe the content?

19 A I assumed it was accurate.

20 Q Mr. Birdwell, at any point in the next six months,
21 did Mr. Breed or Mr. Kelley advise you that Mr. Breed's
22 complaint against Judge Coffey had been dismissed by the
23 Conduct on -- the Commission on Judicial Conduct?

24 A I don't believe they did. We didn't have any
25 discussion about the -- the letter or the complaint.

1 Q I mean -- I'm talking about not just in a formal
2 context at the board meetings. Did anybody informally
3 advise you that it had been dismissed?
4 A No, they did not.
5 Q So would it be safe for me to assume that, as the
6 clock rolled around to October, November, and December,
7 you still believed that there was a pending complaint
8 made by George Breed against Maureen Coffey?
9 A Yes, we did. We -- we never heard a -- a conclusion
10 from the -- from the complaint letter.
11 Q When did you find out that the matter had actually
12 been dismissed on October 1st?
13 A I believe when the lawsuit was filed.
14 Q So, but for the filing of this lawsuit, you would
15 never have known that that complaint got no traction;
16 would you?
17 A I wasn't aware of the -- of the dismissal.
18 Q Because it wasn't publicized, right?
19 A I -- I just wasn't informed. I didn't -- I didn't --
20 I didn't know.
21 Q Who should've informed you, Mr. Birdwell?
22 A I, you know, I didn't ask any questions. I mean, we
23 didn't -- we didn't have any further discussion about it.
24 Q Is it true that there was no further discussion about
25 this letter, at least at the board meetings, at all until

1 the new board was installed on or about June -- excuse me
2 -- January 8th, 2009?

3 A That's correct. I don't -- I don't think there was
4 any further discussion.

5 MR. MATHISON: May it please the Court. Now we've
6 reached the matter that I think that we need ruling on.

7 THE COURT: Ladies and gentlemen of the jury, I'm
8 going to send you back to the jury room just for a few
9 moments. Again, do not discuss this case. It wouldn't
10 be appropriate to do so at this time. We'll be right
11 back with you. Thank you.

12 JURORS LEAVE COURTROOM 12:20 P.M.

13 ON-THE-RECORD BENCH CONFERENCE,

14 OUT OF PRESENCE OF JURORS. PRESENT:

15 THE COURT, MR. MATHISON, MS. JONES,

16 MR. HALIO, MS. JOLLEY:

17 BAILIFF: Jury's clear. Door's closed, your Honor.

18 THE COURT: Okay.

19 MR. MATHISON: May it please the Court.

20 THE COURT: Mr. Mathison, what has changed in the
21 testimony that would make indemnification the issue -- an
22 issue?

23 MR. MATHISON: I believe that there are several
24 aspects to it that -- I don't think it's an issue. I
25 think it's clearly relevant. And I think it goes to show

1 that, effectively, Mr. Birdwell and his kindred spirits
2 on the board were kept in the dark; didn't know what they
3 were doing. Basically made a vote to do something that
4 was grievously against their best interests without
5 having full information.

6 And I think that it could be argued that, one, that
7 it could be an explanation for why they did nothing. Or
8 it could be, as I've argued in the past, a ratification
9 of something that they didn't approve to start with.
10 They weren't given the opportunity in so many words, to
11 take their agents and servants and reign them in. They
12 just couldn't do it. I mean, when they found out about
13 it, the horse was out of the barn. All right. So it may
14 well be that the proof would lead a reasonable person to
15 conclude that nobody any higher in the pecking order than
16 Mr. Kelley knew what was going on.

17 On the other hand, if they did know, if they did
18 know, a knowing vote in favor of the indemnification that
19 took place on January 8th, 2009 is a ratification, and we
20 have some case law that says it is.

21 THE COURT: Well, why don't you give it to me? I've
22 been asking for it for five days now.

23 MR. MATHISON: I will in just a second. I think he
24 may have gone to get it. It's 1927 case law, and what it
25 holds is that a board can become a joint tortfeasor with

1 its agents and servants by virtue of endorsing their
2 actions after the fact. And we have the case, and I
3 think it may have been sent up to --

4 THE COURT: Is your son bringing it in, or who's got
5 it?

6 MR. MATHISON: Yes.

7 THE COURT: It's right there. He's got it.

8 MR. MATHISON: The case on ratification.

9 THE COURT: Approach. Go ahead and let me take a
10 look at the case. I think what I've tried to say when
11 you all were up at the Bar here, I think you could
12 certainly ask Mr. Birdwell that, you're sitting in a
13 meeting, and you read this letter; and by reading the
14 letter, anyone with a modicum of life experience would
15 understand how detrimental it would be to someone's
16 profession. I mean, all you have to do is put yourself
17 in the place of who it was written about. And I'm
18 assuming that -- Mr. Birdwell has testified, I believe,
19 that he assumed everything was correct in the letter.

20 MR. MATHISON: I believe he has, yes.

21 THE COURT: But he has not testified that anyone
22 questioned it. Because I haven't heard any testimony
23 from anyone that even -- there had to have been some kind
24 of discussion.

25 MR. MATHISON: I believe that that's one inference

1 that you could draw from everything that's been said.
2 But I think it's not one that you were willing to draw
3 when I was attempting to argue that as a basis for
4 holding Mr. Birdwell's company in the case. I think that
5 some of the testimony regarding the degree of non-inquiry
6 and non-investigation and --

7 THE COURT: You have to do an overt act to commit
8 conspiracy, though. That's the problem. You have to do
9 something in furtherance of it.

10 MR. MATHISON: Actually, --

11 THE COURT: I don't think they did anything in
12 furtherance of it. We're not going to argue -- we're not
13 going to re-argue that motion, and that summary judgment
14 motion at this point. I mean, if anything, it would be
15 inaction. But the question becomes, again, -- I still
16 don't know the importance of the indemnification. You
17 say it's a ratification. One of the questions I asked
18 you again was, is were there further, were there further
19 publications? Did the ratification or the
20 indemnification by the board cause Mr. Breed or Mr.
21 Kelley or anyone else still in this case to continue to
22 go out and either slander or libel Judge Coffey.

23 Q And we believe that the evidence we put on yesterday
24 through Mr. Sonberg indicates that, indeed, on the day
25 after they ratified, Mr. Sonberg was told that Otis

1 Coffey was about to be arrested, and that Maureen Coffey
2 had been concealing or covering up his whereabouts.

3 MR. HALIO: No, he didn't say that second part. We
4 were waiting on it. I was waiting on it, and he never
5 said it.

6 THE COURT: Okay.

7 MR. HALIO: He said -- the second part he said was
8 that a complaint had been filed. But that's -- that's
9 misrepresentation.

10 MR. MATHISON: Well, forgive me, but I certainly
11 thought he said that.

12 THE COURT: You know, the part of the problem I
13 have, number one, I think there is a very good argument
14 that there is qualified privilege in publications.
15 Again, I'm back to the problem is in publishing it to her
16 employers. And that is a big problem.

17 But again, the simple fact that this board ratifying
18 it, I mean, I don't know if it just means they didn't
19 read it. If they were just going through their meeting
20 and didn't care.

21 MR. MATHISON: We have additional evidence that will
22 stand on top of this, but I'd rather not discuss that
23 until we decide exactly how we're going to rule on this,
24 because --

25 THE COURT: Mr. Mathison, what --

1 MR. MATHISON: It was initially assailed, if I
2 understand correctly, my opponent's point of view, on the
3 basis that it was irrelevant. Then it was assailed on
4 the basis that it was somehow insurance-related. It's
5 neither of those. All right. It's relevant to prove
6 that, if and to the extent there wasn't a privilege, and
7 I think you can argue and I plan on arguing, that as to
8 the dissemination to the board, that was not a privilege
9 to them, because their approval was not necessary.

10 Mr. Birdwell may have believed that it's necessary,
11 and he may have preferred that he see it in advance, but
12 the two people who actually participated both testified
13 that it was operational; they didn't need anybody's
14 authority to do it. Not only did -- did -- I guess I
15 should say, Mr. Kelley said that, and he described what I
16 couldn't understand from Mr. Breed is amounting to the
17 same thing.

18 So, if that's the case, then giving it to the board,
19 knowing that 17 people, is the same thing as just handing
20 it out in Sea Pines, as though you just picked the first
21 17 people. It went all over the Plantation. Because
22 it's not a privilege to them, in view of the fact they
23 didn't have any authority to control it.

24 Last, and I think this is important, this is how I
25 got here to start with. At some juncture, someone had to

1 have believed what Mr. Breed said. Right? We believe
2 someone voting to pay his judgment is about as firm a
3 conviction in the fact that they believed him as you
4 could ask for. You couldn't ask for a better -- not only
5 do we believe it, but we'll stand behind him and pay for
6 it. That's a pretty high level of expectation of
7 success, which indicates a pretty high level of
8 confidence that Mr. Breed was right on the money.

9 THE COURT: Where's the case law? Where's the 1927
10 case?

11 MR. MATHISON: He's gone to get it, your Honor.

12 THE COURT: Okay.

13 MR. MATHISON: Forgive me. It's my fault. I was
14 supposed to bring it in this morning, because I knew this
15 was coming up.

16 LAW CLERK: Do you know the case name?

17 MR. MATHISON: I do not, no. I'm doing well to know
18 it's a 1927 case. But you have to give history its due.
19 The law of agency was very important in the '20s.

20 THE COURT: All right. Do we need to take a break?
21 Do I need to wait to see the case law? What are we
22 doing?

23 MR. MATHISON: I think that we probably do, because,
24 after I ask him four or five questions about this, I'm
25 done with him.

1 THE COURT: Okay.

2 MR. MATHISON: And I appreciate your coming, Mr.
3 Birdwell. I appreciate your putting in the record what
4 was said. If we take five minutes, --

5 THE COURT: Sure.

6 MR. MATHISON: -- I can get on the phone. I've got
7 the phone, not Mike, and I can get the office to email it
8 to you. Be easier.

9 THE COURT: Okay. Thank you. Thank you. If we can
10 just get a citation, that's all we need.

11 MR. MATHISON: All right.

12 THE COURT: Okay. Thanks. You all, we'll be at
13 ease. Just go ahead and take a five-minute break. We'll
14 have five minutes. Okay?

15 Oh, Mr. Birdwell, you are more than welcome to step
16 down. You just can't discuss your testimony with anyone.

17 A I'll just stand up.

18 THE COURT: Whatever you need to do to refresh
19 yourself, you're welcome to. Just don't talk about your
20 testimony with anyone.

21 A Okay.

22 OFF THE RECORD 12:30 P.M.

23 BACK ON THE RECORD 12:42 P.M.

24 CONTINUE ON-THE-RECORD BENCH

25 CONFERENCE:

1 THE COURT: All right. Mr. Mathison, is there
2 anything else?

3 MR. MATHISON: No. I believe that what we're doing
4 is trying to send you an email that has the case on it.
5 The case is called Foxworth. It's a 1926 case, but to be
6 honest with you, what I'm being quoted now is not the
7 case that I read last night.

8 In a nutshell, your Honor, I think it's relevant to
9 prove they believed what Mr. Breed had said. I think
10 that, if it's not a privileged publication, then pretty
11 obviously, this is very, very important evidence. I
12 believe that, arguably, it's not privileged, because the
13 board, at least according to two witnesses, both of whom
14 have agent's authority, did not require the approval of
15 the board. And consequently, showing that the board was
16 a gratuitous publication, and damning because it was
17 done, effectively, to spread throughout Sea Pines the
18 fact that Mr. Breed was making an effort to clean out
19 this nest of burglars and peeping Toms.

20 Last, I believe that it is a ratification which is
21 sufficient to hold the board of CSA as an entity in the
22 case, if, in fact, what happened at the inception was not
23 authorized. And I don't know whether it was authorized
24 or not. I've got two people saying that it was, and I've
25 got one person who says he didn't know anything about it.

1 So the question of authority is one that's left up in the
2 air. It could be either.

3 THE COURT: And again, I would say I would agree
4 that the ratification or the indemnification, if it
5 furthered, if it caused Mr. Breed or Mr. Kelley to go
6 further and to continue.

7 MR. MATHISON: Well, Mr. Kelley was out there
8 continuing to tell fibs. He went all over Sea Pines,
9 basically reciting that Mr. Coffey was going to be
10 arrested. He wasn't arrested.

11 THE COURT: That his arrest was imminent, I think,
12 is what --

13 MR. MATHISON: That's right. And he hasn't been
14 arrested. He was never charged. They have a witness
15 they're going to put up, Toby McSwain, who's going to say
16 there was never an active warrant on Otis Coffey written
17 by the Beaufort County Sheriff's Office. Since 2004.

18 THE COURT: I think you already established that. I
19 understand.

20 MR. MATHISON: I understand. I'm not offering this
21 for that purpose. I'm just saying that a lot of the same
22 lies continued to be told. And specifically, from Mr.
23 Birdwell's standpoint, he got seven months down the line
24 from the original publication without ever knowing that
25 the complaint had been dismissed. He didn't know that,

1 which gave the operational side the latitude within which
2 to keep doing what they wanted.

3 And I think that, until such time as they made the
4 decision that, well, not only are we going to go along
5 with this and acquiesce in it, but we're going to pay for
6 it.

7 THE COURT: And that somehow is an encouragement.

8 MR. MATHISON: It was not just an encouragement, but
9 it reached back and said we embrace what he said in the
10 first place. Which I don't think they'd done before
11 that. And at least, certainly, Mr. Birdwell hadn't.

12 THE COURT: Well, no. It sounds as if all the
13 testimony says is, before that, this was just a deal
14 between Mr. Breed and Mr. Kelley, and that that was what
15 they were doing.

16 MR. MATHISON: That's correct. But once they gave
17 it to the board, they put it in the hands of 17 people,
18 who then put it in the hands of who knows how many
19 people.

20 THE COURT: The problem is this, that part, you
21 can't prove. That's harder.

22 MR. MATHISON: But I don't think I have to prove
23 that. I think, if the 17 distributions were
24 unprivileged, you could --

25 THE COURT: Yeah, that's the question.

1 MR. MATHISON: -- you could infer that they're going
2 to give it to other people.

3 THE COURT: Yes, Ms. Jolley.

4 MS. JOLLEY: Your Honor, our position is that
5 nothing's changed. We don't want to interject argument
6 about privilege and things of that unless you want to
7 hear it now.

8 THE COURT: Um-hmm. Right now, I'm just struggling
9 with Rule 411 and really what that -- I understand your
10 argument. And I certainly appreciate it. And I see
11 where you're trying to go with it.

12 I'm trying to figure out how some way it could be
13 limited, you know, even indemnified. I mean, I think you
14 could ask Steve Birdwell, why did you vote to indemnify
15 this person? You know, I think that's fair game. You
16 know, I think it would be fair game for you to say, why
17 in the world didn't you read this and say wait a minute,
18 what is this?

19 I mean, we only have one board member. You could
20 have subpoenaed them all and said that. I mean,
21 literally. You know, you look at this.

22 MR. MATHISON: Well, I can ask him did he believe
23 it; is that why he did it.

24 THE COURT: And I think that's really what the heart
25 is. I think that's -- and I honestly feel like you can

1 almost get to an indemnification portion by saying the
2 same thing. He saw this letter; you voted to indemnify
3 the guy; did you believe it.

4 MR. MATHISON: He already said he believed it, at or
5 about the time that he read it. He also said that the
6 contents were concerning. He said that not only in his
7 deposition, but he said it here. So it's logical to ask
8 him if --

9 THE COURT: Well, if it was concerning, why did you
10 indemnify him? I mean, and I guess you'd go to the -- I
11 guess you could bring that -- make that --

12 MR. MATHISON: I think that Mr. Birdwell was saying
13 that what was concerning was that Mr. Coffey would have
14 done this, and my client would have -- I think he was
15 saying that he believed it. All right.

16 THE COURT: It was concerning that if she had --
17 well, that's, obviously, him saying that he believed it.

18 MR. MATHISON: Yes.

19 THE COURT: Okay. Well, I can tell you I'm not
20 worried in the sense of, typically, under Rule 411, we
21 talked about insurance that, you know, that this is going
22 to kill the case; that that's going to be an issue in the
23 case, quite frankly. Of course, they're going to explain
24 it just as a -- he was our agent, and --

25 MR. MATHISON: And that's their right.

1 THE COURT: It's his duty and he was working within
2 the course and scope of his employment, and you know. I
3 mean, I guess I'd also say, well, you know, again, the
4 fire was already shot; you couldn't put it back in the
5 gun. So it was done by the time it got to the board.

6 What's the other rule you were relying on, Ms.
7 Jolley, other than 411? Was it 403?

8 MR. HALIO: 402 and 403.

9 THE COURT: 402 and 403.

10 MS. JOLLEY: 402 and 403. Your Honor, one point. I
11 realize that there's some discussion about the
12 publication, the defendants' publication, by Mr. Cary
13 [sic].

14 THE COURT: Um-hmm.

15 MS. JOLLEY: However, the indemnification wasn't of
16 Mr. Cary [sic]. It was of Mr. Breed. There's no
17 allegation that Mr. Breed did anything following
18 indemnification. If what you're looking for is some sort
19 of facts that would say the publication went ongoing
20 following the indemnification decision, --

21 THE COURT: Um-hmm.

22 MS. JOLLEY: -- that's not in evidence, and I don't
23 believe it would come in evidence. There's been no
24 question about -- I mean, Mr. Cary's [sic] not even --
25 Mr. Kelley's not a party in this lawsuit, so I don't see

1 the relevance. This decision happened after the lawsuit
2 was filed.

3 THE COURT: I think in a typical sense of when you
4 say something is either relevant or not relevant in a
5 case, I do think this is relevant. I mean, I can tell
6 you, on a 403 analysis, I certainly don't think the
7 prejudice outweighs the probative value. I mean, I,
8 quite frankly, I couldn't give it you on a 403 analysis.
9 I just don't see it.

10 As far as relevant in Rule 402, I see that it is
11 relevant. And I understand the argument and the tie-in.
12 You know, again, you go back to the question is an
13 indemnification agreement life insurance, which we all
14 know we can't use the word insurance.

15 MR. MATHISON: If indemnity is the word that
16 offends, I don't have any problem by saying, did the
17 board vote to pay any judgment or settlement that Mr.
18 Breed might have. That gets the word indemnity out of
19 it. I mean, indemnity doesn't -- to say that I indemnify
20 someone doesn't mean to me who, of course --

21 THE COURT: Well, you could even say, does the board
22 agree to support, or did the board agree to support Mr.
23 Breed and his actions. I don't think he's willing to say
24 that. I'd be surprised if he would.

25 MR. MATHISON: No, I would -- that -- putting too

1 much of a burden on me, I'm afraid.

2 THE COURT: Yes. Yes. I think it would be too much
3 of a burden, quite frankly, on Mr. Birdwell.

4 MS. JONES: I think this is a practical issue. If
5 you go into this area, which is something that happened,
6 you know, long after the letter was written, long after
7 the plaintiff filed the lawsuit, and you ask for the
8 explanation, the explanation does get to the precise
9 nature of 411, which is the level of insurance that the
10 CSA board had in place. And you can't -- I mean, you
11 know, if you go there, then --

12 THE COURT: Mr. Birdwell was counseling them at the
13 time about we have a ten-million-dollar policy or, you
14 know, whatever, I mean, I don't think it gets into that
15 portion by any stretch.

16 MR. MATHISON: In my opinion, I think the insurance
17 carrier would have a pretty good defense that they're not
18 bound by some contract that makes them libel for somebody
19 else's conduct.

20 MS. JONES: And here we are discussing insurance in
21 front -- I mean, if that's -- because that's where it
22 leads.

23 THE COURT: Um-hmm.

24 MS. JONES: That's exactly what the law and the
25 rules say.

1 THE COURT: It doesn't lead to insurance. It leads
2 to whether or not the CSA board is going to back Mr.
3 Breed in this action. But I don't think it gets -- I
4 don't think it gets to insurance. I really don't.

5 MS. JONES: What you're left with there is the
6 inability to explain, to offer the full explanation of
7 the action. It has nothing -- so, I mean, that's where
8 you are. It goes right back around to it.

9 THE COURT: That's not necessarily -- yes.

10 MS. JONES: But how can you preclude him from
11 offering the full explanation?

12 THE COURT: Well, I don't know, Mr. Birdwell, why
13 did you agree; why did you vote along with those people
14 to indemnify?

15 MR. BIRDWELL: I think -- I think that he was acting
16 in his capacity as an employee of CSA. And you know, I
17 believe as recommended by the --

18 THE COURT: Council.

19 MR. BIRDWELL: -- by the -- by the executive
20 committee.

21 MS. JONES: And that's another thing, though, you
22 get into, those legal discussions.

23 THE COURT: And that is a concern. Quite frankly,
24 that is a concern, and it's also a concern for Mr. Minot,
25 quite frankly, if this all goes bad.

1 MS. JONES: And you get into the legal discussions
2 and the advice of counsel, another thing that is not
3 properly before the jury. When the relevance of it is
4 tangential at best. Because it happened months after the
5 alleged tort, and months after the lawsuit had been
6 filed, and it had been in the *Island Packet* and all over
7 everything.

8 You know, the publication through the *Island Packet*
9 that the defendant that, you know, isn't related to
10 anything that defendants did, had happened from November
11 -- I mean from December the 8th on. There were two or
12 three articles, maybe more than that. But I know that
13 there were two or three. We marked them for
14 identification, but they were not admitted by the court.

15 THE COURT: All right. Mr. Mathison, I am going to
16 let you state and ask him the question as did the board
17 vote to indemnify Mr. Breed for any personal judgment
18 against him in this case.

19 MR. MATHISON: Okay. And I --

20 THE COURT: Okay? So, to that extent. And you can
21 ask him why the board did that. Well, and he's going to
22 say I don't know; I don't know why the other board
23 members did that. And you can specifically ask him, as a
24 board member, why did you do that. Why did you vote for
25 it.

1 MR. MATHISON: I wasn't going to make the connection
2 between the appearance of the gentleman at the McNair
3 firm, because I could see why they might be sensitive
4 about that.

5 THE COURT: Well, I understand, as well.

6 MR. MATHISON: Okay. I was not going to comment on
7 that, but it does appear in the document.

8 THE COURT: It does. I mean, it's -- if the jurors
9 go back there and read the minutes, it's in there.

10 MR. MATHISON: Okay.

11 THE COURT: It says, on advice of counsel on motion,
12 you know.

13 MR. MATHISON: I don't want them looking for an
14 excuse to find somebody other than CSA libel here. All
15 right.

16 THE COURT: Got to make the choice.

17 MR. MATHISON: Well, I'm just saying that --

18 THE COURT: Now, you're talking yourself out of it,
19 aren't you?

20 MR. MATHISON: No, I'm not. I'm saying that I want
21 to put it in.

22 THE COURT: Okay. All right. I will let you, for
23 limited purpose of related to, you know, indemnify him
24 for any personal judgment or costs against him for this
25 matter. And you're going to ask him, you know, why did

1 you vote for it; and he's going to say because I believe
2 he was acting in his role as head of security.

3 MR. MATHISON: Well, now, in view of what we --

4 THE COURT: I think you can also ask him if he
5 believed it.

6 MR. MATHISON: That's what I was going to say.

7 THE COURT: I think you can ask him that. I think
8 -- well, I think it's relevant anyway.

9 MR. HALIO: He's already asked him that.

10 MR. MATHISON: I asked him that.

11 MR. HALIO: He's already asked him that.

12 THE COURT: And I know and I think it's relevant.

13 MR. MATHISON: I'm going to ask him whether he still
14 believed that what was in Mr. Breed's letter was correct.

15 THE COURT: There. You may get the same thing.

16 MR. HALIO: Can we get just an objection to the
17 questions, a running objection, of the questions on
18 indemnity, so we don't have to --

19 THE COURT: Absolutely. Absolutely.

20 MR. HALIO: Which I understand are two or three
21 questions, and that's it, right?

22 THE COURT: Exactly. We're not going to beat this
23 one. Okay? Absolutely.

24 MR. MATHISON: Then, I can enter them in.

25 THE COURT: Pardon?

1 MR. MATHISON: I can enter the minutes into the
2 record.

3 THE COURT: Do you object to the minutes? Is that
4 what you object to?

5 MR. HALIO: The minutes and the questions.

6 THE COURT: The minutes and the questions, because
7 they talked about the indemnification. Gotcha. Okay.
8 I'm going to allow it in. So, subject to your objection,
9 Mr. Halio, on both the entire topic, his questions, and
10 entering the minutes. I think it's fair game. And can't
11 find a rule to keep it out. All right. Let's bring the
12 jury back in now.

13 We're almost done with Mr. Birdwell, correct? Or
14 how much do you all have?

15 MR. HALIO: Not that -- I don't think it's going to
16 be that long.

17 THE COURT: Do you want me to keep going, is my
18 point, or do you want to break for lunch after he
19 finishes? Whatever you prefer.

20 MR. HALIO: I'm sure Mr. Birdwell would like to
21 leave.

22 MR. BIRDWELL: I'd like to finish.

23 MR. HALIO: And if I let him go before lunch, I'm
24 assuming he may let me play golf down at his plantation.

25 MR. BIRDWELL: We'll all play golf.

1 MR. HALIO: Then let's finish.

2 THE COURT: Okay. Sounds good to me. Let's bring
3 the jury in.

4 BAILIFF: The jurors are entering, your Honor.

5 THE COURT: Thank you.

6 JURORS ENTER COURTROOM 1:02 P.M.

7 BAILIFF: The jury is seated, your Honor.

8 THE COURT: Thank you. Ladies and gentlemen, we are
9 going to endeavor to finish Mr. Birdwell's testimony
10 before we go to lunch. I don't think it's going to be
11 that much longer. So, if everyone is fine, sit tight.
12 We'll go ahead and continue. All right, Mr. Mathison.

13 MR. MATHISON: Thank you, your Honor.

14 STEVEN P. BIRDWELL

15 CONTINUE DIRECT EXAMINATION, MR. MATHISON:

16 Q Mr. Birdwell, do I understand that, with the
17 exception of the meeting in September, you went to every
18 monthly meeting of Community Service Associates board
19 right through January of 2009?

20 A I believe I did, yes.

21 Q Is it correct that at no point from and after that
22 meeting on January 24th was there any discussion about
23 Mr. Breed's letter of June 6, 2008?

24 A I don't recall any further discussion, no.

25 Q Is it true that nobody, yourself included, made any

1 inquiries into the bonafides of what Mr. Breed had put in
2 that letter?

3 A I did not, no.

4 Q At the board meeting on January 8th, 2009, did the
5 board vote unanimously to pay for any judgment or
6 settlement that Mr. Breed might make in this lawsuit?

7 A Yes, I believe that the board did.

8 Q I'm asking you to turn to Page 2. Is that where it
9 appears?

10 A Yes, it is. Yes, it does.

11 Q It's a separate section having to do with just that
12 subject. Is that right?

13 A That's correct.

14 Q Did you vote for that resolution, Mr. Birdwell,
15 because you still believed what was in the letter of June
16 6th, 2008, prepared by Mr. Breed?

17 A I voted for the motion because I thought that Mr.
18 Breed was acting in his capacity as an employee of CSA.

19 Q At the time you voted, did you know that the
20 complaint embodied in Mr. Breed's letter of June 6th,
21 2008 had, in fact, been dismissed for lack of evidence on
22 or about October 1?

23 A I don't believe that I did know that it had been
24 dismissed.

25 Q Do you know of anybody else on the board knew it had

1 been dismissed?

2 A I didn't have any conversation with anyone, so I -- I
3 -- I didn't have any basis to know whether other people
4 knew -- knew or not.

5 Q Were you attempting to approve of Mr. Breed's conduct
6 and what he'd done?

7 A No, I was not.

8 Q Can you identify the minutes that I've handed you as
9 being the minutes of that meeting that we just discussed
10 on February 8th, 2009?

11 A January 8th, 2009.

12 Q Excuse me, January 8th, 2009.

13 A It appears that it is -- these are the minutes of the
14 -- of the board meeting.

15 Q And would you mark on there the section dealing with
16 this particular vote that was taken.

17 WITNESS COMPLIES..

18 Q With the exception of this vote, Mr. Birdwell, did
19 the people on the board vote on anything else having to
20 do with this letter?

21 A With this letter?

22 Q Mr. Breed's letter, yes, sir.

23 A No. That was the only subject, I think, during that
24 board meeting.

25 Q So, -- no, that's not what I meant. With respect to

1 the Breed letter overall, the board never voted to
2 authorize. Isn't that right?

3 A No, we did not.

4 Q The board never took a vote on anything presented.
5 Isn't that right?

6 A That's correct.

7 Q There wasn't any board-conducted inquiry or
8 investigation into the bonafides of it. Is that right?

9 A That's correct.

10 Q And without any discussion or any other -- and this
11 is your deposition testimony -- any other inquiry, all of
12 a sudden, out of the blue, on January 8th, 2009, you
13 voted to pay for his judgment and/or settlement amount in
14 this lawsuit. Is that right?

15 A I don't recall any -- any discussion.

16 Q And you don't --

17 A There could have been discussion.

18 Q And you don't know whether that doesn't indicate that
19 you believed that what he said was true.

20 A No. We -- I -- I voted to -- for the motion because
21 I thought Mr. Breed was acting in his capacity as an
22 employee of CSA.

23 MR. MATHISON: Move the introduction of the minutes
24 as Plaintiff's Exhibit 24.

25 THE COURT: They're in evidence, subject to prior

1 objection.

2 COPY OF DOCUMENT REFERRED TO AS JANUARY 8,
3 2009 BOARD MINUTES MARKED PLAINTIFF'S
4 EXHIBIT NUMBER 24, AND ADMITTED AS EVIDENCE.

5 BY MR. MATHISON:

6 Q Do you have your deposition in front of you?

7 A I do.

8 Q Mr. Birdwell, on a day in December, 2000 -- on
9 December 3rd, 2008, did you get an email from Mr. Cary
10 Kelley about this lawsuit?

11 A Yes, I did, along with the other board members.

12 Q And does that email that you're holding in your hand
13 indicate that Mr. Kelley somehow knew that a lawsuit was
14 about to be filed and served on Community Services
15 Associates?

16 A It appears that there had been discussion in the week
17 prior. So --

18 Q Mr. Birdwell, how did Mr. Kelley know that a lawsuit
19 was about to be filed if none had been filed?

20 A I don't know. You'd have to ask Mr. Kelley.

21 Q Is it true that you didn't know anything about the
22 dismissal of the original complaint by Mr. Breed on this
23 day?

24 A I don't recall knowing anything about the dismissal.

25 Q Does the email say that the week prior to that date

1 there had been some kind of meeting to conceive a
2 litigation strategy to thwart or prevent or inhibit
3 Maureen Coffey from --

4 MR. HALIO: Objection, your Honor. He's leading and
5 he's mischaracterizing.

6 THE COURT: Why don't you ask what does the email
7 say.

8 BY MR. MATHISON:

9 Q Read the email for me.

10 A The email just says: *Ladies and gentlemen:*
11 *Yesterday, CSA was officially served the subject*
12 *complaint via registered mail. Our counsel is proceeding*
13 *with the strategy that the board approved at last week's*
14 *meeting.*

15 Q How would you know to conceive a strategy before
16 getting served, Mr. Birdwell?

17 A You'd have to ask Mr. Kelley.

18 Q Did you know?

19 A I don't recall knowing, no.

20 Q So this is something that you found out about after
21 the fact.

22 A After it was filed.

23 Q Do you know how Mr. Kelley may have learned this?

24 A I do not.

25 Q Move the introduction of the email dated December

1 3rd, 'from Mr. Kelley to a number of people, including Mr.
2 Birdwell, who is the last addressee. Isn't that correct?

3 A Yeah. That's correct.

4 THE COURT: What's the number?

5 MR. MATHISON: Plaintiff's Exhibit 25.

6 COPY OF DOCUMENT REFERRED TO AS

7 EMAIL DATED DECEMBER 3, 2008 FROM

8 CARY KELLEY MARKED PLAINTIFF'S EXHIBIT

9 NUMBER 25, ADMITTED AS EVIDENCE.

10 BY MR. MATHISON:

11 Q And I believe that, from the appearance of that e --
12 excuse me. I'm sorry.

13 COURT REPORTER: Do you need it?

14 Q Yes, please, if you would.

15 A Thank you.

16 Q And isn't it true, Mr. Birdwell, that you and your
17 lawyers produced that document to us?

18 A It appears that we did, yes.

19 Q Did you attend the meeting that he described to
20 conceive the litigation strategy?

21 A I don't recall the meeting. No, I don't -- I don't
22 recall that.

23 MR. MATHISON: Thank you. Please answer any
24 questions that Counsel may ask.

25 STEVEN P. BIRDWELL

1 CROSS-EXAMINATION, MR. HALIO:

2 Q Did you have a meeting when you got sued in this
3 case?

4 A A meeting?

5 Q Yeah.

6 A I had a conversation with our in-house counsel.

7 Q Okay. That's what people do, right?

8 A That's correct.

9 Q They get sued; they have meetings.

10 A Yeah.

11 Q Now, you asked about how CSA could possibly have
12 gotten notice of the lawsuit that wasn't served until
13 December the 8th. Let me hand you the initial complaint
14 that was filed in this case of Coffey versus Sea Pines
15 Associates. Would you identify or tell the jury what the
16 filing date on that is.

17 A Appears to be November 20th, 2008.

18 Q Okay. So the lawsuit was filed on November 20th.
19 Your email was dated December the 3rd, right?

20 A That's correct.

21 Q And some time in the middle of December 20th and
22 December 3rd, somebody found out that the lawsuit had
23 been filed, because it was public record, right?

24 A That must -- must be what happened.

25 Q Nothing unusual about that, right?

1 A No.

2 Q I mean, you can walk into the clerk's office and --

3 or you can go online and find out who's suing who, right?

4 A There can be a delay between the filing and -- and

5 when you're officially served.

6 Q Okay. Now, you serve on the Sea Pines board of

7 directors. Is that correct?

8 A That's correct.

9 Q And Mr. Kelley serves on the board of directors,

10 also. Is that correct?

11 A He is not an official member of the board, I don't

12 believe.

13 Q But he comes to the meetings?

14 A He does attend the meetings.

15 Q And what is his position with CSA?

16 A Executive vice president.

17 Q Okay. Are you interested in the security of Sea

18 Pines Plantation?

19 A Sure.

20 Q Is Mr. Kelley interested in the security in Sea Pines

21 Plantation?

22 A You'd have to ask him, but I'm sure he is.

23 Q Okay. And doesn't, in fact, CSA have a security

24 department to keep Sea Pines safe?

25 A Yes, there is.

1 Q All right. And in your meetings, the board meetings,
2 security is a regular topic of the conversation in the
3 meetings.

4 A There is usually a security update, yes.

5 Q All the board meetings have a section on security.

6 A That's correct.

7 Q Okay. Because everybody on the board, every resident
8 of Sea Pines Plantation, is interested in the security of
9 the Plantation. Isn't that correct?

10 A Absolutely. And there's a security committee of the
11 board.

12 Q And the board shares information on security issues,
13 do they not?

14 A Yes, they do.

15 Q We've seen it in writing, in the minutes.

16 A Yes.

17 Q And we've seen the security bridge reports, right?

18 A That's correct.

19 Q And were you aware of a series of crimes in Sea Pines
20 in 2008?

21 A I'm assuming you're referring to the peeping Tom
22 incidents. And the only way I knew about those were,
23 they had been reported in the local newspaper.

24 Q Breaking and entering?

25 A I think that there was one that -- that actually was

1 a breaking and entering. Primarily, peeping Toms were
2 reported.

3 Q Were you interested in 2008 in stopping whatever
4 criminal activity was taking place in Sea Pines?

5 A Of course.

6 Q Was the rest of the board interested in stopping
7 criminal activity in Sea Pines in 2008?

8 A I'm sure that they were.

9 Q Was Mr. Kelley interested in stopping crime in Sea
10 Pines Plantation in 2008?

11 A I expect that he was, yes.

12 Q So all of you all had a common interest in security,
13 right?

14 A That's correct.

15 Q Now, let's talk a little bit about the letter that's
16 brought us all to court this week. You said that the
17 letter was passed out in a meeting, and then at the end
18 of the meeting, was taken back up, right?

19 A That's my recollection.

20 Q And at some point, you got a copy of the letter. And
21 where did you put it? In a file?

22 A Yes. I routinely maintain a notebook of information.

23 Q And you didn't give it to anybody else; did you?

24 A I did not.

25 Q And you don't know of anybody else in your office who

1 saw that; do you?

2 A Well, there are some other members of the board, CSA
3 board, that -- in our office. So they would've received
4 the same package.

5 Q Other than the board members who received the same
6 package, do you know of any person in your office who saw
7 that letter?

8 A No, I do not.

9 Q Because you -- okay. You put it in the file, and you
10 didn't -- and you left it there.

11 A That's correct. I do have an administrative
12 assistant who helps maintain those files for me.

13 Q But you don't know that she ever saw it, too; do you?

14 A No.

15 MR. HALIO: Excuse me one second, your Honor.

16 THE COURT: Yes, sir.

17 BY MR. HALIO:

18 Q Did you testify earlier that you became aware of the
19 lawsuit having been filed with the news media or
20 newspaper?

21 A I don't think I testified to that. We were served,
22 as well, at Sea Pines Resort.

23 Q Did you become aware of the newspaper articles after
24 the plaintiff filed her suit?

25 A I did read the article that was in the paper.

1 Q Okay. So you read all about this lawsuit that I
2 handed out to you earlier. Is that correct?

3 A That's correct.

4 Q And so, you would have read about the dismissal of
5 the complaint, the judicial complaint, as well?

6 A If that was in the article, yes.

7 MR. HALIO: Nothing further, your Honor.

8 THE COURT: Mr. Matheson, anything further?

9 MR. MATHISON: Couple things, your Honor.

10 STEVEN P. BIRDWELL

11 RE-DIRECT EXAMINATION, MR. MATHISON:

12 Q Your email, Plaintiff's Exhibit 25, makes reference
13 to the litigation strategy discussed the week before, at
14 the meeting the week before.

15 A That's correct.

16 Q I'm handing you the minutes of the November 25, 2008,
17 meeting. I'm asking you whether there's any record of
18 any discussion about litigation, any litigation, in that
19 letter. I mean, in the minutes.

20 A I don't think that there is. It would have probably
21 been discussed -- discussed during the executive session.

22 Q Is there an executive session that takes place during
23 each meeting, or don't you have to call it to put it on
24 the minutes?

25 A Not at each meeting.

1 Q If, in fact, there is an executive session, do you
2 put it in the minutes that you went into executive
3 session?

4 A Yes.

5 Q I've given you four different sets of minutes. Has
6 there been an executive session in any of them?

7 A I would have to look back.

8 Q I'm showing you Plaintiff's Exhibit 24. That's the
9 January 8th meeting.

10 A Yes, there is a executive session.

11 Q Which one?

12 A In the January 8th, 2008.

13 Q Did that take place before or after the vote?

14 A It was after the vote.

15 Q So, does that cause you to continue or persist in
16 your testimony that there was no discussion with respect
17 to the decision by the board to pay Mr. Breed's expenses
18 or judgment or settlement in this case?

19 A I don't recall the discussion.

20 Q Was there an executive session on June 24, 2008?

21 A Yes, there was.

22 Q Did that take place before or after the discussion of
23 Mr. Breed's letter?

24 A It appears that it was after the discussion
25 concerning the letter.

1 Q If there was one, why not discuss Mr. Breed's letter
2 in the executive session?

3 MR. HALIO: Objection. Speculation.

4 THE COURT: If he can answer it.

5 A I don't set the agenda. You'd have to ask the
6 chairman or -- or Mr. Kelley.

7 Q Was there a separate litigation committee, that is, a
8 group of folks who served on the board who met --

9 MR. HALIO: Your Honor, I think we're getting kind
10 of far afield talking about a legal committee. I don't
11 see where any of this is relevant.

12 THE COURT: Mr. Mathison, are you going to be able
13 to wrap this up?

14 MR. MATHISON: Two more questions.

15 BY MR. MATHISON:

16 A I'm not aware of a legal committee. I think the
17 executive committee may discuss some of these issues.

18 Q Executive committee, does that import that everybody
19 went into executive sessions so that all 17 of you were
20 sitting there? Or is that a limited number of people who
21 made decisions for everyone else?

22 A Well, there's a separate executive committee that's
23 generally made up of the officers of CSA.

24 Q And who were they during 2008?

25 A I believe Pat Jenkins was the president, George

1 Minot, treasurer. Mark King was likely the -- the --
2 Norm Harberger, who was the secretary. I think, also,
3 Mark King was a representative on the executive
4 committee.

5 Q May I see your email. Thank you.

6 Reading Plaintiff's Exhibit 25, am I correctly
7 quoting when I say, *Yesterday, CSA was officially served*
8 *the subject complaint via registered mail. Our counsel*
9 *is proceeding with the strategy that the board approved*
10 *at last week's meeting.*

11 Is that what it says?

12 A Yes, it does.

13 Q Is there any minute entry of the November 25th
14 meeting which indicates that there was a strategy
15 approved?

16 A Well, in this section, the executive session: *The*
17 *board went into executive session to discuss personnel*
18 *and legal issues at 5:05 p.m.*

19 Q Was there a lawyer there when that happened?

20 A Yes, sir.

21 Q Do you know?

22 A It appears that there was. Mr. Walter Nester.

23 MR. MATHISON: Move the introduction of the
24 Community Service Associates minutes for November 25,
25 2008, as Plaintiff's Exhibit 26.

1 COPY OF DOCUMENT REFERRED TO AS COMMUNITY
2 SERVICE ASSOCIATES MINUTES FOR
3 NOVEMBER 25, 2008, MARKED PLAINTIFF'S
4 EXHIBIT NUMBER 26, ADMITTED AS EVIDENCE.

5 THE COURT: Very well.

6 MR. MATHISON: Thank you very much.

7 THE COURT: Do you all have anything?

8 MR. HALIO: We have a question, your Honor.

9 STEVEN P. BIRDWELL

10 RE-CROSS-EXAMINATION, MR. HALIO:

11 Q Mr. Birdwell, we've talked about a litigation
12 strategy that was formulated at or about the time the
13 complaint was filed. And I'm handing you a document
14 called *Rule 40(j), Consent Dismissal*. What's the date on
15 that?

16 A January 12, 2010.

17 Q All right. So it appears as a result of the
18 litigation strategy, or for whatever factor, the case was
19 dropped, right?

20 A Yes, it was.

21 MR. HALIO: No further questions.

22 THE COURT: Anything further, Mr. Mathison?

23 MR. MATHISON: You're going to give a charge on what
24 *Rule 40(j)* means. Just charge the rule. Because,
25 otherwise, I'm not going to --

1 MR. HALIO: Objection, your Honor. You know, we
2 have a lot of speaking objection.

3 THE COURT: All right. You've got to ask a
4 question. Okay. Okay. All right. Anything further for
5 Mr. Birdwell?

6 MR. MATHISON: I don't have any questions. If you
7 don't want me --

8 THE COURT: Anything further for Mr. Birdwell? He
9 doesn't know what a 40(j) is. He can't testify.

10 MR. MATHISON: I know, and I'm not going to ask him.

11 THE COURT: Anything else, other than that, for Mr.
12 Birdwell?

13 MR. MATHISON: I don't.

14 THE COURT: All right.

15 A All right.

16 THE COURT: Mr. Birdwell, you are excused, sir.

17 A Thank you.

18 THE COURT: Leave the exhibits there, if you would,
19 sir.

20 A Okay.

21 THE COURT: Thank you.

22 A Great.

23 THE COURT: Ladies and gentlemen of the jury, I
24 think now is a very good time for lunch. You see the
25 clock back there. It's almost 1:30. Ladies and

1 before we bring the jury out?

2 MR. MATHISON: No, your Honor.

3 THE COURT: Nothing from the Plaintiff? Nothing

4 from the Defense? All right let's bring the jury out.

5 BAILIFF: Jurors are entering, your Honor.

6 JURORS ENTER COURTROOM 2:36 P.M.

7 THE COURT: Thank you. Welcome back, ladies and

8 gentlemen. I hope you had a nice lunch. And I just

9 about escaped the rain, but not quite, I'm sure.

10 I also want to tell you how much I appreciate your

11 all's willingness to arrange you schedules -- or re-

12 arrange your schedules, so that you can stay with me on

13 Monday and Tuesday. I do appreciate it.

14 At this time, Mr. Mathison, if you can go ahead and

15 call your first witness for the afternoon.

16 MR. MATHISON: Thank you. The Plaintiff would call

17 Sherry Hamilton to the stand.

18 THE COURT: I'll swear you in. Not a problem.

19 WITNESS SWORN.

20 THE COURT: Thank you, ma'am. Come on around.

21 SHERRY HAMILTON

22 DIRECT EXAMINATION, MR. MATHISON:

23 Q State your name for the record, please.

24 A My name is Sherry Hamilton.

25 Q Sherry, where do you live?

1 A I live Eleven Club Course Lane, Hilton Head.
2 Q That's in Sea Pines; isn't it?
3 A It is in Sea Pines, yes, sir.
4 Q And are you married?
5 A Yes, sir, I am married to Richard Hamilton.
6 Q Do you have any children?
7 A Yes, sir. I have two daughters.
8 Q And what do you do for a living?
9 A I am the municipal court assistant.
10 Q And in that capacity, do you work in the same office
11 with Maureen Coffey?
12 A Yes, sir, I do.
13 Q Do you work for Maureen Coffey, or do you work for
14 someone else?
15 A I work with Maureen Coffey. I work for the Town of
16 Hilton Head, which my immediate supervisor is Arlyne
17 Benson, and our department head is Tom Fultz.
18 Q And do you know who Mr. Fultz works for?
19 A Yes, sir. He works under Mr. Greg DeLoach.
20 Q How long have you been in this position that you hold
21 now?
22 A I've been in the summary court for 20 years, 20-plus
23 years. I've been with municipal court for 12 years.
24 Q And by summary court, before it became municipal
25 court, it was a magistrate's court, wasn't it?

1 A I was with Chief -- retired Chief Magistrate Simmons,
2 for nine years. And then I resigned my position with her
3 and took on a job with the municipal court.

4 Q So you're a longer veteran of the municipal court
5 than Ms. Coffey; isn't that right?

6 A That is correct, sir.

7 Q During 2004, do you know whether Ms. Coffey was a
8 part-time or a full-time judge?

9 A She was a part-time associate judge.

10 Q Do you remember who the full-time judge was?

11 A 2004. I want to think it was probably Judge Herring
12 or Judge Ruffalo. I'm not sure which one, sir. She came
13 under both of them.

14 Q Were you, in 2004, working in a spot that was in
15 close proximity to Judge Coffey's office?

16 A Yes, sir. Yes, sir.

17 Q And did that continue right up until today?

18 A Not today, no, sir.

19 Q Not today, you're not.

20 A No, sir.

21 Q How about in 2008?

22 A If -- 2008. I think so, sir. But dates, I don't
23 remember.

24 Q I understand.

25 A 2008. If Judge Coffey was the judge at that point,

1 then, no, my -- my office was not in proximity to hers.

2 Q But not close; is that right?

3 A Yes, not close, no, sir.

4 Q Okay. Do you recall in 2008 Mr. Jolin coming to your
5 office?

6 A I do remember that, sir.

7 Q Do you know whether, at the time he came to your
8 office, he was carrying two incident reports, namely,
9 Plaintiff's Exhibit 10 and 11?

10 A I know he was carrying one. I -- I can't remember
11 that he was carrying two, but he was carrying -- he had
12 it in his hand. I didn't -- I didn't -- well, actually,
13 I did ask him let me hold it, let me look at it. But I
14 don't remember all that was in it at the time.

15 Q What did Mr. Jolin want to do?

16 A Well, first, he wanted to talk to Judge Coffey. And
17 being keeper of the gate, everybody's got to come through
18 me.

19 And I said, *Sorry, she's not here, but, you know,*
20 *you can talk to me all day long.*

21 And he said, *Well, I've got something I need to show*
22 *her.*

23 And I said, *Well, show me.*

24 So he did. And he proceeded to tell me what it was.

25 And --

1 Q And after you heard what he had to say about what it
2 was, what, if anything, did you do?

3 A Well, I -- I -- because of Judge Coffey's directive
4 prior to this, which was anything coming in per anything
5 to do with Sea Pines, you know, send it to my attorney;
6 don't -- do not tell me anything about it, and so I did.

7 I just said, *Here's her attorney's phone number.*
8 *You need -- if you got something that you think you, you*
9 *know, you can take to her attorney, have at it.*

10 Q Did you, in fact, talk to Judge Coffey before you
11 told Mr. Jolin to send the material to Judge Coffey's
12 lawyer?

13 A Did I talk to Judge Coffey before he said --

14 Q You told him or before?

15 A No, I don't think I did.

16 Q So there was an outstanding, as you said, directive,
17 that she did not want to have anything to do with Sea
18 Pines materials; she didn't want to be involved in it; is
19 that right?

20 A That is correct, sir.

21 Q Do you know whether Mr. Jolin sent those reports to
22 Mr. Holloway, or not?

23 A No, sir, I don't know that.

24 Q Do you know what the report said, to the extent that
25 you could identify them if those are the right ones?

1 A I want to think that -- I don't -- and again, I don't
2 know that I looked at both of them. I know what he said
3 to me, and -- and, you know, most of the time, I wouldn't
4 say -- well, I may have said; I just can't remember now.
5 But I may have said let-me-look-at-it kind of thing.
6 Because a lot of times I'll -- I can look at incident
7 reports and say, yeah, you've got probable stuff for a
8 warrant. So I been at this for 20 years, so yeah, you've
9 got enough here, you-can-see-the-judge-for-a-warrant kind
10 of thing.

11 Q Right.

12 A And so, if it were -- if at some point that I knew
13 and if I'd seen the word Otis Coffey, I would've, you
14 know, clammed up right there and said, wup, you need to
15 see her attorney.

16 Q Okay. So is it true that Mr. Jolin left without
17 seeing Judge Coffey?

18 A Well, that is correct, sir. He did not see her that
19 day. Nor any other day that I know of.

20 Q Did Officer Jolin come back a second time to your
21 office?

22 A Yes, sir, he did.

23 Q And when he came back the second time, what did he
24 want?

25 A He wanted to talk to Judge Coffey. He had something

1 personal to say. And I said, *Sorry, you can't talk to*
2 *her. You've got an incident, so you can't talk to her.*
3 And he said, *Well, I need to talk to somebody.*
4 Again, I said, *Hey, have at it. You can talk to me*
5 *all day.*
6 And then he proceeded to tell me what he told me.
7 MR. HALIO: Objection to what he told her as being
8 hearsay.
9 THE COURT: Okay. She hasn't stated it yet; just
10 that he told her something.
11 MR. MATHISON: May it please the Court. He's
12 already testified to what he told her. And I think that
13 it's nothing but cumulative at this juncture.
14 MR. HALIO: No, that's not correct.
15 THE COURT: Do you all need to come talk to me?
16 MR. MATHISON: Yeah.
17 OFF-THE-RECORD BENCH CONFERENCE,
18 OUT OF HEARING OF JURORS. PRESENT:
19 THE COURT, MR. MATHISON, MR. HALIO,
20 MS. JOLLEY.
21 SHERRY HAMILTON
22 CONTINUE DIRECT EXAMINATION, MR. MATHISON:
23 Q Ms. Hamilton, when Mr. Jolin got there, what was the
24 nature of the discussion that you all had?
25 MR. HALIO: Objection. Same objection.

1 A Which time?

2 Q The second time.

3 A What was the nature?

4 Q Yes.

5 A I can say?

6 THE COURT: Go ahead.

7 A He came in, and he was really upset. And I said,
8 *What's wrong?* And he proceeded to tell me that -- that
9 -- that they were saying that he and Judge Coffey had had
10 an affair. And I laughed. And I said, *You're serious,*
11 *right?* And he says, *They're saying that. That's the*
12 *gossip out there is that they're saying that she and I*
13 *had an affair.*

14 And I said, *Well, you know, who's saying this?* And
15 he said, *They are, Sea Pines Security. Everybody is*
16 *saying it.*

17 And I said, *Well, you need to go talk to her*
18 *attorney again.*

19 And that was pretty much it, is that I had told --
20 you know, he told me that. He was visibly upset. He was
21 actually crying some; that he loved his wife and he
22 didn't want anything like that to get back to his wife,
23 because he loved her, and he didn't want -- he didn't
24 want his -- his wife to think that he was cheating on
25 her. And of course, I'm sitting there thinking there's,

1 you know, no way, but anyway. That was my opinion.

2 And so, that was it. He, you know, he was upset,
3 and I sent him off again, saying, *You need to go talk to*
4 *her attorney about this.* You know. *You can't talk to*
5 *Judge Coffey about this; you got to go talk to her*
6 *attorney.*

7 Q Do you know whether he did or not?

8 A No, sir, I don't know that.

9 Q Have you ever seen Toby McSwain, when he was a
10 lieutenant or when he was a captain, come to the
11 municipal court at the Town of Hilton Head?

12 A No, sir. I worked in municipal court for 20 years,
13 and I still can't keep up with private, lieutenant,
14 captain, general. They all -- I know Toby McSwain, yes
15 sir. I know him as Captain McSwain now. I did know him.
16 I knew his face. He was the officer who gave me my first
17 ticket when I moved to Hilton Head, so I'll never forget
18 him.

19 Q Regardless of what rank he was, --

20 A Yes, sir.

21 Q -- do you know whether he's been in court at any
22 point since 2004, that is, the municipal court of the
23 Town of Hilton Head?

24 A I can only recollect in the last couple of years.
25 He's been in court probably four, maybe five times in the

1 last couple of years. A couple times as a witness. I
2 think a time as a victim. And the last ticket we had
3 from him, he didn't show up at all.

4 Q He didn't show up at all?

5 A No. His defendant paid, you know, he didn't show to
6 court.

7 Q To the best of your knowledge, has he ever been to
8 see Judge Coffey in her office?

9 A The best of my knowledge, no, sir.

10 MR. MATHISON: Thank you. Please answer any
11 questions that counsel may have.

12 A Sure.

13 MR. HALIO: May it please the court.

14 THE COURT: Yes, sir.

15 SHERRY HAMILTON

16 CROSS-EXAMINATION, MR. HALIO:

17 Q Ms. Hamilton, you've been here throughout the trial;
18 have you not?

19 A I have, sir.

20 Q Including when Mr. Jolin testified?

21 A Yes, sir.

22 Q Did you hear him say that he had been to your office
23 and to Judge Coffey's office on one occasion, and not on
24 two occasions?

25 A I don't remember that, because I knew what the facts

1 were.

2 Q So you don't remember him saying that on Tuesday? Or
3 Wednesday.

4 A Again, I knew what happened. He was there twice, and
5 -- and he talked to me twice.

6 Q Okay. And that would be -- that should have been,
7 from what you've told us, that second visit should have
8 been something that he should have remembered, and right?
9 Sounds like it was sort of a big deal.

10 A Well, with him being under the gun more so than me,
11 then, I would, you know, nervous. I don't know.

12 Q And it was certainly something that you remembered,
13 right?

14 A Definitely something I remembered.

15 Q And so should be something he remembered too;
16 wouldn't it? Wouldn't you think?

17 A Again, yeah. He knew he talked to me twice. As you
18 said. He said he talked to me twice.

19 Q All right. So he came to see Judge Coffey on two
20 occasions. Do you remember the dates of those occasions?

21 A Oh, no, sir. I don't remember dates. I have a hard
22 time even with my husband's birth date. I remember some
23 things and some years. I do remember that. Specific
24 dates, no, sir, I do not remember specific dates.

25 Q But you'll remember Mr. Jolin running into your

1 office to see Judge Coffey on two occasions?

2 A Yes, sir. He did come to our office twice.

3 Q The first time, bringing in one of these.

4 A One or both. I don't know. I don't remember that.

5 Q And the second time he came in crying?

6 A No, he wasn't crying to start with. He came in

7 saying he needed to talk; talk to Judge Coffey about

8 something personal. And --

9 Q So on two occasions he came in looking to see Judge

10 Coffey. Is that right?

11 A Correct.

12 Q Now, you eventually -- well, let me ask you this.

13 Have you seen the letter that's been marked as

14 Plaintiff's Exhibit Number 4?

15 A Well, I heard the testimony about this. I can't say

16 that I remember it or that I read it. I can't say that

17 at all.

18 Q Have you ever seen it?

19 A Before today, if I did, I don't remember it.

20 Q Because it's been represented to me by Counsel that

21 you opened up a confidential letter from the Commission.

22 A That is correct, sir.

23 Q And that was in there.

24 A That is correct. I open all mail comes through the

25 court, whether --

1 Q Even if it says confidential?

2 A Even if it says confidential, next of kin, whatever.
3 I open all mail. There is -- per directive from every
4 judge we've had so far, except Judge Herring, all mail
5 that's marked confidential is not confidential in the
6 court, because there's so many people that try to get to
7 the judge without the right format, that there is nothing
8 confidential in the courthouse.

9 When I do open something and I do see that it is
10 something confidential, immediately, I would fold it back
11 up, take it right where it needs to be, and that would be
12 that.

13 Q And that's what you did in this case?

14 A I'm sure that's what I did in this case.

15 Q Because you really don't remember it; do you?

16 A That is correct. If it came to the courthouse marked
17 confidential, though, I promise you, I opened it.

18 MR. HALIO: No further questions.

19 THE COURT: Anything further?

20 MR. MATHISON: One.

21 SHERRY HAMILTON

22 RE-DIRECT EXAMINATION, MR. MATHISON:

23 Q One of your roles, Ms. Hamilton, is that of the
24 gatekeeper isn't it?

25 A My official -- me, I put it there, yes, sir.

1 Q And you're there to make sure that nobody has an
2 inappropriate contact with the judge.

3 A That is correct. I learned that under Judge Simmons.

4 Q And that's why you open confidential mail, to make
5 sure that someone desiring inappropriate contact is not
6 putting confidential on it and then trying to argue a
7 court case.

8 A Correct. The only time confidential would not ever
9 be opened is that it was an interoffice something from
10 the Town that would be marked confidential. That would
11 never, ever, ever be opened. But mail coming through the
12 U.S. postal system is not confidential in our office.
13 When we do open it, we, you know, take it where it needs
14 to be, and that's that.

15 MR. MATHISON: I understand. Thank you very much.

16 A Yes, sir.

17 THE COURT: Anything further?

18 MR. HALIO: No, your Honor.

19 THE COURT: All right. You are excused.

20 A Thank you, ma'am.

21 THE COURT: Call your next witness.

22 MR. MATHISON: Your Honor, the plaintiff would call
23 Todd McNeill.

24 THE COURT: Come on up, Mr. McNeill.

25 WITNESS SWORN.

1 TODD MCNEILL

2 DIRECT EXAMINATION, MR. MATHISON:

3 Q State your name for the record, please.

4 A Todd McNeill.

5 Q Mr. McNeill, how old are you?

6 A I'm 42.

7 Q And where do you live?

8 A Lake Linden in Bluffton.

9 Q By whom are you employed?

10 A CSA.

11 Q Do you work for Sea Pines Security?

12 A Yes, I do.

13 Q And how long have you worked there?

14 A Twenty-one years.

15 Q Pardon me?

16 A Twenty-one years.

17 Q Have you attained some rank while working for Sea

18 Pines Security?

19 A Yes, I have.

20 Q And what's that?

21 A I'm currently a lieutenant.

22 Q Mr. McNeill, do you know who John Thomas Levy is?

23 A I know of him. I haven't met him.

24 Q Were you instrumental in the arrest and conviction of

25 John Thomas Levy?

1 A Yes, sir.

2 Q Isn't it a fact that you were given an award by the
3 Rotary Club for your participation in the arrest and
4 conviction of Mr. Levy?

5 A Yes, I was.

6 Q Was Mr. Levy engaged in peeping Tom activities in
7 2004?

8 A I do believe he was.

9 Q Was he doing his peeping Tom and the breaking and
10 entering both in Hilton Head Plantation and Sea Pines
11 Plantations?

12 A From what I understand, yes.

13 Q Did he have a Hilton Head Plantation pass on his car,
14 which would allow him into Sea Pines?

15 A I found that out later on, yes, sir.

16 Q Do you know how many different residences in Hilton
17 Head Plantation and Sea Pines Plantation, all told, Mr.
18 Levy entered unlawfully?

19 A No, I do not.

20 Q But it was a number; wasn't it?

21 A Yes, I assume.

22 Q In point in fact, one of the ways that you all find
23 out who was doing it, is you went through a camera that
24 was found in lost and found, and actually looked at the
25 film that was in the camera, eight-millimeter film.

1 Isn't that right?

2 A It was a Sony Camcorder. I don't know if it was
3 eight millimeter or not.

4 Q Okay. Well, did you look at the film, regardless of
5 its size?

6 A Yes, I did.

7 Q And was there evidence, without saying what is was,
8 was there evidence of voyeuristic activities in that
9 film?

10 A Yes, there was.

11 Q And was the evidence in that particular film of areas
12 in Sea Pines that you could identify?

13 A Not exactly of Sea Pines.

14 Q Well, did you indicate that the incident originated
15 at Willow Oak Road in Sea Pines?

16 A That, I'm not sure of.

17 Q Where was the camera found?

18 A That, I'm not sure of. It was in our property
19 locker.

20 Q I'm showing you a document that was sent to me, along
21 with hundreds of pages of incident reports last week.

22 MR. HALIO: Your Honor, I object.

23 THE COURT: Okay. I --

24 MR. HALIO: Is there a question?

25 THE COURT: Okay. Number one, we're going to stop

1 the editorializing. It's the afternoon. It's Friday.

2 Ask the question.

3 BY MR. MATHISON:

4 Q Is this the incident report that effectively started
5 the investigation of John Thomas Levy.

6 A I've never seen this before.

7 Q So you didn't do it?

8 A No, I did not.

9 Q Do you know who Angela Olds is?

10 A Yes, I do.

11 Q Who does it say is the complainant on that incident
12 report?

13 A It would be George Breed.

14 Q That is, Mr. Breed over there?

15 A Correct.

16 Q Did Mr. Breed know who John Thomas Levy was?

17 MR. HALIO: Objection to what Mr. Breed knew or
18 didn't know.

19 A I don't know if he does or not.

20 BY MR. MATHISON:

21 Q Okay. Mr. McNeill, who recommended you to receive
22 the Rotary Club award that you received in 2005?

23 A I assume the Rotary Club.

24 Q Handing you this document, and ask if it doesn't
25 indicate that Mr. Breed put you up for your award, just

1 as Sheriff Tanner put Angela Olds, now Angela Vennes, up
2 for her award.

3 MR. HALIO: Could we have the document identified
4 and a foundation laid before he's asked a question about
5 it?

6 BY MR. MATHISON:

7 Q Is that what it says?

8 MR. HALIO: Can we have a found -- I object. Can we
9 have a foundation laid for a document being shown to a
10 witness? Thank you.

11 BY MR. MATHISON:

12 Q The newspaper report of your award, sir.

13 A Okay.

14 Q Doesn't it say that George Breed recommended you for
15 the award?

16 A I just read that.

17 Q Okay. And isn't it a fact that he did?

18 A That's what it says, yes.

19 Q How could that be if Mr. Breed does not know who John
20 Thomas Levy is?

21 A Then, obviously, he knows.

22 Q He obviously knows. Have you ever had one of your
23 incident reports changed, Mr. McNeill?

24 A Yes.

25 Q Who changed it?

1 A I would have changed it.

2 Q Pardon?

3 A I would have changed it.

4 Q I'm handing -- excuse me -- I'll hand it to Counsel
5 first.

6 MR. HALIO: Thank you.

7 BY MR. MATHISON:

8 Q I'm handing you an incident report indicating in the
9 upper left corner a crime of petty larceny. Is that
10 correct?

11 A Yes, it is.

12 Q And who was the victim, complaining witness? A Mr.
13 Dupps?

14 A Yes, it is.

15 Q And who is the suspect? Mr. Klippel?

16 A Correct.

17 Q And his sister. Is that right?

18 A Correct.

19 Q Can you identify that as the report you prepared
20 originally?

21 A Yes, it is.

22 MR. MATHISON: Move the introduction is Plaintiff's
23 Exhibit 27.

24 COPY OF DOCUMENT REFERRED TO AS INCIDENT

25 REPORT MARKED PLAINTIFF'S EXHIBIT

1 NUMBER 27, ADMITTED AS EVIDENCE.

2 Q That indicates the commission of a crime; does it
3 not? Petty larceny is a crime.

4 A Correct.

5 Q A misdemeanor, but a crime, right?

6 A Correct.

7 Q Did the report subsequently get changed?

8 A It is an in-house report that I made. That's the
9 complaint was petty larceny.

10 Q Yes, sir. Did it get changed? The report.

11 A Changed to what?

12 Q Did your report get changed?

13 A I'm not sure what you're trying to ask.

14 MR. HALIO: I object. I fail to see the relevance in
15 this line of questioning.

16 BY MR. MATHISON:

17 Q I'm handing you this document which is --

18 THE COURT: All right. Come here for a second.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 OUT OF HEARING OF JURORS. PRESENT:

21 THE COURT, MR. MATHISON, MR. HALIO.

22 BY MR. MATHISON:

23 Q Is this other report also the same incident?

24 MR. HALIO: Could I have a running objection to this
25 line of questioning, your Honor?

1 THE COURT: You may.

2 BY MR. MATHISON:

3 A Yes, it's the same report.

4 Q In fact, the verbiage, the report of the complaint
5 and the narrative, everything is the same; is it not?

6 A Correct.

7 Q The only thing that's been changed is petty larceny
8 has been taken off as a crime. Isn't that right?

9 A No.

10 Q What else is changed?

11 A The in-house on the top, right corner, is missing,
12 also.

13 Q Why were those things changed, sir?

14 A I don't know why the in-house is missing, but further
15 -- at talking with the Klippels, Mr. Dupps realized that
16 it wasn't a crime that was committed.

17 Q You did, or somebody else did?

18 A I did.

19 Q Did you change the report, or did Mr. Breed change
20 the report?

21 A I changed the petty larceny at the top. I took it
22 off.

23 Q Did he change something else?

24 A No, he did not.

25 Q Did he know you changed it?

1 A I'm not aware if he does or not.

2 MR. MATHISON: Move the introduction of the second

3 report as Plaintiff's Exhibit --

4 MR. HALIO: I object, and I would like to have the

5 previous exhibit stricken from the record.

6 THE COURT: You all --

7 MR. HALIO: Because they've got no relevance to this

8 case.

9 THE COURT: Okay. He has testified to it; we're not

10 going to put it in.

11 Q Do you know whether the change of that report was

12 instrumental in leading to litigation that took place

13 after --

14 MR. HALIO: Objection, your Honor. I don't know

15 where we're going with this, but we've gone into the

16 Klippel case now, and we're trying to try the Coffey

17 case. It's really not relevant.

18 THE COURT: Mr. Matheson, we need to move this along.

19 You need to make a connection and get going.

20 BY MR. MATHISON:

21 Q Did this change in the report lead to litigation?

22 A Yes, it did.

23 Q Were you involved in that litigation?

24 A I was a witness in that, yes.

25 Q And was Mr. Breed a witness in that litigation?

1 A I believe he was called, sir.

2 MR. MATHISON: Thank you. Please answer any

3 questions Counsel has.

4 TODD MCNEILL

5 CROSS-EXAMINATION, MR. HALIO:

6 Q Mr. McNeill, who do you live with in Bluffton?

7 A Sir?

8 Q Who lives with you in Bluffton in your house?

9 A My wife.

10 Q Anybody else?

11 A My daughter.

12 Q Okay. Do you have any other kids, or just the one

13 child?

14 A Just the one.

15 Q And where does your wife work?

16 A She also works at CSA.

17 Q And you said you've been there for 21 years, and you

18 retain the rank of lieutenant. Is that correct?

19 A Correct.

20 Q What is your job right now? What is your job

21 description?

22 A I am a wildlife officer.

23 Q And what do you do as a wildlife officer?

24 A I deal with all nuisance animals, domestic, wild.

25 Q Gators?

1 A Alligators, reptiles, everything.
2 Q Work out in the woods?
3 A Yes, I do.
4 Q Have you always done that?
5 A No, sir.
6 Q What else have you done at CSA?
7 A I worked the gates, the beach club when I first
8 started back in '91. Then I worked the gates for I think
9 a year and a half. And then I went on to patrol.
10 Q Well, when did you switch from patrol to wildlife?
11 A I want to say probably close to nine, ten years ago.
12 Q Now, as a wildlife officer, do you just deal with
13 wildlife, or do you sometimes assist other officers with
14 more routine law enforcement?
15 A I do everything.
16 Q You do everything.
17 A Yes, sir.
18 Q Were you aware, in 2008, of a series of crimes,
19 property crimes, that were going on in Sea Pines
20 Plantation?
21 A Yes, I was.
22 Q And prior to or on or about the evening of May 20,
23 2008, did you have any conversations with Mr. John Jolin,
24 about where he might go to if he wanted to apprehend
25 whoever was doing the stuff?

1 A Yes, I did.

2 Q Tell us about that conversation.

3 A I spoke to John and asked him, you know, a lot of
4 break-ins have been happening at night, you know, why
5 haven't anybody caught anybody yet. He said his hands
6 were kind of tied with his supervisor. And John just
7 didn't want us to really go into it.

8 And I told him that, you know, you're the shift
9 supervisor on two nights a week that his -- his
10 lieutenant's off. I said, you know, if you want to catch
11 this guy doing the break-ins, to hang out between the
12 foot bridge on south Sea Pines Drive of the South Beach
13 Lane.

14 Q Would you come on down here for a second? Let me
15 show you this map. Would you show the jury where you
16 told Mr. Jolin to go.

17 A It would be in this area right here, where the foot
18 bridge is. This is South Beach Lane right here.

19 Q And that's the general area?

20 A Yes, sir.

21 Q Okay. Would that include the area where the X that
22 he marked is?

23 A Yes, sir.

24 Q Turns out you were right; doesn't it?

25 A Yes, sir.

1 Q What happened? What did you find out happened?
2 A The following day, when I came in at 8:00 in the
3 morning, John was still working, and he told me that he
4 had caught Otis Coffey. And when I asked him about it,
5 he said that he chased him on foot down towards the
6 beach; that he had Officer Fryman go down to Gadwall and
7 sit there and wait, where he observed a male run inside
8 the house. He waited for deputies.
9 Q Was there any question about whether or not he had
10 identified Otis Coffey?
11 A No, there was no question.
12 Q All right. Did you have any subsequent conversations
13 with him about the identification?
14 A About a week or so later, I heard that he wasn't as
15 quite sure.
16 Q So he changed his mind.
17 A Yes, sir.
18 Q And did you ever furnish Mr. Jolin with a picture of
19 Otis Coffey for any reason?
20 A I don't recall, sir, no.
21 MR. HALIO: No further questions.
22 A Thank you.
23 THE COURT: Anything further, Mr. Mathison?
24 TODD MCNEILL
25 RE-DIRECT EXAMINATION, MR. MATHISON:

1 Q Have you ever seen a color photograph of Otis Coffey?

2 A I don't believe so, sir, no.

3 Q Was there a black and white photograph of Otis Coffey
4 hanging or displayed in the operations room all over the
5 place during this period of time, in May of 2008?

6 A It may have. We periodically have pictures the
7 sheriff's department fax over us, now they send them
8 computer, that we put around in our operations room
9 and/or dispatch.

10 Q Well, why would you have a picture of Otis Coffey,
11 who hadn't been convicted of anything property-related in
12 years and years?

13 A It was the element of possibly the same -- the same
14 crimes that were happening in '04.

15 Q Well, that's interesting, because in '04, didn't the
16 Sea Pines property crimes terminate just about the time
17 you got the credit for seeing to the arrest of John
18 Thomas Levy?

19 A No, sir.

20 Q They didn't terminate?

21 A They terminated shortly after one of our former
22 officers, Brian Kilby, ensued a foot chase with Otis
23 Coffey.

24 Q When was that?

25 A That was in '04. I can't remember the exact date.

1 Q When was John Thomas Levy arrested?
2 A That was in -- later past the fall.
3 Q Pardon?
4 A Later in the fall.
5 Q Later in the fall of 2004.
6 A Correct.
7 Q And you're telling me that you can tell the
8 difference between when Mr. Coffey was arrested for
9 trespassing and when John Thomas Levy was arrested for
10 peeping Tom and multiple burglaries?
11 A At that time, pretty much everything stopped at the
12 end of that year.
13 Q Okay. I believe you told me that you took -- you
14 just testified that you told John Jolin where to go in
15 order to catch the culprit. Is that right?
16 A Correct.
17 Q Was it you that told him, or was it Officer Woods?
18 A No. I -- I had -- I had told him where to go.
19 Q Okay. And I think you said that you talked to him at
20 8:00 the next morning, and he told you that he caught
21 him. Is that right?
22 A Correct.
23 Q You don't believe that he was out looking around for
24 a bicycle at 8:00 in the morning with your colleague,
25 Officer Campbell?

1 A Not that I'm aware of, the exact time, no.

2 Q Did you testify in response to Mr. Halio's question

3 that the reason you told him to go to a specific place

4 was because, and I'm quoting, *there were a lot of break-*

5 *ins that night?* Did you say that?

6 A Not that particular night, no.

7 Q In point of fact, there were no break-in that night;

8 was there?

9 A At night. Not *the* night.

10 Q That's correct.

11 A It all happened at night.

12 Q Oh, at night.

13 A At night.

14 Q But on the particular night in question, when you

15 told him to go down there, there wasn't any crime

16 committed in Sea Pines at all; was there?

17 A No, I do not believe so.

18 Q So how could you have arrested somebody who didn't

19 commit a crime?

20 A I didn't arrest anyone, sir.

21 Q Do you agree with your colleague, Officer Woods, that

22 within a day or so after the incident on May 20th,

23 everybody at Sea Pines Security knew that Mr. Jolin had

24 recanted his identification?

25 A Yes, sir.

1 Q Does everyone include Mr. Breed?
2 A I assume so.
3 Q Is there any reason he would not know that there was
4 no positive identification by June 6, 2008?
5 A I don't understand your question. Who -- who would
6 not know?
7 Q Mr. Breed.
8 A That, I cannot answer for.
9 Q So you don't know whether he might have been confused
10 about that.
11 A I don't know. I can't answer that.
12 Q Thank you, sir. Excuse me. One more thing. Did you
13 tell me that Sergeant Kilby was chasing Otis in 2004?
14 A I do believe so. Yes, sir.
15 Q Do you know of any incident report involving Otis
16 Coffey in 2004, other than the trespassing offense that
17 took place on or about December 10, 2004?
18 A I believe it was just the trespass incident.
19 Q Okay. Did anybody chase anybody during that, sir?
20 A That, I -- I'm not sure on.
21 Q Okay. And was Mr. Levy arrested before or after
22 December 10, 2004?
23 A I do not know.
24 Q About the same time?
25 A I don't know.

1 Q The person for whom you got credit for seeing to his
2 arrest and conviction, you don't know when he was
3 arrested?

4 A I don't know when exactly Levy was arrested. I know
5 it was some time in the fall that I discovered the tapes,
6 the recording device, and turned it over to the sheriff's
7 department.

8 Q And as a result of your discovery of a tape, they got
9 a search warrant and went and discovered a whole bunch of
10 tapes; didn't they?

11 A Apparently so, sir.

12 Q And those tapes showed multiple houses, both at
13 Hilton Head Plantation and Sea Pines Plantation, where he
14 had broken in for purposes that neither one of us want to
15 discuss; isn't that right?

16 A Yes, sir.

17 Q Has anybody ever told you that Otis Coffey is a sex
18 offender or a voyeur or any of the things that Mr. Levy
19 was?

20 A No, sir.

21 MR. MATHISON: Thank you.

22 TODD MCNEILL

23 RE-CROSS-EXAMINATION, MR. HALIO:

24 Q Just one follow-up. Did you say there were -- how
25 many incidents in Sea Pines were you aware of that Mr.

1 Levy was connected to?

2 A I have no idea.

3 Q You have no idea.

4 A No, sir.

5 MR. HALIO: Thank you.

6 MR. MATHISON: Thank you, sir.

7 BY THE COURT:

8 THE COURT: Anything else for this witness, Mr.
9 Mathison?

10 MR. MATHISON: Your Honor, may it please the Court.
11 I need to talk to my client one second.

12 Thank you, your Honor. We're going to read at this
13 juncture.

14 THE COURT: Okay. What are you going to read?
15 Let's call it. Let's hear it.

16 MR. MATHISON: The first one is going to be -- the
17 first one will be Mr. Breed.

18 THE COURT: All right. You're going to read his
19 deposition. Is that correct?

20 MR. MATHISON: Yes, ma'am.

21 THE COURT: Who's going to actually read for us?

22 MR. MATHISON: I'll read the witness part.

23 THE COURT: Okay. Ladies and gentlemen, at this
24 time, what we're going to do is -- or the plaintiffs want
25 to do is read portions of a deposition transcript. A

1 THE COURT: Well, I'm going to be back, clearly, in
2 three minutes. Figure out what you're doing. We'll read
3 them. If you can't figure it out tonight, they're going
4 home.

5 OFF THE RECORD 3:30 P.M.

6 BACK ON THE RECORD 3:37 P.M.

7 BY THE COURT:

8 THE COURT: You all ready to go? All right. Thank
9 you. Let's seat them. Let's bring the jury in.

10 BAILIFF: Yes, ma'am.

11 Jurors are entering, your Honor.

12 JURORS ENTER COURTROOM 3:40 P.M.

13 THE COURT: Welcome back, ladies and gentlemen. All
14 right. At this time you are going to be read portions of
15 a deposition of George Breed. Is that correct, sir?

16 MR. MATHISON: That is correct.

17 THE COURT: All right. Go ahead.

18 MR. MATHISON: So that you understand, I'm going to
19 play my role. I will be the lawyer asking the questions.
20 And this gentleman, my son, is going to be Mr. Breed.
21 He's reading the witness's answers. We're going to start
22 at Page 7, Line 14.

23 READING DEPOSITION OF GEORGE F.

24 BREED, JR. MR. ROBERT V. MATHISON

25 IS READING THE QUESTIONS; MR. MICHAEL

1 MATHISON IS READING THE ANSWERS.

2 Q Would you state your name for the
3 record.

4 A George F. Breed, Jr.

5 MR. MATHISON: Going to Page 15, Line 13. Excuse
6 me, that's not correct. Going to Page 10, Line 5.

7 Q Did you go to college after high
8 school?

9 A Yes. When I enlisted in the Army,
10 I did attend classes at the University
11 of Maryland there. And then I left
12 the military; was a police officer. I
13 continued with the University of
14 Maryland.

15 Q Okay.

16 A On a part-time basis.

17 MR. MATHISON: Going to Page 11, at the top of the
18 page.

19 Q How long were you in the Army?

20 A Two-and-a-half years.

21 Q And would that have started in 1972?

22 A Approximately. Late '71, '72, yeah.

23 Q Okay. Did you have any overseas
24 duty?

25 A Yes, sir.

1 Q Where?

2 A The Czechoslovakian Border, East
3 Germany.

4 MR. MATHISON: At the bottom of the page, at Line
5 22.

6 Q In the military, what was highest
7 rank that you achieved?

8 A I was a sergeant. I was a tank
9 commander.

10 Q And when you got back, what was
11 your first job? What, exactly, did
12 you do?

13 A As a turbine operator.

14 Q Yes.

15 A It encompassed many, many things.
16 The controls at a power plant, taking
17 turbines offline, putting turbines
18 online.

19 Q How long were you a turbine operator?

20 A I want to say a year.

21 Q Then what?

22 A Went to work in law enforcement.

23 Q How did you make the transition?

24 A Series of examinations, both physical
25 and written exams at Prince George

1 County.

2 Q This is in Maryland?

3 A Yes, it is.

4 Q Okay. Who did you work for first?

5 A The Prince George's County Sheriff's

6 Department.

7 Q Were you a road deputy? Is that the

8 way they start them?

9 A Yes. I worked in warrants.

10 Q You mean serving warrants or drafting

11 warrants or what?

12 A Fugitive warrants.

13 Q Okay. And how long did you work

14 for them?

15 A I want to say two years.

16 Q So we're up in '76 maybe?

17 A Correct.

18 Q Did you attain any rank when

19 you were working for the Prince

20 George's Sheriff's Department?

21 A I believe it was a DFC.

22 Q That would be a detective first

23 class?

24 A Deputy first class.

25 Q Deputy first class. All right.

1 Then what?

2 A I went to work for the Frederick
3 County Sheriff's Department.

4 Q Why the change?

5 A Prince George, because we just
6 had a son that was born. Prince
7 George County is a great place
8 to get experience. One of the
9 best police academies in the country.
10 However, with a family that was
11 growing, I thought there was more
12 opportunity -- opportunity, and
13 it was a family-friendlier area in
14 Frederick County.

15 MR. MATHISON: Okay. I'm now at Page 14, Line 9.

16 Q What did you do when you switched
17 jobs?

18 A Began to work for Frederick County
19 as a patrol officer.

20 Q Again, were you working traffic,
21 or were you working investigations?
22 What were you doing?

23 A During the time I was there,
24 everything. Investigations, traffic
25 patrol.