

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 IV**

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1 MR. HALIO: Correct.

2 THE COURT: All right. Let's go ahead and bring the
3 jury in.

4 BAILIFF: Yes, your Honor.

5 THE COURT: Thank you, Norman.

6 BAILIFF: The jury is entering, your Honor.

7 JURORS ENTER COURTROOM 11:32 A.M.

8 THE COURT: Welcome back, ladies and gentlemen. Mr.
9 Halio, if you will call your next witness, sir.

10 MR. HALIO: Cary Kelley.

11 THE COURT: Come on forward, Mr. Kelley, to be
12 sworn.

13 WITNESS SWORN.

14 CARY A. KELLEY

15 DIRECT EXAMINATION, MR. HALIO:

16 Q Please state your full name.

17 A Cary A. Kelley.

18 Q Mr. Kelley, where do you live?

19 A I live on Lady's Island in Beaufort.

20 Q And what do you do?

21 A I am the executive vice president for Community
22 Services Associates and Sea Pines Plantation.

23 Q And we've all heard your testimony given by way of
24 the deposition that was read yesterday, so we're not
25 going into everything in minute detail. But would you

1 just, again, remind me and the jury how you happened to
2 come to this area.

3 A I was on active duty in the Marine Corp. I was
4 stationed at -- Parris Island was my first tour here.
5 And basically moved from Parris Island to the air
6 station, from where I retired in 2000, and stayed here.

7 Q And what did you do after you retired?

8 A I went to work at Callawassie Island as a property
9 manager. I happened to know the individual that was
10 filling that position when I saw the job advertised, and
11 went down for an interview and got the job.

12 Q When did you move over to Sea Pines?

13 A In June of 2005. I, again, the job was advertised.
14 I knew my predecessor, Ward Kirby, at Sea Pines
15 Plantation. I went, interviewed, and again, got the job.

16 Q What do you do for CSA?

17 A I'm the chief operating officer, essentially. I
18 manage and oversee all the maintenance and all the
19 security operations within the plantation.

20 Q Is that basically what CSA does, is maintenance and
21 security?

22 A Yes. Maintenance of the open-space areas, which
23 would include all the roads, roadsides, drainage, the
24 Forest Preserve, all of those areas.

25 Q Who do you report to?

1 A I report to the CSA board of directors.

2 Q Now, referring you to 2008, have you attempted to
3 determine if Ann Coffey's gate privileges were suspended
4 at any time?

5 A Yes. I was asked that question during my deposition.
6 And I went back and checked with staff. And as far as we
7 can determine, there's never been a suspension.

8 MR. MATHISON: Objection. He can bring the staff in
9 to say what he learned.

10 THE COURT: Okay.

11 A Okay.

12 THE COURT: You can tell what you know.

13 BY MR. HALIO:

14 A After reviewing the records, it did not appear that
15 we had ever suspended Ms. Coffey's gate pass privileges.

16 Q And did Ann Coffey ever come to you, or to the best
17 of your knowledge, anybody in your employ, to complain
18 about her guest passes -- pass privileges had ever been
19 suspended?

20 A No, sir, she did not.

21 Q There's been testimony from a gentleman named Mr.
22 Richard Sonberg, about a January 20, 2009, Calibogue Cay
23 meeting. Were you at that meeting?

24 A Yes, sir, I was.

25 Q And did you make the statements to Mr. Sonberg that

1 he said you made regarding Otis Coffey's arrest being
2 imminent, and something about, I believe, a judicial
3 complaint filed against the plaintiff. Did you make
4 those statements at that meeting?

5 A No, sir, I did not. I did not make those statements.
6 The only -- the only context in which I used the word
7 *imminent* during that meeting was, the settlement of
8 another lawsuit action with the Sea Pines County Club,
9 that had been negotiated, and we were waiting for the
10 final documents to be produced by our attorneys. That
11 was imminent. In regards to the other case, no. Or this
12 case. Excuse me.

13 Q All right. Now, we've touched on, a couple minutes
14 ago, the fact that you work for the board of directors,
15 right?

16 A Yes, sir.

17 Q Now, does CSA -- CSA, obviously, has a security
18 division, right?

19 A Yes, we do.

20 Q Private security business.

21 A Yes.

22 Q And what is the -- I'm going to ask you an obvious
23 question. What's the goal of the CSA security?

24 A Keeping the plantation safe and secure, for our
25 residents, our owners, and all the visitors, tourists

1 that we receive on an annual basis.

2 Q Is that an interest that you share?

3 A Absolutely.

4 Q Is that an interest that your board of directors

5 shares?

6 A Absolutely.

7 Q And is that why you informed the board of directors

8 of what was happening in 2008, with regard to the Coffey

9 matter?

10 A Yes. I -- I showed them -- essentially shared with

11 them the -- the complaint that Mr. Breed had filed.

12 Again, through the course of my job responsibilities,

13 there are times when I have to make complaints, whether

14 it's on vendors or folks providing a service to us and

15 such. And from time to time, I would share that with the

16 board.

17 Q Was that a matter that you consider to be of common

18 interest with you and the board?

19 A Absolutely.

20 MR. MATHISON: Objection. And this is just leading

21 him into what he wants him to say.

22 THE COURT: Your objection is leading?

23 MR. MATHISON: Yes.

24 THE COURT: Don't lead him.

25 BY MR. HALIO:

1 Q Why did you tell the board about the complaint
2 against the plaintiff?

3 A Well, it was an operational decision that -- that Mr.
4 Breed and -- and I made to -- that felt it was in the
5 best interests of the community, from a safety and
6 security standpoint. And I knew the board shared those
7 concerns, so I made them aware.

8 Q Other than the board of directors, did you share that
9 information with anybody else?

10 A No, I did not.

11 Q Excuse me one second, your Honor. All right. You
12 testified, I believe, that the reason you shared the
13 information with the board.

14 A Yes, sir.

15 Q And was that shared with the board in your normal
16 course of business.

17 A Yes, it was.

18 MR. HALIO: Nothing further, your Honor.

19 THE COURT: Mr. Mathison.

20 CARY A. KELLEY

21 CROSS-EXAMINATION, MR. MATHISON:

22 Q In your deposition, Mr. Kelley, didn't you say that
23 if -- that Mr. Breed had not told you anything about John
24 Thomas Levy?

25 A Yes, sir, I did.

1 Q And do you now understand that Mr. Breed knew all
2 about John Thomas Levy?

3 A No, sir, I do not.

4 Q In your deposition, Mr. Kelley, didn't you say if
5 you'd known about John Thomas Levy, that may have changed
6 your outlook as to what you thought you would have done.

7 A No, sir, I don't believe that's what I said. I said
8 that it would have been nice to have heard about Mr.
9 Levy.

10 Q Because you weren't actually at Sea Pines Plantation
11 in 2004; were you?

12 A No, sir, I was not.

13 Q You were somewhere else. Callawassie Island?

14 A Yes, sir, I was.

15 Q So you had no independent knowledge about anything
16 that went on in 2004, correct?

17 A Correct.

18 Q And who is your resource? Mr. Breed?

19 A Yes, sir.

20 Q And you stand by your statement, I think you just
21 made in response to Mr. Halio, that you believed that the
22 decision to write the Breed letter and send it, the June
23 6th letter, was operational. Is that the terminology you
24 used?

25 A Yes, sir. It's an operational decision to do that

1 sort of thing. The board -- the board sets policy, under
2 which we operate. And there is no policy guideline
3 saying that we cannot file complaints, whether it's
4 against vendors, et cetera. Or in this case, on the
5 issue that we thought impacted the safety and security of
6 the plantation. And so I, you know, it was an
7 operational decision that we made.

8 Q Is there a board policy that precludes you making
9 operational decisions that defame other people?

10 A No, sir. I mean, it's common sense that I would not
11 go out and defame someone using that as a purpose.

12 Q And that's not something that you would do without
13 getting the approval of the board; is it?

14 A I would never defame anybody in any sense, sir.

15 Q Yes, but the truth of the matter is, nobody got the
16 permission of the board to send Mr. Breed's letter of
17 June 6, 2008, to Mr. DeLoach; did they?

18 A No, sir.

19 Q And don't you think that, before you and Mr. Breed
20 decided to do that, someone should have gotten their
21 consent?

22 A From the board to show it to Mr. DeLoach?

23 Q Yes.

24 A No, sir, I do not. It was our -- it was my position
25 at that time, and I cannot speak for Mr. Breed, but it

1 was my position that Mr. DeLoach was her direct report.
2 I get complaints regarding our employees, because I'm
3 their direct report. I may not be, actually, their
4 direct report, but because I'm the executive vice
5 president, I will get those complaints. So.
6 Q So you were --
7 A I didn't feel that was out of the norm.
8 Q Wouldn't it have been a good idea to get a lawyer to
9 tell you what was out of the norm?
10 A Out of the norm to file a complaint?
11 Q To deliver a complaint to someone who wasn't in any
12 way connected with the Commission on Judicial Conduct.
13 A I didn't realize he had to be connected to the
14 Commission, sir.
15 Q And that's the reason that you decided to distribute
16 that letter that Mr. Breed wrote to the 17 people on your
17 board. Isn't that right?
18 A I work for those -- directly for those 17 people,
19 sir.
20 Q Right. And how many people did those 17 people give
21 the letter to? Do you know?
22 A I know of none, sir.
23 Q Have you made an effort to find out?
24 A No, sir.
25 Q And there was a good deal of testimony about exactly

1 when you learned about this dismissal of the Breed letter
2 as a complaint. Isn't that correct?

3 A In my deposition?

4 Q Yes, sir.

5 A Yes, sir.

6 Q And do you stand by the fact that you don't know when
7 you learned about it?

8 A I do not recall the exact date, no.

9 Q And do you stand by the fact that there's no minutes
10 of any meeting that record or reflect the fact that you
11 disclosed to the board that that complaint had been
12 dismissed?

13 A That -- that's true. Yes, sir.

14 Q There is a mention of the dissemination and
15 discussion of Mr. Breed's letter; is there not?

16 A In the June 2008 minutes, I believe there is. It's
17 very vague. It says that it is a complaint. It does not
18 name the plaintiff. But yes, there is -- there is
19 indication that a complaint letter was discussed.

20 Q The June 24, 2008 minutes. Isn't that right?

21 A Yes, sir. I believe so. I believe that's the date.
22 I don't have them in front of me.

23 Q But there is -- despite the fact that it was
24 important enough to be discussed when it was pending
25 complaint, it was not important enough to be discussed

1 when it was dismissed.

2 A Well, sir, I know that I discussed, as I testified in
3 my deposition, I notified the board of the dismissal at
4 some point. I do not prepare the minutes, and I do not
5 approve the minutes. That's done by the board
6 themselves. Actually, my assistant prepares the minutes
7 in draft form. The board approves them, makes changes,
8 they're incorporated, And then the board secretary will
9 sign them. At that point, they're official, and we post
10 them and make them available to our members.

11 Q How did you learn about the pendency of this lawsuit
12 before it was served on you, Mr. Kelley?

13 A I -- I don't understand what you're asking me, sir.

14 Q How did you learn that this case was about to be
15 brought before it was served on you?

16 A This case was brought -- again, I don't -- I don't
17 know what -- to what you're referring.

18 Q Did you receive -- did you send an email to the board
19 members on or about -- excuse me -- I believe it's
20 December 3rd. Let me find it. I'm handing you
21 Plaintiff's Exhibit 25, which is an email from you, to a
22 number of people on the board, dated December 3, 2008.
23 And I ask if you would read from *ladies and gentlemen to*
24 *sincerely.*

25 A Yesterday, CSA was officially served the subject

1 *complaint via registered mail. Our counsel is proceeding*
2 *with the strategy that the board approved at last week's*
3 *meeting.*

4 Q All right. What date was the last week's meeting?

5 A You mean the board? The meeting I'm speaking to
6 here? Sir, I don't -- I don't know off the top of my
7 head.

8 Q Was it November 25th?

9 A That would appear so, yes, sir.

10 Q How did you learn about the pendency of the lawsuit
11 on November 25th, when you hadn't been served with it?

12 A Well, sir, this says CSA was officially served via
13 registered mail yesterday.

14 Q The day before.

15 A The day before.

16 Q But not on November 25th, when you conceived the
17 litigation strategy, right?

18 A No, sir.

19 Q So I'm asking you where you learned that there was
20 going to be litigation that would have you conceive a
21 strategy before you got served with the lawsuit?

22 A Well, sir, this lawsuit had been pending. So this
23 had been discussed when the original complaint came out,
24 but I can't recall exactly what was discussed.

25 Q Mr. Kelley, look at the date on that document.

1 A Yes, sir. I -- I've got the date, sir.
2 Q All right. What date is it?
3 A On this document?
4 Q Yes.
5 A It says December 3, 2008, at 8:00 a.m.
6 Q Okay.
7 A Okay.
8 Q Do you know whether or not this lawsuit, the original
9 lawsuit, was, in fact, filed in the court on November 20,
10 2008?
11 A No, sir, it wasn't. According to this email. The
12 original lawsuit was filed a year prior.
13 Q Are you saying in 2007?
14 A No, sir. Excuse me. I have my dates all -- all
15 confused here. I don't know, sir. I -- I can't answer
16 the question. I just can't recall what we discussed.
17 There was other litigation pending, and I may have
18 included that in result, in concert with that other
19 litigation. I may have gotten them co-mingled somehow,
20 is all I can think of at this point.
21 Q You're getting it co-mingled in an email about
22 getting served with a summons in complaint in this case.
23 A Yes, sir.
24 Q You're referring to a litigation strategy, are you
25 not, that, apparently, was conceived about a week before

1 you were served with the case.

2 A That's what this says. Yes, sir.

3 Q And I'm asking you how you found out that you were
4 going to be served with a lawsuit?

5 A Sir, I just said that we had two lawsuits pending at
6 that time. So I may have just co-mingled them, is all I
7 can think of at this point.

8 Q Do you have somebody as a matter of routine that
9 comes over to the Beaufort County Courthouse on a daily
10 or a weekly basis to find out whether Community Service
11 Associates has been sued?

12 A Sir, we have McNair Law Firm that represents us on
13 retainer. So I don't know how often their runner comes
14 to the courthouse. I would assume it's pretty often.

15 Q So you think that's what happened? Somebody came
16 over here and saw the lawsuit had been filed?

17 A Sir, as I said, I -- I don't recall. This is several
18 years ago.

19 Q On the day you wrote that email, December 3, 2008,
20 had you informed the board that Mr. Breed's letter
21 complaint, dated June 6, 2008, had been dismissed?

22 A Sir, I don't recall. And I said that in my
23 deposition.

24 Q Is it true that most of the board members learned
25 that it had been dismissed only when they got served with

1 the lawsuit?

2 A Sir, I -- I don't know that to be a fact, no.

3 Q Well, you were here when Mr. Birdwell testified;
4 weren't you?

5 A Yes, sir, I was.

6 Q And didn't he say that?

7 MR. HALIO: Objection. That's pitting one witness's
8 testimony against the other.

9 THE COURT: Okay. Go ahead and answer the question.

10 BY MR. MATHISON:

11 A Okay.

12 Q Did he say that, sir?

13 A Did he say what, sir?

14 Q That he learned that the complaint by Mr. Breed
15 against Ms. Coffey had been dismissed when he learned
16 about the pendency of the lawsuit.

17 A I believe that is what Mr. Birdwell said, yes.

18 MR. MATHISON: Thank you very much.

19 CARY A. KELLEY

20 RE-DIRECT EXAMINATION, MR. HALIO:

21 Q One final question, Mr. Kelley.

22 THE COURT: Just leave it right there.

23 Q You were asked about the lawsuit and when it was
24 filed and that. Can you see the filing stamp on there
25 for this lawsuit?

1 THE COURT: That's already done.

2 MR. MATHISON: I'm sorry.

3 THE COURT: I mean, it's any statement made by a
4 party can be used against her at any time, against her
5 interest, regardless. Okay. So other than the Keep
6 information.

7 MR. MATHISON: I'll give you an example of what I
8 consider relevant, but prejudicial. At Page 48, they've
9 asked Maureen to put Otis' criminal record, what she
10 knows about it. And she does.

11 THE COURT: Uh-huh.

12 MR. MATHISON: But they already did that on direct.
13 So they've done it twice.

14 THE COURT: Um-hmm.

15 MR. MATHISON: And then Mr. Patterson came back and
16 further asked her to put his criminal record in. So they
17 want to put it in once through her on direct, once
18 through her in a published deposition, and once through
19 her. It makes it appear as though that's so important it
20 needs to be discussed three times. And that's a
21 distortion of the record here. There is no variance.

22 THE COURT: Well, it is what it is. I would tend to
23 agree with you that, if it was asked by a subsequent
24 attorney, if it was asked twice, we don't need to be
25 beating them over the head with it.

1 BAILIFF: The jury is seated, your Honor.

2 THE COURT: Thank you. Welcome back, ladies and
3 gentlemen. At this time, defense is going to read
4 portions of the plaintiff, Maureen Coffey's deposition.
5 Mr. Halio is playing himself. Ms. Jones is playing
6 Maureen Coffey, the plaintiff.

7 MR. HALIO: This is the deposition of Maureen
8 Coffey, taken September 2, 2011. Page 7.

9 Maureen T. Coffey, having been produced
10 and first duly sworn as a witness, testified
11 as follows:

12 Q Please state your name.

13 A Maureen T. Coffey Edri.

14 Q Can I call you Ms. Coffey so I don't have
15 to call you Ms. Coffey-Edri?

16 A Yes, sir. Yes. Most people do. I
17 depends on where I am. At school, I'm Ms.
18 Edri. At work, I'm Ms. Coffey. And so,
19 whatever.

20 MR. HALIO: Okay. Turning to Page 11, Line 17.

21 Q Does your mom still live on 4 Gadwall?

22 A Yes, sir.

23 MR. HALIO: All right. We are now on Page 14, Line
24 6.

25 Q How about Otis? Where is Otis Coffey

1 A Not that I'm aware of.

2 Q When these contracts came up, when they're

3 finished, do you have to renegotiate?

4 A Yes, sir.

5 Q Who do you negotiate with?

6 A Mr. DeLoach, generally.

7 Q When you did this contract, the February

8 2011 contract, did the Town advertise the

9 position, or did they come to you and say,

10 Ms. Coffey, your contract is up; would you

11 like to renew? Was it open to the public,

12 or was it just you and them?

13 A Just me and them I think. My contract was

14 coming to an end. And historically, I

15 mean, my contract ends, and they

16 renegotiate it, like, six months after

17 it's over. And then we do a retro-

18 actively. And generally, I meet with

19 counsel. This time, two, three months

20 prior to it expiring, I got a notice from

21 Mr. DeLoach's assistant, asked if I

22 intended to renegotiate it. And he --

23 then he asked me for my changes or my

24 suggestions, and I gave it to him. And

25 then we met. And this was the first time

1 they ever actually signed the renewal part
2 to my -- the contract that was in place
3 expiring.

4 Q So, during the course of -- I assume
5 you'd been there since the year 2000.

6 A Yes.

7 Q During that time, have they ever
8 advertised or asked anybody else to
9 compete for your job?

10 A For my job?

11 Q Right.

12 A No, I don't believe so.

13 Q Have you had any other jobs since you
14 first became a judge for the Town of
15 Hilton Head, either in the legal
16 profession or outside of it?

17 A No. Just Mom.

18 MR. HALIO: Page 34.

19 Q What types of cases do you hear in court?
20 Is it civil and criminal?

21 A No, sir. Just criminal misdemeanors and
22 municipal.

23 MR. HALIO: 35.

24 Q What law enforcement agencies bring cases
25 in your court?

1 MS. JONES: Thirty -- wait a minute.
2 MR. HALIO: Eight?
3 MS. JONES: No. 48.
4 MR. MATHISON: 48.
5 MS. JONES: 48? Okay.
6 Q When did you get your second divorce? I'm
7 sure it's in the papers, but can you tell
8 me?
9 A I'm not divorced.
10 Q You're not divorced.
11 A No.
12 Q Separated?
13 A We're separated, yes.
14 Q Have divorce papers for the final divorce
15 been filed?
16 A No.
17 Q Have you been married to anybody else
18 besides Mr. Mouser (phonetic spell) and
19 Mr. Edri?
20 A No.
21 Q What are the custody arrangements with
22 your three children?
23 A I have full custody of the three children.
24 Q The paper said that there was one time
25 there was supervised visitation by Mr.

1 Edri. What was the reason that he had
2 only supervised visitation at that point?
3 A Because he has a temper, and that was
4 really why. And he needed to get -- if
5 you read the complaint, it says that I
6 love my husband, but he needs to get some
7 help. And the supervised visitation
8 wouldn't be lifted until he saw a
9 psychiatrist, and I agreed to see one,
10 too.
11 Q Psychologist or psychiatrist?
12 A Psychiatrist.
13 Q And who was that?
14 A I saw Dr. Walters. I forget who he saw.
15 Rosenbaum -- bloom. That's her name.
16 Q Did he get the help he needed so that
17 visitation became --
18 A No. She signed off, and he didn't, and it
19 didn't help him. He con -- he just
20 continued to spiral down, and it wasn't a
21 help to him, actually. And he --
22 MR. HALIO: Turn to Page 50.
23 Q Was he ever violent with you physically?
24 A You know, yeah. A certain somewhat. Very
25 scary. He's a big guy.

1 Q He is?

2 A Yes. Like I say, he was a professional

3 athlete. He's very skilled.

4 Q What kind of professional athlete was he?

5 A He played volleyball for Israel, and

6 they're all extremely good marksmen.

7 They're all -- and he was whatever that is

8 -- I don't know exactly. It's not the

9 Mossad; it's the IBF. And he had guns,

10 but I never knew where they were, because

11 I don't agree with the guns. Mostly it's

12 just his temper.

13 Q Did you attempt to resolve your difference

14 -- differences with your husband?

15 A Yes. Prior to separating we saw a

16 counselor for a year.

17 Q Who was the counselor?

18 A Dr. Warnack.

19 Q Is Dr. Warnack a marriage counselor?

20 A Yes, sir.

21 Q Was that helpful?

22 A Not terribly.

23 Q Did you all have any counseling with

24 anybody else besides Dr. Warnack?

25 A After we separated in around 2007, I don't

1 remember exactly when, I could look,
2 because I saw the stuff from Dr. Geiger,
3 but I got a recommendation from a friend
4 who said she was a very good counselor,
5 and I thought because she was Jewish as
6 well, that would give her some credibility
7 with my husband. And so, we tried to
8 reconcile.

9 Q Do you remember when the counseling or
10 treatment, I don't know what you'd call
11 it, but when you started to see, is it Dr.
12 Geiger?

13 A Yes. I think she is a psychologist.

14 Q Have you had any conflicts with the people
15 at work?

16 A Not that I'm aware of.

17 Q The only reason I ask you is that there's
18 a note in Dr. Geiger's file that says,
19 'She reports that, in addition to stress
20 re lawsuit and changing attorneys, there
21 were increasing conflicts at work, which
22 caused stress. That was in March, 2010.

23 A That was probably having to do with Mr.
24 Fultz. You know, in March when they -- is
25 that where they came up with the -- yes

1 -- no. 2010. Yes, it was 2011, when they
2 came up with the bond hearing thing.
3 That's just -- I can't remember what the
4 specific instances there are, but the
5 prosecutor will stick his nose into places
6 he's not supposed to. And Mr. Fultz will
7 -- they're much more on my case these days
8 about little things. Like some guy
9 complains, some defendant, who is a
10 certified -- who is certifiable,
11 complained to Brian that I was a racist,
12 which is pretty hysterical, considering
13 I'm married to an Israeli Jew, and I have
14 African-American brothers, but whatever.

15 Q Who did that?

16 A This defendant who is a known crazy
17 person. And so Mr. Hulbert comes
18 storming down to my office, And I'm like,
19 'I don't have to answer to you. It's
20 ridiculous. If the guy files a grievance,
21 I'll deal with it.'
22 Little things like that. They come up to
23 me and that wanted me to recuse myself
24 because someone said I had been at a
25 Christmas party with Israelis. The case

1 involved some Israelis, and I had
2 disclosed on the front end that I'm
3 married to an Israeli. Well, first of
4 all, it would be a Hanukkah party, not a
5 Christmas party, and no, I wasn't there.
6 And second of all, no, I don't allow these
7 single guys that run strip joints to
8 babysit my children. That was the other
9 thing, that they babysat my children.
10 But even having to address these little
11 things was ridiculous. It was just once
12 this door was opened up, I had to deal
13 with all these nonsensical things that
14 just made it much more stressful. And
15 there was an underlying, you know, I think
16 Fultz' irritation is what we've got to
17 pay this other judge.

18 MR. HALIO: 76.

19 Q Ms. Coffey, this is the first time, you've
20 met either Mr. Kelley or Mr. Breed. Is
21 that correct?

22 A Yes, sir.

23 Q Have you spoken with -- have you ever
24 spoken with either one of them before
25 today?

1 A I don't believe so.

2 MR. HALIO: 78.

3 Q Now, Otis Coffey is your adopted brother.

4 Is that the proper way to --

5 A I don't distinguish, but yeah, he's my

6 brother.

7 Q And at least in one point in time, he was

8 a resident of Hilton Head Island, and of

9 Sea Pines, correct?

10 A Yes.

11 Q When he was living in Sea Pines, did he

12 live at 4 Gadwall?

13 A Yes.

14 Q How old is Otis now?

15 A He was born in '68. 43.

16 Q He was in Chicago when he was adopted. Is

17 that what you said?

18 A That's correct. He's a natural half--

19 brother of my other sibling.

20 Q Has he ever been convicted of a crime?

21 A To my knowledge, yes.

22 Q What crime or crimes?

23 A That I believe that he's been convicted

24 of?

25 Q Yes.

1 A I think in the late '80s, I'm not exactly
2 sure, because I was not there, he had
3 three simple possession convictions.
4 Q The marijuana.
5 A Yes.
6 Q Anything else?
7 A He has nothing else that I'm aware of in
8 South Carolina. He has several simple
9 possession convictions in Georgia.
10 Q Marijuana again?
11 A Marijuana, all misdemeanors, never a
12 felony, never a burglary.
13 Q How about a trespassing?
14 A Well, he plead no contest, yes.
15 Q Has he ever been arrested for crimes other
16 than simple possession or trespassing?
17 A Yes, I believe so.
18 Q What crimes do you believe he's been
19 arrested for?
20 A I believe one of the simple possessions of
21 something between '89 and '91, one of
22 those three, I think was originally
23 charged as possession with intent to
24 distribute, and it was plead down to, I
25 guess, to simple possession. He was

1 charged with breaking into a motor vehicle
2 while at the White Parrot, on or about
3 that same time, except he had a time card
4 that said he was on Daufuskie Island,
5 and Joey Uratto (phonetic spelling)
6 admitted to the crime he was charged with,
7 I think. I don't know if he was just
8 charged or just a suspect in some
9 burglaries in the late '80s.
10 Again, I wasn't there, but there
11 was another kid, and I'd have to check his
12 name, that was charged and ultimately
13 convicted of that crime. To my knowledge,
14 I think that's it.

15 Q Do you know if he was ever arrested in
16 Georgia for anything other than the simple
17 possession charges?

18 A No, I don't.

19 Q Has he ever gone to any -- undergone any
20 drug treatment?

21 A Yes.

22 Q How many times?

23 A Well, I think in the early '90s, when he
24 wasn't living in the house, I think he was
25 maybe addicted to crack cocaine, and my

1 dad saw him one day and asked him to come
2 home, and he did. And I think he went
3 through the withdrawal and everything, and
4 stopped the crack under my father's care
5 at my parents' house in the early '90s.
6 And the other time I know about was 2007,
7 when he hit rock bottom, and he asked for
8 my help, and I told him that he had to go
9 to any length in Sumter if he wanted me to
10 help him, and he did.

11 Q All right.

12 MR. HALIO: 83.

13 Q Well, I was going to ask you about the
14 trespassing. That was in late 2004, I
15 think?

16 A Yes.

17 Q Tell me about that incident, what you know
18 about it.

19 A To the best of my knowledge, the 2004
20 trespass, I was on my way to Charleston to
21 a CLE, when I received a phone call. So
22 I'm assuming the CLE probably started at
23 8:30. It was probably before that. It
24 was my father on the phone, and it was
25 late 2004, I believe. My father was

1 actually very ill, and he passed in early
2 2005. And he called me because he had
3 driven Otis somewhere, Jessamine Lane, I
4 think it was, in Sea Pines, and he said
5 they were arresting Otis for trespassing.
6 He didn't understand. And I didn't really
7 understand what he was saying to me,
8 because he was very ill. So I said, 'All
9 right, Dad. Hand the phone to an
10 officer.'

11 At the time it was -- I don't know if he
12 was lance corporal or corporal, but it was
13 Eric Calendine, who I do know. So Eric
14 got on the phone and told me, 'Yes,' he
15 said, 'they are arresting him for
16 trespass. They want to impound his car;
17 they want to get his fingerprints; they
18 want to check the car for burglary tools.'
19 And he told me what he told me.

20 Mind you, he was not the most important
21 person on the scene. He was like a lance
22 corporal. To the best of my knowledge,
23 according to Calendine, Judge Woodward was
24 here; Mike Riley was there -- all these
25 high-ranking sergeants. And I didn't ask

1 to speak to anyone important. I said,
2 'Dad, hand the phone to somebody, so I
3 know what's going on.'

4 Eric told me what was going on. I handed
5 the phone back to my father, and I said,
6 'Dad, just let him get arrested; we'll
7 deal with it tomorrow.' Dad is like, 'He
8 has a pass; he's working for Calibogue
9 Construction, and I have a pass for him.'
10 I'm like, 'Don't worry about it. We'll
11 deal with it tomorrow.'

12 And that's what I know about it.

13 Q So your conversation on the phone was with
14 Eric Calendine, and it was basically,
15 what's going on?

16 A Yes. And I didn't ask to speak to anybody
17 else or to stop it or get involved in any
18 way. I said, 'Hand the phone back to my
19 dad. And I told my dad, 'Let him get
20 arrested; we'll deal with it tomorrow.'

21 Q Did you receive any further information
22 about what had gone on as far as the
23 underlying facts, or the arrest, or
24 anything?

25 A No. I just know they didn't find any

1 tools or any other elements of a crime,
2 and he was never charged.

3 Q Do you know where he was when he was
4 arrested?

5 A Yes. He was right there.

6 Q Where?

7 A On Jessamine Lane, which is a street in
8 Sea Pines.

9 Q Right.

10 A Do I know what he was doing there?

11 Q Yes.

12 A Yes.

13 Q What was he doing there?

14 A I mean, all I know of that he was doing
15 there is what he told me.

16 Q What did he tell you?

17 A He told me he parked there, because, I
18 guess Jessamine is a straight street like
19 this, and his boss lived over here. His
20 boss called him up and asked him to bring
21 him some pot. So he parked his car here,
22 went over there, walked through here,
23 because he couldn't park his car here,
24 because his boss has a grandparent who
25 wouldn't allow him to park his car there.

1 So he parked his car there. He brought
2 his boss some pot. He went to go back to
3 his car. He saw the police there, so he
4 walked to my parents' house and got my
5 dad.

6 Q Did you speak to anybody else about that
7 incident?

8 A No.

9 Q So just the guy on the phone, and your
10 dad, who initially called you.

11 A Right.

12 Q Were you at some point told that Otis was
13 considered a suspect in a series of crimes
14 in Sea Pines in 2004?

15 A It was either 2004 or 2005.

16 Q Who told you that he was a suspect?

17 A An investigator who I had never met before
18 from the north End had made an appointment
19 to see me. I had no idea what it was
20 about, because investigators routinely
21 make appointments to see me. He comes to
22 my office -- his name is Brian Baird. He
23 comes in to my office, and lays out this
24 whole scenario where he shows me that Otis
25 was living outside of Sea Pines at that

1 time. And I think the burglaries were on
2 the north part of Sea Pines. And he tells
3 me they want to rule him out as a suspect.
4 If they had any evidence, of course, they
5 would have arrested him. But they came to
6 me. I didn't go to them. And he asked
7 me, 'Would your brother take a lie
8 detector test?' I said, 'I have no idea,
9 but I'll ask him.' I said, 'Otis, they
10 think you're a suspect in these things.'
11 He says he wasn't and that he didn't do
12 that sort of thing. I said, 'All right.
13 Well, then, clear your name and take the
14 lie detector test.' And he said, 'Okay, I
15 will.'
16 Then it got close to the time. And now I
17 understand what he was so skittish about
18 trusting law enforcement, but at the time
19 I really didn't understand. He was very
20 skittish about trusting them. And so,
21 when it came time, the day of, he called
22 me up and said that he couldn't do it
23 because he didn't think they would only
24 ask him those questions; that he had done
25 other stuff and he didn't want to go --

1 that he didn't want to go into, which, I
2 assume, had to do with pot, but I don't
3 know.

4 And so. I said, 'All right.' I said,
5 'Well, listen; it doesn't look good if
6 you're in my jurisdiction and you're a
7 suspect in a crime. Go to work at the
8 restaurant in Tybee.

9 Q You're on the bottom page.

10 MS. JONES: Oh.

11 A He did not tell me what evidence he may or
12 may not have had, and I don't know. I'm
13 just assuming he didn't have any, or he
14 would have arrested him instead of asking
15 him if he would come in and take a lie
16 detector test. And I did what they asked
17 me. I asked him, I asked my brother.

18 Q So you called Baird back.

19 A I called Baird back and said, 'He doesn't
20 want to take it.'

21 Q What did he say?

22 A I don't recall what he said. But I told
23 him -- because back then, I didn't
24 understand my brother's misgivings for
25 trusting law enforcement, and now I

1 understand why, but at the time I did not.
2 And I told him, 'You need to clear your
3 name. If you're not going to clear your
4 name, then just go work at the restaurant
5 -- at the Tybee restaurant for awhile.
6 And if they had any evidence, I would have
7 assisted them, and they know that, in
8 bringing him back.

9 Q Were there crimes that had been committed
10 on the north end of Sea Pines at that
11 time?

12 A Apparently, there were. I mean, they
13 weren't public, so I only knew about it
14 because Mr. Baird brought me some map.
15 And he had highlights at every house, I
16 guess, that had been broken into.

17 Q Did you speak to somebody from the
18 sheriff's department in 2008?

19 MR. HALIO: Page 94.

20 MS. JONES: I think there's a counter-designation.
21 I don't want to leave it out.

22 MR. HALIO: On 92?

23 MS. JONES: On 92, yeah.

24 MR. HALIO: Okay. I've got it. Thank you.

25 Q Was it not in the newspaper?

1 A If it was, it didn't register with me. I
2 had no idea. I mean, I was blind sided,
3 actually. And actually, Mr. Baird told
4 me, in our conversation, that, if I was
5 upset that he was doing this, that the
6 sheriff was concerned, and the sheriff was
7 on the island, and would come over there
8 in a minute to talk to me. And I told him
9 I wasn't upset; you're just doing your
10 job, and I understand.

11 MR. MATHISON. By MR. MATHISON: Just for the
12 record, who does Mr. Baird work for?

13 A The sheriff's department, but on the north
14 side. So he's not an investigator that I
15 routinely work with or have ever worked
16 with since.

17 MR. HALIO: Now can I go to 94.

18 MS. JONES: Yeah.

19 Q Did you speak to somebody from the
20 sheriff's department in 2008?

21 MS. JONES: What page are you on?

22 MR. HALIO: 94.

23 MS. JONES: Okay.

24 A I did.

25 Q Who did you speak with?

1 A In 2008, on or about May 13th, the Packet
2 published an article that said there was
3 a rash of break-ins in the South Beach
4 area. And I knew at the time my brother
5 was living in the South Beach area, and I
6 knew that since they suspected him of the
7 2004 -- although, to my knowledge, the
8 added element of voyeurism wasn't an
9 element of the 2004; it may have been; it
10 wasn't disclosed to me. So this was an
11 added little twist. But I knew he would
12 be a suspect since he was in the proximity
13 of those crimes at the time.

14 Q When did he come back from Georgia?

15 A I think before Christmas, 2007. I mean,
16 he was probably -- he was back for
17 probably about a month, like, before my
18 mom told me. I didn't know he was back,
19 actually.

20 Q So you saw this article.

21 A I saw the article, and I can't remember
22 which one I talked to first, if it was
23 Meredith Florencio, who's an investigator
24 with the Beaufort County Sheriff's
25 Department, or Dwuan Holmes, who was also

1 an investigator with the Sheriff's
2 Department, who were people I saw that
3 day, anyway, getting warrants, and I was
4 talking with Meredith about it, and I
5 said, -- because I honestly don't believe
6 it was my brother -- I said, 'My mom has
7 an alarm system.'

8 Well, first, I called my mother, and I
9 said, 'Mom do you know if he's going in
10 and out of the house at night?

11 Q All right. When he came back in late
12 2007, did he move back in with your mom,
13 or did he move somewhere else?

14 A He moved in with my mother.

15 Q So, to the best of your knowledge, between
16 2004, when there was this conversation
17 about the time he decided not to take the
18 lie detector test in late 2007, Otis was
19 living in Georgia.

20 A Yes.

21 Q How about, I think it's Captain McSwain,
22 did you ever talk to him?

23 A No.

24 Q Why is that?

25 A I'm not fond of the guy, but I don't have

1 any reason to talk to McSwain. I mean, he
2 talks to DeLoach, and I think Hulbert.

3 I mean, I talk with the investigators --
4 Mike Riley; I would talk to Cunningham. I
5 don't even know what McSwain -- he's a
6 captain, but I don't know where he is in
7 the whole food chain of officers. He's
8 not somebody that would appear before me.

9 Q Now, do you have any personal knowledge
10 about an incident that occurred on the
11 night of May 20, 2008, involving John
12 Jolin and an individual on a bicycle?

13 A Do I have any personal knowledge?

14 Q Right. I mean, you weren't there, were
15 you?

16 A I wasn't there.

17 Q Tell me about every incident that you're
18 aware of involving your family and Sea
19 Pines Security that occurred after May
20 20th.

21 A I can tell you what I know.

22 Q Tell me what you know.

23 A On the evening my mother said she was
24 woken up, she said there were a whole
25 bunch of police cars with sirens, and it

1 was Sea Pines Security and Beaufort
2 County. I don't know who asked her the
3 questions. I know Sargent Blackmon was
4 there from Beaufort County. I think they
5 asked her if Otis was home, and she had
6 just woken up, and I can't remember if she
7 -- I mean, I think she said she didn't
8 think so either, because she did see his
9 dog, or she didn't see his dog. I forget
10 which it was. But whatever it is, based
11 on that, she said, 'I don't think he's
12 home.'

13 And then someone said, 'Have Otis come to
14 Mr. Breed's office tomorrow morning.'

15 And I know she was really miffed that they
16 woke her up in this fashion to ask a
17 question like that. So that's all I know
18 about that night.

19 The next day, not surprising, Otis did not
20 go see Mr. Breed. And the next day, I
21 think it was Officer Campbell who was
22 having her car towed for parking on the
23 street. And I think she asked him why he
24 didn't call her, and he said he didn't
25 know who owned the car. I think the car

1 may have been registered in my deceased
2 father's name still. And I don't remember
3 what the ticket was for, but there was a
4 ticket written. I know she paid the tow
5 guy a \$190.00 not to tow her car. And I
6 wasn't there, but according to her, she
7 saw that the ticket was written for my
8 court, and she said, 'Don't you know who
9 my daughter is,' or something, because she
10 said they wrote it for my court, which I
11 immediately sent out to magistrate's
12 court.

13 Then she was having a dinner party on
14 Thursday, and it was my brother,
15 Christopher. I don't know if he called or
16 he went by to pick up a pass, but anyway,
17 he was told that she couldn't get guest
18 passes until she went in to see Mr. Breed,
19 and her guest number was no longer valid.
20 And she didn't have a number for a year.
21 She got it about a year ago. I don't -- I
22 don't know when she got it, but it was --
23 and she has a different number. And then,
24 on Friday, she called me. She was very
25 upset. She said the security officers

1 were following her and Otis outside and
2 in and out of Sea Pines. But I had been
3 busy working that whole week, and I didn't
4 get down to -- it's South Beach. It's the
5 end of Sea Pines, and I have three kids,
6 so I don't get there much. But I said,
7 'All right, I'll go down there.'

8 So I go down to my mom's house to wait
9 for my mom, but I don't have a key. So
10 I'm waiting out -- I'm out -- I'm outside
11 waiting. And a security car comes by, and
12 I'm assuming I'm going to know who the
13 officer is, because I generally know these
14 road guys, because they appear before me.
15 It's somebody I don't know, so I introduce
16 myself. And I tell them that they've got
17 to stop harassing my mother, and that I
18 was having Otis move out, and tell Breed
19 I'll get with him next week -- which
20 meant, since he apparently wanted Otis and
21 my mom to meet with him, I was going to go
22 meet with him. And that's the end of it
23 until I got served with this.

24 Q When you saw the new officer, is that all
25 you recall of the conversation?

1 A That's all I recall. It was very brief.
2 Q Did you mention to him that you were the
3 judge?
4 A I did.
5 Q How did that come up?
6 A I said, 'Oh, you are new; you don't know
7 me; I'm the judge,' or something. I don't
8 know exactly what I said, but something
9 like that. 'You guys have got to stop
10 harassing my mother. I'm moving my
11 brother out.' Which he didn't know
12 anything about the situation, I guess, or
13 so he said. You'll have to ask him. It's
14 Mr. Wright. 'And tell Breed I'll get with
15 him next week, or I'll meet with him next
16 week. I don't have time now,' or
17 something.
18 Q He did move out?
19 A Yes. He went to the Red Roof Inn, I
20 think, for two weeks. Then he got an
21 apartment on Janesta.
22 MR. HALIO: Okay. The next page I've got marked is
23 142.
24 Q In 2004, Otis went to Georgia, right?
25 A I think he went to Georgia in late 2004,

1 early 2005.

2 Q I think you testified earlier that you

3 told him he needed to go to Georgia.

4 A I told him that -- well, I was trying to

5 coerce him to take the lie detector test

6 to clear his name.

7 Q Right.

8 A So I told him, 'If you don't want to take

9 the test, then I really don't think it's a

10 good idea if you stay in my jurisdiction;

11 it doesn't look good.'

12 And in any case, my dad was very ill, and

13 we needed people in the restaurant in

14 Georgia. And my dad had a -- the

15 apartment Otis was living in was leased to

16 my father. I think the lease was coming

17 up anyway, so I just said, 'Go live' --

18 and our brother, Christopher, had an

19 apartment in Georgia. So I said -- so I

20 just said --

21 Q Did you provide any assistance to him in

22 moving from here to Georgia?

23 A No.

24 Q Financial or otherwise?

25 A No.

1 Q And the second time in 2008, when he moved
2 from Sea Pines, out of Sea Pines, did you
3 provide him with any assistance in regard
4 to that move?

5 A No.

6 Q Now, you tell me -- describe for me in
7 this case. We've talked about the
8 financial and economic damages that you're
9 claiming. You've also made a claim for
10 damages to your reputation. So explain
11 that to me the best you can.

12 A Well, the first part to my reputation came
13 to me when I was called -- when I called
14 up Mr. Hulbert, who is the staff attorney,
15 and would -- normally, he handles it when
16 someone is appealing me or something. He
17 handles all these cases where he tells me
18 that he's been told he can't help me in
19 any way, shape, or form; that it's
20 personal, not professional. And it was
21 just, I mean, it's like they took the
22 position right away that somehow I had
23 done something wrong. I went from, you
24 know, golden girl to barely tolerable in
25 one fell sweep.

1 Q Swoop?

2 A Swoop, yeah. See. Thank you. And then,

3 initially, just the treatment, I mean,

4 prior to this, I had a very comfortable --

5 what I would consider comfortable

6 relationship with Mr. DeLoach. And

7 immediately after this, he was

8 particularly frosty.

9 And there were little things that I was

10 scrutinized more. And it's hard to

11 explain, but I was scrutinized more. Mr.

12 Hulbert was coming more into the

13 courtroom, like, watching me. And Fultz

14 was like, micro-managing, because,

15 obviously, they were under the impression

16 that I had done something wrong.

17 According to my knowledge, Fultz only knew

18 that we had to hire someone to -- I don't

19 know if he knew. I really have never

20 asked him. But there was that.

21 And then, one day, I think in October or

22 around Thanksgiving, my mother -- my

23 mother's house is a low-county house, and

24 I was going up the stairs. And her part-

25 time neighbor, whose sister is a full-time

1 neighbor, said something to me about
2 something that I -- how was I doing or
3 something, you know, and something about
4 me doing something wrong. And I asked her
5 what she was talking about, and she said
6 something about -- I think her sister was
7 upset that my mom exposed her to a felon
8 or something. And I just said, 'You don't
9 know what you're talking about.' Or I
10 said -- I think I said, 'You don't
11 understand -- you'll understand when this
12 is all over.'

13 So prior to that, I think she thought I
14 was a pretty good person. I would have to
15 say that she doesn't. I don't know how
16 much she knows or what she heard or what
17 she saw, but she certainly heard
18 something.

19 Q Who is that person? Do you know her name?

20 A Yes. Darby Cusick.

21 Q Cusick.

22 MR. HALIO: I think we are on Page 152, Line 20.

23 Q Let me ask you this. If I came in front
24 of you in court, and I had a case and I
25 complained about you to your boss, would

1 Q Are you aware of any other similar suits
2 where a sitting judge has sued somebody in
3 relation to a complaint that they filed
4 about their conduct, and other actions
5 related to the complaint?

6 A I wasn't filing suit against a complainant
7 -- a complaint that was filed against me
8 to the Commission. I was filing a lawsuit
9 against someone who made false and
10 defamatory statements that impugned my
11 character and ability to do my job, in the
12 form of a letter that was distributed to a
13 lot of people. And I think if that had
14 ever happened to a different judge, they
15 probably would have filed suit, too.

16 MR. HALIO: 243.

17 Q So now we've established that a limited
18 number of people knew about your judicial
19 complaint, but based upon these articles,
20 now everybody in the public knows that a
21 judicial complaint had been filed against
22 you; don't they?

23 A That's correct.

24 Q Did you reference in your lawsuit the
25 judicial complaint, Exhibit 6?

1 send you back to your jury room.

2 Again, do not discuss this case. It wouldn't be
3 appropriate to do so at this time. I will be right back
4 with you in a matter of ten minutes, at the very most.
5 All right. Thank you.

6 JURORS LEAVE COURTROOM 1:25 P.M.

7 RENEWING MOTIONS:

8 BAILIFF: The jury is clear. The door is closed,
9 your Honor.

10 THE COURT: Mr. Mathison, do you have any rebuttal
11 witnesses?

12 MR. MATHISON: I have one, your Honor.

13 THE COURT: Okay.

14 MR. MATHISON: Ms. Hamilton will testify again as a
15 rebuttal witness.

16 THE COURT: Okay. Okay. Well then, what we need to
17 do is let's renew our motions. Let's do this somewhat
18 quickly, again. And then we'll go ahead and bring the
19 jury back to hear your rebuttal witness. Then, I don't
20 see any way we can go over the charge, argue motions, you
21 all argue, me charge, and get this to them by 5:30 in any
22 way, shape, or form today. I can just tell you, as I see
23 it, allowing both of you an hour to argue, as much as I
24 know everyone would like to, I think that what we need to
25 do is, we'll go ahead and get all the testimony and get

1 the rebuttal testimony. And from there, obviously, I
2 could hear motions. We can go ahead and talk about the
3 charge. We can talk about the verdict form, unless
4 anyone has a better idea. And I actually even thought of
5 letting you all argue today, and I could charge in the
6 morning.

7 Again, it's problematic for me that, again, I have
8 my son's graduation tomorrow. So by the time we argue
9 and charge, my thought is, is that if we actually argued
10 and charged tomorrow, that I would bring them in at 9:00.
11 That would put us to probably 11:45 or 12:00 when it got
12 to them. I could run till -- I mean, could literally
13 give them a good, hopefully, four-and-a-half hours or so
14 to deliberate. And then we'd have to break if they
15 hadn't come back by then, and come back on Thursday.
16 What about arguing today?

17 MR. MATHISON: Your Honor, may it please the Court.
18 I would rather argue tomorrow.

19 THE COURT: I'm sure you would rather, but again, to
20 get things done, we may want to go ahead and do that.
21 Okay. Well, let's do this. I think you need to renew
22 your motions at this point. And if you don't mind, we
23 can do pretty summarily.

24 MS. JOLLEY: Your honor, we filed a written motion,
25 for direct verdict. We're happy to, and we've argued

1 previously, we're happy to rely on that argument and
2 submit motion.

3 THE COURT: Okay. As well.

4 MS. JOLLEY: We'll re-submit it at this point.

5 THE COURT: Okay. And that's fine, and I appreciate
6 that. I am back to again, the ASPPPPO defendant on
7 whether or not they committed civil conspiracy.

8 Mr. Mathison, tell me, where did Cary Kelley act
9 under his ASPPPPO authority in any of the actions he took
10 that was put in evidence?

11 MR. MATHISON: I don't think that there's any
12 evidence that specifically identifies his acting or
13 ASPPPPO, as opposed to his acting for CSA.

14 THE COURT: Okay. And again, his authority under
15 ASPPPPO is to enforce covenants, correct? Or ASPPPPO's
16 purpose.

17 MR. MATHISON: ASPPPPO's purpose is to enforce
18 covenants. His authority is general. He's got the
19 authority as a general agent, which is what a registered
20 agent is by definition, to take all lawful ways and means
21 on their behalf to accomplish whatever their objectives
22 are; and to the extent that he's acting for them, to take
23 all unlawful ways and means, which is what we're alleging
24 that he did.

25 THE COURT: Okay. And looking back at the bridge

1 reports, which were my concerns, those are security
2 reports that I understand came from George Breed to Mr.
3 Kelley. They weren't something that he generated. And
4 I can tell you, that, until I saw that, I didn't quite
5 realize that. So I don't know if the jury's confused, as
6 well, but hopefully not.

7 I can tell you, Mr. Mathison, I just don't see in
8 any way Mr. Kelley acted under his ASPPPPO authority. I'm
9 just having a hard time with the civil conspiracy. Was
10 hoping that -- I was hoping that when Mr. Kelley got on
11 here on the stand, and you had an opportunity to cross-
12 examine him, you were going to ask him something about
13 his ASPPPPO hat and what he did, and it just never came.

14 MR. MATHISON: That's true, your Honor.

15 THE COURT: Okay. Well, respectfully, I am going to
16 grant the motion for a directed verdict as to the civil
17 conspiracy claim against ASPPPPO. And I'm assuming, was
18 there still surviving a civil conspiracy claim against
19 CSA, or was that gone, too, already? I mean, obviously,
20 you have to be able to conspire with someone, so.

21 MS. JOLLEY: I believe it was still there, your
22 Honor.

23 THE COURT: Okay.

24 MS. JOLLEY: But --

25 THE COURT: Of course, it doesn't survive if there

1 is no one to conspire with.

2 MS. JOLLEY: Yes, your Honor.

3 THE COURT: Well, actually, that's not true.

4 MR. MATHISON: That's not true, your Honor.

5 THE COURT: That's not true. You can actually sue
6 someone for civil conspiracy, even if you don't name all
7 of the conspirators. So again, you would have to show,
8 Mr. Mathison, who he conspired with. And again, under
9 the same lack of evidence in the case, you haven't showed
10 who he conspired with.

11 MR. MATHISON: I think that you could make a pretty
12 good case that he conspired with the Beaufort County
13 Sheriff's Office. We don't want to make that case, and
14 we're not going to. And under *Angus*, we can't make a
15 case that there was a conspiracy between the municipality
16 and CSA, because, quite frankly, we concede that *Angus*
17 would catch that if we did.

18 THE COURT: Right. Okay. All right. Well,
19 respectfully, then, the civil conspiracy is out as to
20 either or all persons. And what we have left is the
21 defamation cause of action, so.

22 MR. MATHISON: That's --

23 THE COURT: That's what we got.

24 MR. MATHISON: That's where I think we need to be.

25 THE COURT: I think that's what you all have

1 basically put out in front of this jury, quite frankly,
2 so. Okay. Yes?

3 MS. JOLLEY: Your Honor, one question. There's both
4 the libel claim based on the letter, and the slander
5 claim based on the allegation of adultery. And I don't
6 believe there's any evidence in the record linking the
7 allegations regarding adultery between Mr. Jolin and
8 Judge Coffey, to CSA or to George Breed.

9 THE COURT: Mr. Mathison?

10 MR. MATHISON: There very definitely is evidence in
11 the record. There's evidence that Mr. Woods is the
12 person -- Lieutenant Woods is the person to whom this
13 defamation was traced. It's alleged that employees of
14 CSA, not just Breed, engaged in the defamation. We
15 believe that they did it purposefully on his watch.

16 If you remember the testimony of Mr. Waxel, he said
17 he heard it three times at work, right? And --

18 THE COURT: Right.

19 MR. MATHISON: He then communicated --

20 THE COURT: I would agree with you that I think the
21 CSA employees have testified that they perpetuated it.
22 My problem is, is there any slander back to George Breed
23 personally? Because I don't think you made that tie.

24 MR. MATHISON: I don't think --

25 THE COURT: I think there's definitely -- I think

1 there's definitely slander among the CSA employees, like
2 you said, under Woods' testimony.

3 MR. MATHISON: There's direct evidence, which is
4 that Woods more or less admitted it to Mr. Jolin. But
5 there's also indirect evidence that he said it's three
6 times to Waxel, when Waxel was working for Sea Pines
7 Security. And finally, after the third time, Mr. Waxel
8 told it to Mr. Jolin. All right. And then, in addition,
9 other people told Mr. Jolin's wife.

10 THE COURT: Again, how does that get back to Mr.
11 Breed, though, is my question? I agree with you that I
12 think it goes toward slander as to CSA. But remember,
13 we've got two defendants here. We've got CSA and we've
14 got George Breed individually.

15 MR. MATHISON: I think that, with respect to whether
16 he's libel for the slander, it would have to be an
17 inference that was taken from the fact that it went on
18 repeatedly during the period that he was in charge. I
19 realize that each one of the CSA witnesses who've taken
20 the stand have been very careful to say that Mr. Breed
21 didn't know anything about anything. It makes it very
22 difficult for me to comprehend how he holds his job. But
23 they have been very, very careful to say that.

24 If you remember, for example, the testimony of
25 Lieutenant Woods -- excuse me -- I think Lieutenant

1 McNeill, the testimony was to the extent that, shortly
2 after Mr. Jolin thought he'd identify Coffey, everybody
3 at Sea Pines knew that he hadn't. When asked to clarify
4 that specifically, did everybody include Mr. Breed, the
5 testimony was, he couldn't say what Breed knew.

6 THE COURT: Um-hmm.

7 MR. MATHISON: And that's, in fact, the pattern
8 throughout this case, is that you go down one dead end
9 after another looking for Mr. Breed to know anything.
10 There's a reason Mr. Breed didn't testify in this case.
11 I think there's enough circumstantial evidence in the
12 record to establish that this form of malignant
13 denigration of a former employee and sitting judge would
14 not have taken place if Mr. Breed hadn't wanted it to
15 happen. So, I --

16 THE COURT: Wait a minute, though. Don't we have to
17 establish, once again, the slander by actual malice?
18 There has to be actual malice. And if we can't even have
19 him saying it, how in the world do you prove actual
20 malice as to a slander? Am I correct in --

21 MS. JOLLEY: Yes, your Honor.

22 MR. MATHISON: If you're talking about
23 constitutional actual malice? I believe --

24 THE COURT: As to Breed. Yeah.

25 MR. MATHISON: Well, I'm not -- all I'm arguing is

1 that I have a circumstantial case against Mr. Breed, in
2 that multiple officers in his employ were all saying this
3 at the same time, in such a way that it got back to
4 people throughout the community.

5 THE COURT: Um-hmm.

6 MR. MATHISON: If that's not sufficient to impute
7 knowledge to Breed, it's -- there's no question but what
8 Mr. Woods did not say that Breed had told him that.

9 THE COURT: Right.

10 MR. MATHISON: I mean, that's the only person that
11 testified on that specific issue, and he said he didn't
12 say it.

13 THE COURT: Okay.

14 MR. MATHISON: And the only reason I asked him the
15 question is you told me I had to put the words in Breed's
16 mouth.

17 THE COURT: Um-hmm.

18 MR. MATHISON: And I tried, and it didn't work out.

19 THE COURT: Again, I still don't know how you reach
20 the hurdle proving the actual malice and the slander if
21 we don't have it tied to him. I just don't know how a
22 jury could arrive, by clear and convincing evidence, that
23 Breed slandered her. I think, based on the testimony of
24 McNeill and Woods, I think that -- I guess there's a
25 possibility that it could come to the idea that it was

1 done with actual malice. I don't know. I think it's a
2 jury issue. That is at least a jury issue I think that's
3 created. I'm not so sure as to Mr. Breed, though. Yes?

4 MS. JOLLEY: Your Honor, one thing I'd like to say
5 about the --

6 THE COURT: Yes.

7 MS. JOLLEY: -- CSA claim. There's been no evidence
8 that McNeill or Woods acted with any apparent authority
9 from CSA, such that the jury could arrive and say there's
10 clear and convincing evidence that CSA made those
11 comments through these lower officers about something
12 personal about Judge Coffey that no one in a position of
13 control or authority with CSA even knew were being made
14 until this action was filed. That's the testimony in the
15 record.

16 MR. MATHISON: Being able to say that with round
17 eyes is something only Ms. Jolley could do. I think that
18 everyone knew that it was going on, and that's why it was
19 so prevalent. The fact that these are low officers,
20 you've got a gentleman with 29 years of experience and
21 another with 19 years of experience; they have ranks of
22 lieutenant. I think that they are certainly high enough
23 in the chain that, if they're slandering someone, the
24 Community Service Associates ought to be responsible for
25 it.

1 THE COURT: Okay.

2 MR. MATHISON: I think they've got enough -- and
3 there's no question Mr. Waxel heard this slander, not in
4 a night club somewhere. He heard it at work, from people
5 with whom he was working.

6 THE COURT: Okay. Okay. Again, I don't think
7 there's enough to make that claim against Mr. Breed
8 individually, but I do think you can bring it against
9 CSA.

10 MR. MATHISON: One thing I want to show. I want to
11 use the implications of sexual impropriety as additional
12 evidence of constitutional actual malice.

13 THE COURT: Against CSA? Yeah.

14 MR. MATHISON: Yes.

15 THE COURT: I understand that.

16 MR. MATHISON: I mean, I think --

17 THE COURT: I mean, your argument obviously would be
18 is, you know, you couldn't get her fired, so then you
19 attacked her chastity, but.

20 MR. MATHISON: I think that, once they found out
21 Officer Jolin was going to cooperate, it was as much an
22 attack on him as it was on her. It's a standard card
23 that's played, typically, if you want to destroy
24 someone's character in the public eye.

25 THE COURT: Okay. All right. Well, let's do this,

1 then. Respectfully, like I said, I think I am granting
2 the motion as to Mr. Breed, again individually, but not
3 CSA. This makes for a very, very difficult jury charge,
4 you all.

5 MR. HALIO: And the verdict form just got
6 complicated, too.

7 THE COURT: I know. Okay.

8 MR. MATHISON: I believe there's sufficient evidence
9 that it could go to the jury against Mr. Breed.

10 THE COURT: Mr. Breed.

11 MR. MATHISON: But I concede it's only
12 circumstantial. There is, you know --

13 THE COURT: It's just I'm just having a hard time
14 with it has to be proven by clear and convincing
15 evidence, the actual malice portion of it. And so,
16 that's where I'm not so sure the jury can do that, based
17 on the evidence. I don't think they can, based on the
18 evidence they've heard. How do you show that someone
19 acted with malice if we don't even have him saying it?
20 Or even admitting to ever having heard it?

21 MR. MATHISON: I think that the case itself, the one
22 that's cited that is the most pertinent, says that most
23 people who engage in defamation never admit it.

24 THE COURT: Right.

25 MR. MATHISON: And if you can't prove it in some

1 way, other than out of their own mouths, --

2 THE COURT: Right.

3 MR. MATHISON: -- there would be no defamation
4 claims most of the time.

5 THE COURT: I would agree with you, except that the
6 difference in this case is, is that she is a public
7 figure. I mean that's -- a public official. That's
8 where the problem lies for you, I think, and that's why
9 these cases are so difficult.

10 Okay. All right. Well, let's do this then. Let's
11 bring the jury back in, and you can call your rebuttal
12 witness. And then what I propose -- what about you all
13 being able to argue today? I mean, I would love it if
14 you could argue today, considering you both are going to
15 argue for an hour. And I think that's a good use of our
16 time. We come back at 9:00 a.m. in the morning. I'll
17 charge them on the law. Because I'm going to tell you
18 quite frankly, my charges, I'm going to have to go
19 through it yet again. I just can't send it to them
20 today. It's just too late. And I do have one juror that
21 needs to leave by 5:45 today, anyway. So I don't think
22 it's going to be of much use.

23 MR. HALIO: I don't have a problem with that. I
24 would like to get something to eat at lunch. But other
25 than that.

1 THE COURT: Sure. Okay.

2 MR. MATHISON: Your Honor.

3 THE COURT: Yes, sir.

4 MR. MATHISON: Based on what they said yesterday

5 with their witness list, my assumption was we would do

6 the argument and charges tomorrow. I would prefer to

7 have this evening to think about what I'm going to say,

8 instead of basically having to duel with my colleagues

9 here, and think of it at the same time.

10 THE COURT: I'm confident you can do that.

11 MR. MATHISON: Well, but I'm --

12 THE COURT: I'm absolutely confident you can do

13 both. All right. Let's do this. What I'm going to do

14 is, I will -- let's hear the rebuttal testimony. I'm

15 going to send them to lunch. I'm going to tell them to

16 come back, and I do propose that we go ahead and argue

17 today, unless something drastically changes my mind in

18 the meantime. Okay? So that's, I think, how we're going

19 to handle it. So let's go ahead and bring them back in,

20 Al, and --

21 MR. MATHISON: May I have just a moment, your Honor?

22 THE COURT: You need just five minutes?

23 MR. MATHISON: Yes.

24 THE COURT: We're going to take five minutes Al, and

25 then we'll come back. Okay?

1 OFF THE RECORD 1:40 P.M.
2 BACK ON THE RECORD 1:50 P.M.
3 BY THE COURT:
4 THE COURT: All right. Okay. And I wanted to ask,
5 Ms. Jones, Mr. Halio, which one of you is going to do the
6 closing argument for you all? Mr. Halio is? Okay.
7 All right. Well, let's bring the jury back in and
8 you'll call -- you got one rebuttal witness, you said,
9 Mr. Mathison?
10 MR. MATHISON: I do.
11 THE COURT: Thank you. All right. Let's bring them
12 in.
13 BAILIFF: Yes, your Honor.
14 JURORS ENTER COURTROOM 1:51 P.M.
15 BAILIFF: The jury is entering, your Honor.
16 THE COURT: Thank you. Ladies and gentlemen of the
17 jury, I know it's running late, and I know you all are
18 hungry. But at this point, we do have one rebuttal
19 witness, so I was hoping to go ahead and get that witness
20 up, and then we'll go ahead and break for lunch.
21 All right? Mr. Mathison.
22 MR. MATHISON: The plaintiff would call Ms. Sherry
23 Hamilton, please.
24 THE COURT: Come on forward, Ms. Hamilton.
25 WITNESS SWORN.

1 SHERRY HAMILTON, ON REBUTTAL

2 DIRECT EXAMINATION, MR. MATHISON:

3 Q Ms. Hamilton, you offered testimony during the
4 plaintiff's case in chief; didn't you?

5 A Yes, sir.

6 Q I believe it was on Wednesday. Isn't that correct?
7 Last Wednesday. It's been quite a while.

8 A It was one day last week, sir.

9 Q Were you here this morning when Mr. McSwain
10 testified?

11 A No, sir.

12 Q Do you know whether Captain Toby McSwain made an
13 appointment to come and visit Judge Coffey in 2004?

14 A I can't recall 2004. I can give you speculation. My
15 speculation is --

16 MS. JONES: Your Honor, I object to speculation.

17 A Okay.

18 THE COURT: Okay.

19 A That's okay.

20 BY MR. MATHISON:

21 Q Let me ask you this --

22 A Yes, sir.

23 Q In 2004, was Judge Coffey the principal judge, or was
24 she an associate judge?

25 A She was an associate judge.

1 Q And her office, was it at the end of the hall in the
2 municipal court? That is the main judicial office?
3 A Her office back in 2004 was not where it is now.
4 Q Right. The person in that office in the very back as
5 you go down the hall and turn right, that was Judge
6 Herring; wasn't it?
7 A That is correct, sir.
8 Q And where was her office in relation to coming in the
9 door?
10 A Well, you entered into my office. I shared an office
11 with another secretary. There were two desks and a space
12 about ten by ten. And you had to come -- we had to open
13 the door, they walked between the desks, back to a --
14 back to what we call our file room, because that's where
15 all the file cabinets were. And she had one of those
16 little portable desks like kids use in college.
17 Q Um-hmm.
18 A She had one of those kind of desks. She had no
19 window, and the door wouldn't shut.
20 Q So her office was filled with filing cabinets, had a
21 little desk and a chair. Is that right?
22 A That is correct, sir.
23 Q And there were no windows.
24 A Absolutely, yes, sir. That's correct.
25 Q And anybody getting in there had to walk right by

1 whom?

2 A Me and the other secretary, Lisa.

3 Q Did you ever see Toby McSwain in 2004, anywhere near
4 your office, going toward what you just identified as
5 basically a file room, which is where my client had set
6 up shop?

7 A I don't ever remember Toby McSwain coming in, except
8 in the courtroom itself. He would come in the courtroom,
9 because he would have cases from time to time. But to
10 walk in our office and sit down with Judge Coffey in the
11 back, I don't ever remember that.

12 Q Do you remember Mr. McSwain ever making an
13 appointment in 2004 to come see Ms. Coffey?

14 A That, I don't recall at all, sir.

15 MR. MATHISON: Thank you. Excuse me, one second.

16 Thank you, Ms. Hamilton.

17 THE COURT: Anything?

18 MR. HALIO: If it please the court.

19 THE COURT: Yes, sir.

20 SHERRY HAMILTON, ON REBUTTAL

21 CROSS-EXAMINATION, MR. HALIO:

22 Q I would imagine, like everybody else, you take
23 vacation, and you get sick, and take lunch, and you go on
24 breaks, and that sort of stuff, right?

25 A Well, thank Lord I haven't been sick lately, and

1 don't take breaks, and I don't take lunch. I eat at my
2 desk. I do take vacations.

3 Q Okay. So you're not in the office 24/7, 365 days a
4 year.

5 A 24/7 365 days, no, sir.

6 MR. HALIO: Okay. Thank you.

7 THE COURT: Anything further?

8 SHERRY HAMILTON, ON REBUTTAL

9 RE-DIRECT EXAMINATION, MR. MATHISON:

10 Q Are there windows in the main judge's office?

11 MR. HALIO: Objection. This is not proper re-
12 direct. We didn't talk about the layout of the office.

13 MR. MATHISON: I'm sorry.

14 THE COURT: You are a bit outside the scope.

15 MR. MATHISON: I'm finished, your Honor.

16 THE COURT: Okay.

17 MR. MATHISON: Thank you very much.

18 THE COURT: All right. Ms. Hamilton, you may step
19 down.

20 A Thank you.

21 THE COURT: Mr. Mathison, at this time, do you rest?

22 MR. MATHISON: I do, your honor.

23 PLAINTIFF RESTS.

24 BY THE COURT:

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, it is now past a good time for lunch. Ladies and
2 gentlemen, again, do not discuss this case. It wouldn't
3 be appropriate to do so at this time. Even though you
4 have heard all the evidence in this case, and the
5 testimony, you have not heard the arguments of the
6 lawyers nor my charge in the law. And again, it would be
7 inappropriate for you to discuss this case or do any of
8 your own independent research.

9 Ladies and gentlemen, I'm asking that you go and get
10 a good lunch, and ask that you be back in your jury room
11 at 3:15, where we're going to go ahead and continue the
12 trial of this case. All right? Thank you.

13 JURORS LEAVE COURTROOM 1:57 P.M.

14 BAILIFF: The jury is clear, your Honor.

15 THE COURT: Mr. Halio, I endeavored to get you the
16 opportunity to go eat some food and prepare your
17 argument, so. And certainly for both sides.

18 MR. HALIO: Thank you.

19 THE COURT: You're welcome. It's about five minutes
20 to 2:00. Do we need to talk about the charge at all,
21 other than, I can tell you that what I am charging for
22 the most part -- and again, it's not completely done out
23 as, obviously, the defamation. Do you have a pre-
24 existing charge as far as the headaches are concerned?

25 MR. HALIO: Probably so. It's in the case.

1 THE COURT: Okay. I assumed that. You wanted a
2 deposition charge. The plaintiffs did, as well.

3 MR. MATHISON: Yes.

4 THE COURT: Deposition testimony charge. And you
5 have also requested your spoliation of evidence charge,
6 which maybe is something I think that we better take up
7 right now, rather quickly. Because I'm assuming Mr.
8 Mathison, you want to argue that.

9 MR. MATHISON: I certainly do, your Honor.

10 THE COURT: Okay. And then you have also the
11 counter-request, which is erasure of a tape recording
12 when done as part of a routine practice is not evidence
13 of actual malice.

14 MS. JOLLEY: Correct, your Honor. And we also would
15 ask that the Judge be -- charge Rule 37(f) of the South
16 Carolina Rules of Procedure, in the event you allow a
17 spoliation charge. That rule says that, absent
18 exceptional circumstances, a court may not impose
19 sanctions under these rules on a party for failing to
20 provide electronically stored information lost as a
21 result through routine good-faith operation of an
22 electronic information system.

23 MR. MATHISON: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. MATHISON: I filed my motion on May 25. Kelley

1 filed a response. And I don't think that she anticipated
2 what I was going to say, and I certainly didn't
3 anticipate what she was going to say. In effect, Kelly's
4 arguing that I shouldn't be allowed to discuss with the
5 jury the fact that they don't have any of the tape
6 recordings, either audio or video, that they made from
7 2008.

8 THE COURT: Um-hmm.

9 MR. MATHISON: And I think that the record is so
10 replete with that, I couldn't make my argument without
11 making those points. My specific motion was based on the
12 fact that they never produced Mr. Breed's emails. Mr.
13 Breed testified that, in his business, or in his
14 investigative capacity, he only used AOL email.

15 THE COURT: Um-hmm.

16 MR. MATHISON: In addition, he didn't produce any of
17 his email from 2008.

18 THE COURT: Um-hmm.

19 MR. MATHISON: The first email produced was from
20 2009. What's been marked as Plaintiff's Exhibit 15, the
21 email that he sent to Captain McSwain, that wasn't
22 produced by him, but was produced by Detective Florencio,
23 in response to a subpoena --

24 THE COURT: Um-hmm.

25 MR. MATHISON: -- served on her to deliver

1 documents.

2 THE COURT: Did you compel the information to --

3 MR. MATHISON: Did I make a motion to compel?

4 THE COURT: Yes, to compel his AOL accounts?

5 MR. MATHISON: What we did is, we asked in the
6 deposition if he would get us the archive from AOL. What
7 we got was an email from Ms. Jones, the week before the
8 trial, in which Ms. Jones said, effectively, they
9 performed an Internet search, and that, based on their
10 Internet search, AOL did archive, but they couldn't
11 produce that which had been deleted by the principal.

12 So the document that Ms. Jones produced to say that
13 they couldn't get the information, on its face, revealed
14 that there would be an archive, but for the fact that the
15 email had been deleted by the person whose account it
16 was.

17 THE COURT: Did it actually say that?

18 MR. MATHISON: Yes.

19 MS. JOLLEY: Your Honor, that is what Ms. Jones'
20 letter -- email stated. When they went and looked on
21 AOL, AOL explains there is an archive, but you must
22 actually move the email from your inbox to the saved
23 folder for it to save. The testimony in the record, in
24 the deposition and -- that was read in the case is that
25 Mr. Breed didn't save it. So there's no email.

1 MR. MATHISON: I'm sorry, but that's not what is in
2 the email that I got from Ms. Jones. What Ms. Jolley
3 just said is not there, and I challenge her to read where
4 it says that.

5 MS. JOLLEY: I don't -- not disputing what Ms. Jones
6 said in her email. There is an archive function on AOL.
7 It was not utilized.

8 THE COURT: Okay.

9 MS. JOLLEY: Therefore, there's nothing in it.

10 THE COURT: Okay.

11 MS. JONES: And I, you know, maybe, for the record,
12 I need to put my email into evidence. I can forward the
13 Court the email. But it was a link to the AOL
14 information that lays it all out.

15 THE COURT: Um-hmm.

16 MS. JONES: That's what we provided.

17 THE COURT: Um-hmm.

18 MR. MATHISON: Excuse me, but I have it attached to
19 my motion. All right? I mean it's -- there's --

20 THE COURT: Let's go ahead and put your motion and
21 your attachment in as a court's exhibit.

22 MR. MATHISON: Certainly. And they have it by
23 virtue of having been served with it.

24 THE COURT: All right. Ms. Jones, anything else I
25 need to hear from you?

1 COURT REPORTER: This will be -- the motion will be
2 3, Court's Exhibit 3.

3 COPY OF DOCUMENT REFERRED TO AS
4 MOTION AND ATTACHMENT MARKED COURT'S
5 EXHIBIT NUMBER 3.

6 MS. JONES: Yes, your Honor. Here's the email, and
7 sending him the link.

8 THE COURT: Okay.

9 MS. JONES: Which I would mark as the Court's
10 Exhibit or Defendants' Exhibit.

11 MR. MATHISON: Well, why don't you just look and if
12 what --

13 MS. JONES: But I want it filed.

14 MR. MATHISON: See if what you're handing up isn't
15 exactly what I have attached to my motion.

16 MS. JONES: It is the email I sent to you, with the
17 reference to the link.

18 THE COURT: Okay. Ms. Jones, did you not -- you
19 were the original lawyer in this case. Is that correct?

20 MS. JONES: Well, I was the original lawyer when the
21 original first complaint was filed in 2004, along with
22 four or five other lawyers.

23 THE COURT: I assume that's 2008.

24 MS. JONES: I mean 2008. I'm sorry.

25 THE COURT: Okay. So you were one of the original

1 lawyers.

2 MS. JONES: I was one of the original lawyers.

3 Then, our representation stopped for a period of time.

4 After the -- well, no. But I mean, we -- I was the --

5 was a lawyer, along with a number of other people, until

6 the action was 40(j'd). Till the dismissal.

7 THE COURT: When you say a number of other people,

8 is that all McNair or?

9 MS. JONES: No. No, no, no, no, no. No.

10 MS. JOLLEY: Several other firms.

11 MS. JONES: Andy was in it.

12 MR. HALIO: A bunch of people.

13 MS. JONES: There were a bunch of people in it.

14 Bunch of people in it.

15 THE COURT: Okay.

16 MS. JONES: And they're all -- that's a matter of

17 record. Then, when the motion was made to restore the

18 case, I was not involved in the case. And I did not

19 start working on the case again until after Ms. Coffey's

20 deposition was taken or --

21 MS. JOLLEY: We did answer.

22 MR. MATHISON: Yes, they --

23 MS. JOLLEY: We did answer.

24 MS. JONES: Oh, okay. All right.

25 MR. MATHISON: They filed an answer in the case

1 after it was --

2 MS. JOLLEY: We did, and then we were --

3 MS. JONES: Okay. Then I did file an answer, moved
4 to dismiss in the case, and then we were out until -- or
5 we did not participate in the case until --

6 MR. HALIO: October.

7 MS. JONES: -- October.

8 MR. MATHISON: I'm sorry, but that's not correct,
9 either. They filed an answered. They filed a motion to
10 dismiss. We had those motions heard here in May of 2011.

11 MS. JOLLEY: We were not counsel of the case when
12 those motions were heard. We had already submitted our
13 withdrawal at that time.

14 MR. HALIO: Yeah. I argued those.

15 THE COURT: You argued those.

16 MS. JOLLEY: Yeah.

17 THE COURT: All right. Did one of you not --
18 because I know it's McNair standard practice that, when
19 they're in litigation, you all send out a letter that
20 says don't destroy anything, don't get rid of any
21 evidence, when you first get a case. Did anyone send out
22 that typical letter to your client?

23 MS. JONES: I'd have to go back and look.

24 THE COURT: I mean, it's -- I just know that, just
25 in my experience with other cases, it's actually a very

1 good letter. So I don't know if Mr. Halio does one, too,
2 but I think it's a, you know, very succinct. It's very
3 smart, and it's very -- says exactly what it should. My
4 question is, is did you do that?

5 MS. JONES: And I cannot answer it, as I stand here.

6 THE COURT: Okay.

7 MS. JONES: There were -- there was a -- when the
8 first case was filed --

9 THE COURT: Wait. Hold on a second.

10 MS. JONES: -- there were a lot of lawyers.

11 THE COURT: I can tell you --

12 MR. MATHISON: Your Honor, may it please the Court.

13 THE COURT: Yes.

14 MR. MATHISON: The argument is premised on the
15 notion, or seems to be, that, until the amended complaint
16 got served, nobody would know that they're supposed to
17 keep evidence. That's just not true. The case that
18 we've cited, which is attached to the motion, which is
19 the Stokes case, pretty clearly says that you're
20 chargeable with retaining evidence from the moment you
21 can reasonably perceive that litigation is coming.

22 And I can tell you, if I had written that letter on
23 June 6th, that's the moment I would have perceived
24 litigation was coming. And I can tell you that, within a
25 month, Mr. Breed proceeded to convey his one-half

1 interest in the house to his wife, which is a pretty good
2 indication that he knew litigation was coming. And I can
3 tell you the deposition testimony says that they knew on
4 or before the date that the summons and complaint arrived
5 that they were going to get sued, all of which took place
6 in fewer than five months from June 6th.

7 And for them not to have material at this juncture,
8 and shrug and say we had no idea this was going to
9 happen, is just wholly implausible. I'm not talking
10 about the lawyers here, your Honor. I'm talking about
11 the client.

12 THE COURT: I understand. Well, I can tell you, I
13 am inclined to give the spoliation charge in this case.
14 I mean, at the point litigation was filed, they should
15 have known that they did not destroy anything or should
16 not get rid of evidence. And regardless of the 40(j)
17 status, regardless of even if there had been any
18 interrogatories or requests to produce propounded, he
19 point litigation is filed, they should know.

20 Ms. Jolley, I'm not so sure. You're asking me to
21 charge Rule 37(f). I don't think that applies in here.

22 It states: *Electronically stored information.*
23 *Absent exceptional circumstances, a court may not impose*
24 *sanctions under these rules on a party for failing to*
25 *provide electronically stored information lost as a*

1 *result of a routine good-faith operation of an electronic*
2 *information system.*

3 I don't think that's what he's talking about. I
4 understand that your argument for that is that, in the
5 normal course of their business, under *Peeler versus*
6 *Spartan Radiocasting*, if it's done as a part of a routine
7 practice, it's not evidence of actual malice, which I'm
8 assuming is an exact quote. Do I need to double check
9 that to make sure is?

10 MS. JOLLEY: It's an exact quote, your Honor. I'm
11 looking at the case.

12 THE COURT: Okay. So let me just -- we'll put that
13 case to make sure. But I can tell you *Rule 37(f)*, even
14 if you go on to read the note, it has to do with a motion
15 to compel, whether or not the Court could or should
16 sanction a party for failing to turn over --

17 MS. JONES: Your Honor --

18 THE COURT: -- electronically stored information. I
19 just don't think *37(f)* is appropriate in this case. It
20 says, *a court may not impose sanctions*. I mean, it
21 really doesn't speak to it. I would agree that I think
22 you're charge on the law is appropriate and your request
23 to charge, if it is, in fact, an exact quote. But I
24 don't see charging *Rule 37(f)* as being appropriate in
25 this case.

1 MS. JOLLEY: Your Honor, respectfully, we believe
2 that a spoliation charge is, in effect, a sanction
3 against the party. We're not arguing that there was no
4 need to keep the emails until the amended complaint was
5 filed. However, frankly, there's no testimony that Mr.
6 Breed had already -- had saved those emails, and then
7 destroyed them.

8 Every case in which a spoliation charge has been
9 granted, there has been evidence that the other side had
10 evidence in their hands that they chose not to hand over.
11 That is not the case here. The plaintiff is arguing that
12 they didn't receive emails; therefore, these emails must
13 have been destroyed. And our argument is that that's not
14 the case. Unless Mr. Breed had already saved those
15 emails at the time he wrote them, under AOL's policy,
16 they were no longer present. That's standard practice.

17 THE COURT: Um-hmm.

18 MS. JOLLEY: There were no discovery requests sent
19 to Mr. Breed himself. They went to CSA. The testimony
20 in the record is that CSA's server does not hold Mr.
21 Breed's email. Mr. Breed uses an AOL account. You know,
22 so our reason we're arguing 37(f) is, quite frankly --

23 THE COURT: You think it's a sanction for --

24 MS. JOLLEY: I think it's a sanction, based on the
25 fact that his email is gone. If you look, your Honor --

1 I know that, of course, he's arguing *Stokes*. In *Stokes*,
2 there were two pieces of medical evidence that they all
3 acknowledge should have been in the record that were
4 missing.

5 THE COURT: Yes.

6 MS. JOLLEY: *Welch versus Gibbons*, which is where
7 the charge comes from, there was an actual soft drink
8 bottle that the plaintiff wouldn't let anyone even look
9 at. *Kershaw*, in *Kershaw*, everyone admitted that the
10 asbestos was removed, and they refused to hand it over
11 the information.

12 Look at *Peeler*, then you had a -- they actually had
13 a tape recording that did disappear. And they said
14 that's not actual malice, and they didn't do a spoliation
15 charge in that case.

16 When you look here at these other -- the other two
17 cases I found where the court looked at it, you know, for
18 example, *Deaton Truck*. This is an old case. It's '45.
19 But in that case, they tried to get a contract -- they
20 tried to get the Supreme Court to say, look, they didn't
21 hand over this contract that would have showed they did
22 business in South Carolina. And they said that should
23 give us -- that should give us a presumption that they
24 contents of that contract were unfavorable, because they
25 had to hand it over. And the Supreme Court said, no, the

1 appellate hadn't asked the respondent to produce the
2 contract, and there's no showing that the respondent
3 refused to disclose the contents.

4 In this case, there were no discovery requests given
5 to Mr. Breed. There's no evidence that Mr. Breed refused
6 to hand over something he had. He admitted in his
7 deposition he didn't have the information to give over.

8 THE COURT: But then, Ms. Jones voluntarily said,
9 *Here is his AOL account.* And when they accessed it, it
10 turned out to be deleted.

11 MS. JONES: No, no, no, no, no, no. That's not what
12 happened at all, your Honor. No. We sent them the link
13 to the information --

14 THE COURT: Um-hmm.

15 MS. JONES: -- that regarding the AOL corporate
16 account policies in general and the fact that Mr. Breed
17 had had an AOL account.

18 MR. MATHISON: May it please --

19 MS. JONES: And what that said is that, if you have
20 an AOL account, and you want to save things, and then not
21 -- and you want to have access to them, you have to take
22 the affirmative step of setting up the account so that it
23 will archive.

24 THE COURT: Okay.

25 MS. JONES: It does not automatically archive.

1 THE COURT: Okay.

2 MR. MATHISON: May it please the Court.

3 THE COURT: Yes.

4 MR. MATHISON: Exactly what was said, is attached as
5 Exhibit C to my motion. And with all due deference, I
6 believe what was said is that, you can archive, and it
7 does archive with AOL, but not if you delete the email.

8 THE COURT: Um-hmm.

9 MR. MATHISON: So, I mean, basically, you would have
10 an archival. --

11 MS. JONES: That's exactly correct. If you don't
12 have the archive set up, and you delete the email just as
13 you're going through it on a daily basis, it doesn't save
14 it.

15 MR. MATHISON: May it please the Court. What's
16 attached that was sent to me by Ms. Jones isn't from AOL.
17 It's a search query about AOL.

18 MS. JONES: It was the only thing we could find.

19 THE COURT: Okay.

20 MR. MATHISON: And it was sent to fulfill a promise
21 that Mr. Breed made to me in his deposition, which was
22 read into the record that he would, in fact, obtain the
23 archive of his email from AOL.

24 MS. JONES: That is not what Mr. Breed testified to.
25 Mr. Breed said he would look and see what he could find.

1 MR. MATHISON: Actually, he test --

2 MS. JONES: He would endeavor to see what he could
3 find.

4 THE COURT: Can I ask you, Mr. Mathison. Do you
5 know of any cases where -- I understand their argument is
6 that he had to have actually positively done something at
7 some point. For a spoliation charge, he to have actually
8 had what it is that he's being accused of getting rid of.

9 MR. MATHISON: May it please the Court. Until I
10 heard that come out of their mouths, that's not in the
11 document that was sent to me. What's in the document
12 that was sent to me is an indica --

13 THE COURT: That doesn't matter. That's not my
14 question, though. My question is, again, their argument
15 is it had to have been in -- and I guess the argument
16 would be is that, of course, at one point, it was in his
17 presence, because he generated it or received it in one
18 way or another.

19 MR. MATHISON: He was asked where it was in his
20 deposition. If he testified, I deleted it, you know, a
21 month after I did it, that's my routine practice, I think
22 they'd have a position. But he was asked whether he
23 furnished everything that he had in 2008. He was asked
24 whether he'd made an effort to recover it from AOL.

25 THE COURT: Um-hmm.

1 MR. MATHISON: He was asked whether he knew that AOL
2 has an archive. And I know that, because I'm an AOL
3 customer. All right. And I know what I can recover, and
4 I can recover literally what I just told you. Everything
5 that I haven't purposely deleted. And I could probably
6 do that if I was willing to pay for it.

7 So, I mean, what they did is, is they got nothing
8 from AOL, and basically sent us a search engine query
9 that says here's what AOL's policy is. And it says the
10 policy is they do archive, and the only thing they can't
11 recover is what's been deleted by the customer.

12 THE COURT: Okay.

13 MR. MATHISON: So I don't know when it was deleted.
14 All I know is that it was deleted. That's all that
15 proves.

16 THE COURT: Okay. And that is the full extent of
17 what you want your spoliation charge to go to? Is that
18 what you're looking at?

19 MR. MATHISON: I want -- well, --

20 THE COURT: Because I'm not sure it's appropriate,
21 then, under what you've just said.

22 MR. MATHISON: May it please the Court. You see,
23 I'm holding in my hand Plaintiff's Exhibit 15.

24 THE COURT: Right.

25 MR. MATHISON: We got more than a dozen emails from

1 the Beaufort County sheriff's Office and from Mr.
2 Birdwell, all of which had been sent by SecureGate. They
3 gave us none after -- prior to --

4 THE COURT: Just so I'm correct, the SecureGate
5 email address, is that an AOL address, or if that is an
6 AOL address, it's not a specific, it's not his work email
7 address.

8 MR. MATHISON: He doesn't have a work email, --

9 THE COURT: Okay.

10 MR. MATHISON: -- other than Securegate.

11 THE COURT: Okay.

12 MR. MATHISON: That's his testimony.

13 THE COURT: And that's his AOL.

14 MR. MATHISON: He's not on the server. Mr. Kelley
15 is on the server. All right. And we didn't have a
16 problem with what we got with Mr. Kelley.

17 THE COURT: Um-hmm.

18 MR. MATHISON: Mr. Breed is not on the server. He
19 uses SecureGate exclusively in his business. He said it
20 was the only email that he had.

21 THE COURT: I understand that. Okay. All right.
22 Well, you guys go grab some lunch, because the jury's
23 going to be back. And when we get back, I'll let you
24 know whether or not I'm going to charge spoliation.

25 MS. JOLLEY: Okay.

1 THE COURT: Okay.

2 OFF THE RECORD 2:19 P.M.

3 BACK ON THE RECORD 3:17 P.M.

4 BY THE COURT:

5 THE COURT: I am going to charge the *Stokes versus*
6 *Spartanburg Regional Medical Center* charge, where it
7 states: *I charge to you that when a party fails to*
8 *preserve material evidence for trial, it is for you to*
9 *determine what the party has offered a satisfactory*
10 *explanation for that failure. If you find the*
11 *explanation unsatisfactory, you are permitted, but not*
12 *required, to draw the inference that the evidence would*
13 *have been in unfavorable to the party's claim or defense.*

14 And I'm also going to charge what the defendants
15 have requested, which is, that a deletion is not a
16 presumption of malice or actual malice. So I'm going to
17 charge that, as well.

18 I thought you were, again, your argument, Ms.
19 Jolley, about it actually had to be in the possession of
20 the person or party before it was destroyed. The simple
21 fact is, he created some of those documents. They were
22 his own emails. So they had to be in his possession at
23 some point, even though it's in electronic form.

24 So, for what it's worth, that's what I'm doing.
25 That's what I'm charging, just to let you all know.

1 Anything else we need to do, other than I need to
2 know from you, do you need to give me a timing? Do you
3 need me to give you a timing signal of how much time
4 you've got, because you're going to open with about 45
5 minutes. We're going to allow Mr. Halio and hour, and
6 then 15 minutes back, because I do have someone that
7 needs to leave. So I'm happy to give you a cue if you
8 need it.

9 MR. MATHISON: I would be delighted if you give me a
10 cue when I've got 15 of my 40 left -- 45 left.

11 THE COURT: You got it. Okay. And what about you,
12 Mr. Halio?

13 MR. HALIO: Excuse me?

14 THE COURT: What about you, as far as do you want
15 any kind of cue?

16 MR. HALIO: Sure.

17 THE COURT: What do you want? At what time?

18 MR. HALIO: Ten minutes.

19 THE COURT: You have ten minutes left? Okay. Okay.

20 MR. MATHISON: May it please the Court. Are you
21 going to --

22 THE COURT: Yes, sir?

23 MR. MATHISON: Are you going to charge the other
24 request that we made specifically with reference to
25 40(j)?

1 THE COURT: Yes, because there has been so much
2 evidence back and forth about what truly, in fact, a
3 40(j) is. Never charged her rule before, but I guess
4 there's going to be a first for everything.

5 MR. MATHISON: Are you going to charge on the law
6 that comes out of the Weir memo?

7 THE COURT: Yes. That is in there, yes.

8 MR. MATHISON: Okay.

9 THE COURT: Which is a statute. And a regulation.
10 Yes. Anything else?

11 MR. MATHISON: Are we going to start immediately
12 when they come in?

13 THE COURT: We are, if you're --

14 MR. MATHISON: May I make a pit stop? And I'll be
15 ready.

16 THE COURT: You've got two minutes.

17 MR. MATHISON: Okay.

18 THE COURT: Literally, two minutes.

19 MR. MATHISON LEFT COURTROOM 3:20 P.M.

20 MS. JOLLEY: Your Honor, we have one jury charge
21 request, but I'll wait till Mr. Mathison comes back.

22 THE COURT: Okay. I'm really -- well, let's wait
23 till Mr. Mathison gets here.

24 COURT REPORTER: I have this paper on AOL.

25 THE COURT: Right, and I know Ms. --

1 COURT REPORTER: -- that didn't get introduced.

2 THE COURT: -- Jones wanted to mark it. Is that
3 correct?

4 MS. JONES: I do. I would like to mark it, yes,
5 your Honor, for the record.

6 THE COURT: Okay. Yes.

7 COURT REPORTER: The AOL document is going to be
8 Defendants' Exhibit 19.

9 COPY OF DOCUMENT REFERRED TO AS
10 AOL DOCUMENT MARKED DEFENDANTS'
11 EXHIBIT NUMBER 19, FOR IDENTIFICATION.

12 COPY OF DOCUMENT REFERRED TO AS
13 LETTER WITH DOCUMENTS MARKED
14 DEFENDANTS' EXHIBIT NUMBER 18,
15 FOR IDENTIFICATION.

16 THE COURT: You all, in preparing the jury charge, I
17 just go ahead and get on the record. Were you, Wanda, --
18 I guess Ms. Jolley can listen.

19 As far as damages are concerned, it's my
20 understanding and the way this reads is that, he has
21 proven, or he is alleged to have proved some special
22 damages, correct? Which is required, correct?

23 MS. JONES: Correct.

24 THE COURT: After that, then he -- once he has
25 proved special damages, he can also make a claim for ,

1 actual damages or for general damages, correct?

2 MR. MATHISON: Yes.

3 MS. JOLLEY: Your Honor, I think we have a
4 difference of opinion about whether there's a
5 presumption. I think, you know, pain and suffering is
6 something that the jury can find, having found that there
7 were proof of that special damages.

8 THE COURT: Right.

9 MS. JOLLEY: I don't think it's a presumed.

10 THE COURT: Oh, I don't think it's presumed either.

11 MS. JOLLEY: Okay.

12 THE COURT: I think it's just something for them to
13 consider.

14 MS. JOLLEY: Okay.

15 THE COURT: I agree with that. I think it's for
16 them to consider. I think once they find that there are,
17 in fact, special damages, then they can then consider
18 whether or not it is proven the other, you know.

19 MR. MATHISON: I'm going to add -- I'm going to tell
20 them that you're going to charge them they must find
21 special damage. That is something that can be monetized
22 in order to return a verdict, because she's a public
23 official.

24 THE COURT: Exactly.

25 MR. MATHISON: And I'm going to tell them that, once

1 they do find special damage, they're entitled to
2 determine general damage in what they assess the injury
3 to my client's reputation was worth.

4 THE COURT: Okay.

5 MR. MATHISON: That's what I'm going to tell them.

6 THE COURT: And then after that, then they can
7 consider punitive damages.

8 MR. MATHISON: Punitive damages.

9 THE COURT: Okay.

10 MR. MATHISON: That's the way I'm going to argue it.

11 THE COURT: Okay. Yes?

12 MS. JOLLEY: Your Honor, we request that the Court
13 charge them that *Rule 13 of Appellate Rule 502* gives them
14 absolute privilege with regard to the complaint that
15 actually went to the Commission. There's been a lot of
16 testimony about the complaint going to the Commission and
17 whether or not it was accurate or not. And that
18 publication is absolutely privileged, and isn't part of
19 the lawsuit.

20 THE COURT: I would agree with that, but at that
21 point, then, I don't need to charge the very long
22 qualified privilege section that you've asked for. That
23 someone's asked for in this case.

24 MS. JOLLEY: Well, those are two different
25 privileges. That's an absolute privilege under the rule.

1 THE COURT: Oh, you're saying that the absolute
2 privilege -- I thought that was understood. But I guess
3 I could say yes.

4 MS. JOLLEY: I don't if they understand it or not.

5 THE COURT: Okay. Then the qualified privilege was
6 to the CSA board, and they get to determine whether or
7 not, then, the defendants exceeded the scope of that
8 qualified privilege.

9 MS. JOLLEY: Yes, your Honor.

10 THE COURT: Okay. So.

11 MS. JOLLEY: There are two different privileges.

12 THE COURT: Okay.

13 MS. JOLLEY: Excuse me, your Honor.

14 THE COURT: Yes?

15 MS. JOLLEY: Are you going to also charge the -- our
16 -- the defense of fair comment and criticism, out of
17 *Anderson*, rather than the one we submitted?

18 THE COURT: I'm not sure which one she had.

19 MS. JOLLEY: Okay. It's *Section 14-15*, in *Anderson*.
20 We had submitted, I believe, a short version.

21 THE COURT: A much shorter version.

22 MS. JOLLEY: But however, I'm --

23 THE COURT: I can tell you --

24 MS. JOLLEY: I just want to make sure it's charged.

25 THE COURT: It is being charged.

1 MS. JOLLEY: Okay.

2 THE COURT: And I'm not sure which one she has put
3 in. I was kind of on the side of shorter would be
4 better.

5 MS. JOLLEY: Okay.

6 THE COURT: So, again.

7 MS. JOLLEY: Thank you, your Honor.

8 THE COURT: Okay. It's on there. And obviously,
9 I'm not going to charge today. We're going to make these
10 arguments, we're going to go home. We're going to talk
11 about this a little more.

12 MS. JOLLEY: Okay.

13 THE COURT: I'm going to have you all take a look at
14 it, but I'm just trying to --

15 THE COURT: Kelly, tell me again under 502 what you
16 want charged.

17 MR. HALIO: Rule 13, your Honor.

18 MS. JOLLEY: The absolute privilege under Rule 13,
19 your Honor.

20 THE COURT: Rule 13. Okay. Got it. Okay. Much
21 like Judge Howard, it's taking me a while to read through
22 them and find this. All right. I'll give me one second,
23 you all. And I just want to make sure it gets in. I'll
24 be right back. Nobody move.

25 Okay. All right. You ready to go, Mr. Mathison?

1 MR. MATHISON: Yes, ma'am.

2 THE COURT: All right. Let's bring them in.

3 BAILIFF: Yes, your Honor.

4 THE COURT: All right. Mr. Mathison, Mr. Halio,
5 what I'll do at your time is I'll knock. I'll just do a
6 little like this (indicating). You'll know that that's
7 your signal instead of me saying you've got 15 minutes
8 and you've got ten minutes. Okay? So you'll understand.
9 You want me to interrupt you?

10 MR. HALIO: I'm with you interrupting.

11 THE COURT: As long as you don't mind it, I'm happy
12 to. You okay with that, as well, Mr. Mathison?

13 MR. MATHISON: That's fine.

14 THE COURT: Okay. Thank you.

15 BAILIFF: The jurors entering, your Honor.

16 THE COURT: Thank you.

17 BAILIFF: All right, your Honor.

18 JURORS ENTER COURTROOM 3:28 P.M.

19 THE COURT: Welcome back, ladies and gentlemen. At
20 this time what you are going to hear is the closing
21 arguments for the attorneys. Mr. Mathison, whenever
22 you're ready, sir.

23 MR. MATHISON: Thank you, ma'am.

24 CLOSING ARGUMENT ON BEHALF
25 OF PLAINTIFF, MR. MATHISON:

1 MR. MATHISON: Ladies and gentlemen of the jury, as
2 you know, I represent the plaintiff. When this case
3 started, I gave you an overview of what you could expect.
4 As I said at the time, I'm going to repeat -- I'm here
5 arguing. I'm a lawyer. I'm an advocate. I represent
6 the plaintiff.

7 I'm going to tell you something about the law, that
8 is, what I think the Judge will charge you when you hear
9 the law from her tomorrow. And if I say anything today
10 that conflicts with what the Judge says tomorrow, you're
11 required to follow what the Judge says.

12 With respect for the facts, however, you are the
13 sole arbiters of the facts. You're the people that
14 decide, essentially, what happened here within the
15 confines of the law as charged to you by the Judge.

16 We think that there are several things of which you
17 should take note to start with. The culprit in this
18 case, the man that wrote Plaintiff's Exhibit 4, never
19 took the stand. He never gave you an opportunity to
20 examine his motives, his state of mind, as of the time he
21 wrote the letter. The reason is simple. The law
22 requires that, because my client is a public official,
23 that she must, in addition to proving the ordinary points
24 in a defamation action, prove that Mr. Breed acted with
25 what's called constitutional actual malice. And that

1 means something more than malice of common law. I mean,
2 malice is something we understand. It means ill will.
3 It means a reckless disregard for a person's rights.

4 Constitutional actual malice means more. It means
5 knowledge of falsity or reckless disregard for whether
6 something is false. In order to prove that, you have to
7 show the state of mind of the defendant at or about the
8 time that the defamatory statement was made. And of
9 course, defendants always insist that they have,
10 actually, more pure of heart and pure of mind and they
11 believed everything that they said.

12 But the truth of the matter is, the law in this case
13 allows you to decide that by examining direct and
14 indirect evidence in existence that goes to the
15 defendant's state of mind. It allows you to examine
16 evidence that's circumstantial, that would tell you
17 whether his state of mind at the time that he made the
18 utterance is, in fact, a knowledge of falsity or
19 recklessly in disregard of falsity.

20 Much of the evidence that you've heard doesn't have
21 to do with whether the statements were made in this
22 letter. I mean, they were unequivocally made. They have
23 to do with whether at the time they were made, there's
24 reason for you to believe that they were made with
25 constitutional actual malice. Did he know they were

1 false? Should he have known, if he he'd been anything
2 other than reckless?

3 Point one, just to start. He made the statement in
4 the next-to-last paragraph of the letter, and it says
5 this:

6 *In summary, as a result of Judge Coffey's actions,*
7 *she has given the distinct and transparent appearance of*
8 *bias and partiality, and is not able to be a neutral and*
9 *detached arbiter of the many cases that have been and*
10 *will be pending before her.*

11 That says that in cases adjudicated, much like this
12 judge is adjudicating our case, that my client acted with
13 bias and partiality. There's not a shred of evidence in
14 the record to prove that. As a matter of fact, they
15 admitted in our answers to interrogatories, specifically
16 Number 19, which is one of the first exhibits that we put
17 in this case, that they knew of no case, not one case, in
18 which Maureen Coffey, in a case that she was deciding
19 from the Bench, had done anything that was biased or
20 prejudiced or anything but impartial.

21 In addition, every single witness who's testified
22 from the stand since the beginning of this trial has said
23 the same thing. That includes the only witness who
24 testified for CSA as a CSA -- excuse me -- executive
25 employee, Mr. Kelley. It includes all of the law

1 enforcement officers. Everybody you've heard has said
2 that she has never, to the best of their knowledge, done
3 anything that would indicate bias, prejudice, or
4 partiality as a judge adjudicating cases. That we
5 submit, is something that you need to internalize, that
6 the most important statement in this case is admittedly
7 false, and no one has tried to support it.

8 Not even the expert, the person who was paid to come
9 down here and tell you what judicial etiquette is all
10 about. Even he didn't say that there was anything
11 indicating bias or prejudice or partiality in the Judge's
12 Bench conduct.

13 So what are we talking about when they wrote this
14 letter? Well, he's talking about something much
15 different. He's talking about did she interfere or
16 somehow give aid and comfort to her brother in this
17 investigation that Mr. Breed thought was important. And
18 on that note, there are several things that you need to
19 know. I believe the judge will charge you that
20 Plaintiff's Exhibit 4. had it just been delivered to the
21 Commission on Judicial Conduct, is absolutely privileged.
22 There's no reason you can't write one of these and send
23 it off about a judge.

24 What you can't do, if what you put in your letter is
25 not true, is you can't take it and hand it out in back

1 channels to get it circulated. The fact that you
2 addressed it to or sent it to the Commission on Judicial
3 Conduct doesn't make it privileged for all purposes.
4 Because as to a third party, if what's in here is false,
5 if it's fictional, it's defamatory. If you publish it to
6 a third party, where did the publication come? They took
7 it to the Town. They sent it to her employer. Her
8 direct report, quoting both Mr. Breed in his deposition,
9 and Mr. Kelley, they were looking to have the Town take
10 some action against her. Maybe terminate her, maybe
11 reign her in, maybe discipline her. That was the
12 publication. Without question, that publication was
13 made.

14 Where else was there a publication? Well, Mr. Breed
15 and Mr. Kelley, they testified unequivocally that this
16 was a quote, *operational decision*. They were both
17 operations managers. That meant that they had the
18 authority, in their opinion, to send a letter like this
19 and to circulate it, meaning to publish it other than to
20 the Commission, without having to get the approval of
21 their board of directors. All right.

22 There's conflict in the evidence as to whether this
23 is supposed to be confidential. It would have been
24 confidential if it had only been sent to the Commission
25 on Judicial Conduct. When they started passing these

1 letters out, they violated confidentiality. They
2 published in such a way that many people found out about
3 the contents. Consequently, what you had was, you had
4 someone deciding, as an operational matter, to write a
5 letter, without needing the authority of the board of
6 directors. And then, after it had been sent, long after
7 the letter had gone off, after the gun had been fired,
8 when the board could not do anything to recall it or make
9 it go away, they then showed it to them. They showed it
10 to 17 people who didn't need to see it. Seventeen people
11 who didn't need to see it.

12 At the time they saw it on June 24, 2008, there
13 wasn't a single thing they could do about it. They
14 couldn't -- they couldn't stop it. They had no chance to
15 interdict it. That's a publication. Those people, to
16 the extent they got that letter, and they started passing
17 it out in the Sea Pines Community -- and we all know
18 that's what happened -- that's a further publication.

19 The defendants would have us chase every rabbit down
20 and produce someone who's 28 different degrees away from
21 the original publication. Plenty of people saw this
22 letter. Plenty of people knew what it was about. So
23 you've got something that's false, and let me address
24 that for a moment.

25 Defamation, before you get to the question of

1 constitutional actual malice, means a false statement.
2 But there are several kinds of defamation that are false,
3 per se. One of those is the criticism or the castigation
4 of someone's ability to conduct her business, trade, or
5 profession. There isn't any doubt that saying a judge is
6 unqualified by -- is unqualified when you say that she's
7 biased and she's partial and she's prejudiced.

8 We put in the record the lawyer's oath. That's one
9 of the first exhibits. The key central aspect of that to
10 be a judge is impartiality. If you can't pledge to be
11 impartial, you can't sit in judgment of others. And
12 that's a good thing. So everything in this letter went
13 right to the heart of whether the Judge was fit to
14 perform her job.

15 Another thing that is per se, per se defamation, is
16 the criticism of a person by alleging that that person is
17 either unchaste or committing adultery. That criticism
18 popped up some time after it became clear that Mr. Jolin
19 was going to cooperate with the plaintiff in processing
20 or prosecuting her case. That was per se defamation.
21 Not the same kind and content. This is a document. This
22 is libel. It's more -- certainly, more serious than what
23 is basically street talk, which is slander. But each of
24 them has the same basic elements once you get beyond is
25 it defamation and was there publication.

1 We believe that you could find -- must find -- that
2 there was publication of the letter to Mr. DeLoach, to
3 Mr. Coltrane, probably to Steve Riley, to many other
4 people at the Town of Hilton Head Island. We believe
5 that, as a result, injury occurred.

6 We also believe that there was publication of the
7 slander. And you heard the testimony of Mr. Waxel, that
8 he, several times while at work, was importuned by Randy
9 Woods, his lieutenant, and told about the alleged affair
10 between John Jolin and my client. Mr. Waxel, after the
11 third time, then told my client. In addition, he knew
12 that other people knew of it. The net result was --
13 excuse me -- then told Mr. Jolin. The net result was,
14 what started out as a rumor that just stayed in-house at
15 Sea Pines, and was something, I think, intended to
16 denigrate the credibility only of Jolin, ended up, first,
17 alarming his wife, because she found out about it;
18 second, alarming Judge Coffey, because when she found out
19 about it, she realized that there was precedent at the
20 Town of Hilton Head for somebody losing her job as a
21 result of indiscretions with law enforcement officers.

22 And I think you can see where that sort of
23 indiscretion would be enough to cost you your job. It
24 wasn't just idle gossip. It was something that
25 potentially could have harmed her greatly.

1 Moving on, the conduct in this letter upon which
2 they seem to be insisting that Judge Coffey did something
3 to either impede an investigation or assist her brother,
4 is the following.

5 In 2004, there's a telephone call, where she gets a
6 call from her dad, who's sick and is dying with cancer,
7 and Dr. Coffey says there arresting, you know, Otis, and
8 I don't understand what's going on. She asks him,
9 because you couldn't understand him, to put an officer
10 on. The officer, Calendine, then described what was
11 going on. He said they were arresting Mr. Coffey, that
12 is, Otis Coffey; and that they were going to impound his
13 vehicle; that they were going to get fingerprints; they
14 were going to get a current photo; and they were going to
15 get his DNA evidence.

16 And after hearing that, she asked him to give the
17 phone back to her father. And the only testimony is, she
18 told her dad to let it go ahead and happen. And it did
19 go ahead and happen. He was, in fact, arrested. The car
20 was impounded. Unlike 95 percent of trespassing cases,
21 he was actually taken to jail, so they made sure they got
22 his fingerprints. There is no interference or impediment
23 arising out of that.

24 Their expert, again, the man who knew all about the
25 appearance of impropriety, said that, to his way of

1 thinking, that was completely innocent. No one could
2 assign any error to the Judge in doing that, because she
3 didn't initiate it and didn't do anything after she
4 participated.

5 So the entire first paragraph of this letter, Mr.
6 Breed's letter, is based on a fiction, an exaggeration.
7 He said things like she insisted on talking to the head
8 officers in charge, as though she was trying to influence
9 something, but she didn't. He insisted that somehow she
10 was insinuating herself into this situation. But she
11 wasn't.

12 What this is, is, it's an example of hyperbole.
13 It's not necessarily untrue; it's just grossly
14 exaggerated. All right? The fact that the Judge was
15 biased and prejudiced and partial in her judicial
16 proceedings was an out-and-out rank lie. This was just
17 an exaggeration, but it was an exaggeration based on bad
18 facts. All right?

19 Next, again in 2004. Mr. Breed, in writing his
20 letter criticizing the Judge, and then passing it out to
21 her employer, and to people in Sea Pines, known not to be
22 blessed with the greatest of discretion, also said that,
23 in 2004, Otis Coffey was the primary suspect. Well,
24 Florencio, Detective Florencio, she testified that he was
25 a suspect, but not the primary suspect.

1 You heard Mr. McSwain, who's certainly no friend of
2 the plaintiff's in this case, testify that he was a
3 suspect, but not to his knowledge, the primary suspect.

4 And in point of fact, you heard a good bit of
5 evidence this morning, as well as last week, about John
6 Thomas Levy. And Mr. Levy is a person who the -- Mr.
7 Breed couldn't recall. There was virtually nothing he
8 could tell you about Mr. Levy.

9 When Mr. Kelley made his decision about whether the
10 contents of this letter were substantially correct, he
11 took Mr. Breed's word for the fact that, in 2004, Otis
12 Coffey was the prime suspect. Mr. Breed, however, never
13 bothered to tell Mr. Kelley about John Thomas Levy. And
14 of course, law enforcement, you see lots of people, they
15 come and go, but how many people do you see that generate
16 200 incident reports? 200 of them. And multiple films
17 where he had taken voyeuristic films of people inside
18 their houses. And how many times do you forget the name
19 of an individual who you yourself are responsible for
20 apprehending?

21 The incident report that we put in today through Mr.
22 McSwain says clearly that Breed was the complainant. One
23 of his officers, Mr. McNeill, went through the lost and
24 found; found a camera; looked at the film in the camera;
25 the film was voyeuristic in content. And I'm not going

1 to go any further than to say that means it showed people
2 in some state of undress, without their being aware of
3 it, inside their own houses. And that had been going on
4 in Sea Pines and in Hilton Head Plantation by somebody
5 who had a pass, who was driving in and out of both places
6 long enough to generate 200 incident reports.

7 They cleared that case, the John Thomas Levy case,
8 in October of 2004. And you saw the number of incidents
9 dropped from, you know, 23 to what, seven, eight? The
10 principal, or primary suspect. in 2004, was John Thomas
11 Levy. It wasn't Otis Coffey.

12 And if anyone had told Mr. Kelley the truth, he
13 would have known that. And who better to tell the truth
14 than the chief who had submitted the initial
15 investigative report, which gave the information to the
16 Beaufort County Sheriff's Office, that allowed them to
17 get a search warrant to find all the other films. The
18 man who recommended his own deputy, McNeill, for the
19 Security Officer of the Year Award, as given the
20 following year by the Hilton Head Island Rotary Club.
21 All right. He knew that.

22 Yet for purposes of this letter, which is designed
23 to harm and injure Maureen Coffey, Otis Coffey was the
24 prime suspect, and somehow, some way, she interfered and
25 aided and abetted him in 2004. It's just not here.

1 There is no evidence of that. It's patently false, And
2 what you have, instead, is someone with knowledge of the
3 truth. How do you make a report on someone as evil as
4 John Thomas Levy and not recognize the connection between
5 what he's done and open peeping Toms and burglary cases
6 in your community? You can't do it. All right. He
7 knew. He knew this was the likely primary suspect.

8 We have the situation, and I think this is a
9 conflict in the evidence, and from time to time, it
10 happens. Mr. McSwain says he went to see Maureen Coffey.
11 Ms. Coffey says he didn't go to see her. There's some
12 corroborating evidence that would indicate that, if he
13 went to see her, he didn't go to see her in her office,
14 which was effectively a broom closet full of file
15 cabinets. And he was never seen by the gatekeeper, if
16 you will, who is Sherry Hamilton.

17 But my client does remember a conversation with
18 Detective Baird, and Detective Baird remembered it, as
19 well. And basically, what was said was, with respect to
20 McSwain, he wanted to make sure that my client was not
21 going to do something that would interfere with the
22 deputies. And he came away, and he testified this
23 morning, he came away feeling that she hadn't done
24 anything, and that she wouldn't do anything. All right?

25 So, if the conversation took place, and I don't

1 think it did, but if it did, it was a situation of no
2 harm no foul. He went and asked. She said, *Don't worry.*
3 He said she said, *Don't worry.*

4 With respect to Detective Baird, he said exactly the
5 same thing. He said that he believed that they were
6 going to -- she wanted -- he wanted a polygraph test to
7 be run on Mr. Coffey, that is, Otis Coffey; and she
8 indicated that she would do whatever she could to get him
9 to do it. She made the effort. Initially, he said that
10 he would do it. Subsequently, he changed his mind. The
11 evidence is clear that she called Baird and told him
12 that.

13 The rub in this case is, they want you to believe
14 that by saying, I'm going to have my brother move out,
15 that somehow they were putting this hardened criminal,
16 you know, in a place where they couldn't get to him.
17 Now, think about that for a minute. This is a man who,
18 according to Mr. McSwain and according to Detective
19 Florencio, and everybody who's testified, did not have an
20 open warrant in Beaufort County. Beaufort County
21 Sheriff's Office hadn't arrested him for anything. All
22 right? He had, at most, some possession of marijuana
23 charges. And some time in 1992, according to folk legend
24 as it was developed in this case, and his actual criminal
25 record, he had an arrest for what was a property crime,

1 which was either dismissed or nol pros, which means
2 effectively, disposed of administratively. They just got
3 rid of it. So he had never been convicted of what Mr.
4 Breed insists he is, which is a burglar. All right?

5 So you've got someone who catches a person who's
6 committed 200 crimes, if these separate incidents are, in
7 fact, all crimes, who he can't remember, and yet he's got
8 this poor black man who doesn't, you know, who doesn't
9 seem terribly formidable, who's never been charged with a
10 property crime, who he thinks is his prime suspect. Now,
11 I ask you, how plausible is that? Does that indicate
12 that this person is maybe being reckless?

13 He says in 2008 he's a prime suspect. But Detective
14 Florencio got on the stand and said that's not true.
15 Detective Florencio said that, contrary to that, when
16 Breed was asked, he sent a list of seven suspects, only
17 one of whom was Otis Coffey. And Otis Coffey was the
18 only black one. Six white men; one black man. All
19 right? There was no prime suspect in 2008, according to
20 Florencio's testimony.

21 The long and the short of it is, with respect to the
22 conversations between Maureen Coffey and Mr. McSwain and
23 Detective Baird, the only thing that there is for you to
24 consider as to whether or not she was interfering, is by
25 saying, I think my client -- I'm going to move my brother

1 and have him go to the restaurant in Tybee Island was
2 somehow frustrating their legitimate purposes.

3 And the truth is, it might have been, if there had
4 been, you know, some arrest warrant. It might have been
5 if there had been some evidence. Because as Mr. McSwain
6 said, once they've got evidence, they don't need your
7 permission to talk. It's not voluntary. What they do
8 is, when they've got some evidence, they arrest you.
9 Well, from December 10, 2004, they've had Otis Coffey's
10 fingerprints. They had his DNA. They have a photo of
11 him. All right. And in any of the crimes thereafter,
12 right through 2008, if he would have matched, in any
13 respect, the forensic evidence developed at those crime
14 scenes, believe me, he would have been arrested. But he
15 didn't. All right.

16 So again, you've got a situation where there's no
17 active interference. You could, I think, infer a good
18 motive to the plaintiff in the sense that she was trying
19 to eliminate conflict, specifically with respect to what
20 was going on in 2004 in her household, where her father
21 was dying. And in 2008, subsequently, in a household
22 where she believed that her mother was the victim of
23 harassment.

24 Again, in 2008, we have what is the most remarkable
25 occurrence that I've ever seen, which is the positive

1 identification that wasn't a positive identification. If
2 you believe the testimony of John Jolin and Detective
3 Florencio, that man, Mr. Breed, the one who didn't
4 testify, was manipulative enough to set up a situation
5 where Mr. Jolin, after having perhaps identified Otis
6 Coffey or not, decided that he couldn't make a positive
7 identification. He made that decision not later than the
8 time he filled out the incident report on the morning of
9 May 29th. So, at some point shortly after the encounter
10 with the black male, he made a decision, and that was not
11 to put a positive identification in the incident report,
12 which is Plaintiff's Exhibit 14. All right.

13 In addition, on the front, what he put in the little
14 box at the top left, where it talks about what crime, is
15 *suspicious activity*. He identified a suspect who was
16 suspected of being engaged in suspicious activity. But
17 in the back, in the narrative, in what is the
18 supplemental form, Page 2, he could not make a positive
19 identification. Somehow, some way, through the sending
20 of the so-called *little butt email*, which is Breed's
21 email to McSwain, on or about May 20th, where he talks
22 about wanting to get Otis Coffey's little butt, as a
23 consequence of that email, Detective Florencio comes to
24 Sea Pines Security. Now, uncharacteristically, she then
25 puts Mr. Jolin on a speaker phone so that other people in

1 the room can listen to what she's saying, and she
2 debriefs him, in her opinion, by telling him that she's
3 revising his report, and in Jolin's opinion, by getting
4 from him a positive identification.

5 What's interesting is, that what Detective Florencio
6 didn't know was that Jolin had received a call ten
7 minutes before she called from Chief Breed. And Breed
8 had told Jolin: you're not 80 percent certain; you're not
9 ninety percent certain; you're a hundred percent certain
10 that it's Otis Coffey. And ten minutes later, he said
11 just exactly that to Detective Florencio, causing her to
12 change the report.

13 When Jolin got to the office that night, he would
14 not sign that report as it was revised. And the
15 testimony is clear that it gave him such problems that he
16 submitted his resignation, put it under the door. He
17 was, nevertheless, told to go and get a warrant the
18 following day, and he did not agree to go get the
19 warrant.

20 There's testimony in the record that there was a
21 meeting held by Jolin and Officer Campbell and others
22 with Chief Breed. Chief Breed, or Mr. Breed, in his
23 deposition, admitted that he had a meeting with Jolin,
24 and Jolin told him he could not positively identify Otis
25 Coffey. He admitted that. It's not Jolin's word against

1 Breed's word. It's Breed admitting it.

2 In view of the way the question was framed in his
3 deposition, the question was: *Within a day or two after*
4 *these incident reports, did you know that Sergeant Jolin*
5 *could not positively identify Otis Coffey?*

6 And he said that there was a conversation where he
7 said he couldn't identify him, within a day or two after
8 that report. Well, that would have been May 21st or May
9 22nd. Yet, basically, two weeks later, on June 6th, he
10 wrote this letter. And in it, the featured, signal
11 moment, on Page 2, in Paragraph 2, is that Jolin
12 positively identified Otis Coffey. How do you not know,
13 and then make that -- he knew that Jolin had not
14 positively identified, because Jolin had told him, and he
15 admitted that in his deposition. Yet, two weeks later or
16 ten days later, he's writing to someone saying he did
17 positively identify him. That's just an out-and-out lie,
18 ladies and gentlemen of the jury.

19 And to set up the telling of it, think about the
20 machinations that we had to go through. Effectively, an
21 officer of the Beaufort County Sheriff's Office and an
22 officer of his own security firm, had to be deceived into
23 creating what neither one of them would have done if he
24 had known what the other was doing.

25 Florencio testified she never would have done that;

1 she wouldn't have changed that report, if, in fact, she'd
2 known about the Breed call. And Jolin didn't go through
3 with it. He realized that he had committed perjury. He
4 realized that Mr. Breed had suborned perjury. And he
5 realized that you can't do that sort of thing and remain
6 in law enforcement. So he said no. But not according to
7 Mr. Breed. According to Mr. Breed, that never happened.
8 It was a positive identification.

9 I submit to you, ladies and gentlemen of the jury,
10 what's in here is not only false, but it is clearly known
11 to be false. You couldn't not know it, based on the
12 admission in Mr. Breed's deposition. That's one of the
13 reasons he didn't testify for you. He didn't come up and
14 take the stand and actually say what happened.

15 Another thing you should consider is this. There is
16 -- there should have been very, very accurate evidence of
17 what took place during this particular event. In point
18 of fact, there should have been video or -- excuse me --
19 audio recordings. The testimony, although it took a long
20 time to get it out. It took impeachment with a
21 deposition taken in another case, the Klippel case. The
22 testimony was that, as a matter of routine, every call
23 generated out of the security office by the officers at
24 Sea Pines Security was recorded.

25 THE COURT: Mr. Mathison, you have 15 minutes.

1 MR. MATHISON: All right. Yet, those recordings
2 weren't produced. Mr. Breed's call to Mr. Jolin, if it
3 originated from the security office, should have been on
4 the record somewhere. Didn't get produced.

5 Ms. Florencio's call to Jolin is clearly made from
6 the security office. And if it had been produced, it
7 would be the best evidence of what happened.

8 In addition to these audio tapes, there are video
9 tapes that should have been produced. Indisputably,
10 every cruiser in Sea Pines had video tape.

11 On the day that Campbell was towing Ann Coffey's
12 vehicle down at 4 Gadwall, there should be a video tape
13 of that. It wasn't produced.

14 The law is such, and the Judge will charge you, that
15 if evidence disappears under these circumstances, you're
16 entitled to draw an inference, that, if the evidence had
17 been presented to you, it would be adverse to the persons
18 who are suppressing it. We asked for it; they didn't
19 give it to us. We've argued about it, and they have
20 continued to suppress it or said -- denied its existence.

21 You're entitled to consider that as evidence of
22 knowledge of falsity, or reckless disregard.

23 Again, in reaching this determination, we think you
24 should look also to certain other aspects that speak to
25 Mr. Breed's state of mind. One is, within three weeks of

1 having written this letter, Mr. Breed, for reasons
2 unknown except -- for no reason, I guess, he conveyed his
3 undivided, one-half interest in his house to his wife.

4 He and she had owned a house together for 16-and-a-
5 half. Three weeks after writing this defamatory letter,
6 we believe that he transferred his interest in the house,
7 for no money to his wife, to prevent it from being
8 available to be attached by judgment. Just as simple as
9 that. The only excuse that he could come up with was
10 that he had medical reasons for doing it, but he refused
11 to disclose those.

12 And if you recall his deposition testimony on this
13 point, two pages before, he said medical reasons. He had
14 testified that he either didn't have or didn't recall
15 having any medical problems in May or June of 2008. So
16 no medical problems when it's not connected to something.
17 Then you're confronted with the fact that you made a
18 fraudulent conveyance to put your property beyond
19 execution, three weeks after writing a defamatory letter.
20 That's the next step. And then, once it becomes clear
21 what the purpose of asking about the deed is, then you
22 say I have medical reasons, but I don't have to tell you
23 what they are.

24 We believe that that goes to his state of mind and
25 establishes that he was, in fact, burdened with guilty

1 knowledge. It shows, in a word, that he knew he had done
2 something wrong.

3 Please spend a lot of time considering, in your
4 opinion, because you're the finders of the fact, who was
5 authentic and genuine from the stand. Was Maureen Coffey
6 more credible than her accusers? I mean, did she
7 actually say something that seemed plausible and honest.
8 And when she basically had her deposition read in today,
9 did what she said from the stand match up pretty closely
10 with what she said in the deposition?

11 There's been an evolution, because time has moved
12 on. But by and large, sounded to me like the same thing.

13 Think about this. Was Mr. Jolin more credible than
14 those who attacked his character? I would be hard-
15 pressed to find a more disinterested and honorable person
16 than Mr. Jolin, and I believe that the testimony stands
17 out like a beacon in a room full of otherwise dubious
18 comments.

19 I am required, at this juncture, to open on damages,
20 as well. And essentially, we've put in the record what's
21 known as special damages. And those are the damages that
22 can be monetized. That is, damages that can, in fact, be
23 reduced to a dollar amount. And the Judge will charge
24 you that, in order for a public official to recover, in
25 addition to showing constitutional actual malice, which

1 has to be shown to a standard of clear and convincing
2 evidence, he has to demonstrate, or she has to
3 demonstrate, that she has actual damages. And they have
4 to be special damages.

5 We put evidence in the record of medical damages.
6 Specifically with respect to Dr. Geiger, there are 35
7 sessions, at \$150.00 a session. The testimony was
8 actually that there were 36, but Dr. Geiger was nice
9 enough to allow one to be complimentary. That's
10 \$5,250.00. She had -- she was being counseled by Dr.
11 Geiger for the trauma that came with this particular
12 finding out about this letter and the ramifications of it
13 being reported to her employer. We also had evidence in
14 the record that she suffered from headaches as a
15 consequence.

16 We also had evidence in the record from Dr. Geiger
17 that she suffered from the gain of weight. Dr. Geiger
18 testified that those were most probably caused by the
19 stress brought on by the letter that Mr. Breed sent.
20 That's sufficient causation for you to find those damages
21 medicals.

22 In addition, she testified, Ms. Coffey did, that her
23 headaches caused her such pain that she was incapacitated
24 for large periods of time in the summer of 2008; and
25 that, as a consequence, she incurred additional

1 babysitting charges of \$800.00.

2 So, in addition to \$6,444.40 of medical, she had
3 some \$800.00 in babysitting charges. No one disputes
4 that babysitting costs money. No one disputes that she
5 had babysitters from time to time. The defense will
6 argue, you know, she didn't pay for them other than in
7 cash, so there's no proof of it. I think all of who've
8 had babysitters realize they are paid in cash. That's
9 the way business is done. My client is not going to come
10 in here with a fabrication about how much she paid for
11 additional babysitting.

12 She's already in the situation where she's raising
13 three children, and effectively holding down a full-time
14 job, without a -- too much help from her husband over the
15 course of the last three or four years.

16 In addition, there's special damage that inheres in
17 the fact that the testimony revealed she had a three-year
18 contract, up until the last one. The last one she got to
19 negotiate as to the amount, and she got a slight raise.
20 It went from 86 -- \$85,600.00 to \$87,000.00. But instead
21 of three years of guaranteed money, which is what she had
22 under the contract that came into existence in February
23 of 2008, she only had two years. And if you add up the
24 difference between the two, it is a loss of income, of
25 guaranteed income, of \$82,000.00. \$82,000.00 and

1 \$800.00. We believe that is special damage, and you can
2 find that.

3 Any of those can be found as special damage. It's
4 within your prerogative to decide how much of any, if
5 any. For example, if you don't think all of Dr. Geiger
6 was counseling about this particular mishap in her life,
7 you have the power to allocate some percentage of what
8 Dr. Geiger charged over the 36 months. That's your
9 purview. It's not mine. I'm arguing what's on the
10 document, what's the evidence put in. But you can find
11 them specifically; you can find them in any amount; but
12 you must find actual damages, special damages, in order
13 to find for my client.

14 Because she's a public official, in order to get
15 reputation damage, which I'm about to talk to you about,
16 she has to show and get you to find some special damage
17 in her favor. It's very important that you think about
18 that.

19 Next, and this is what defamation is all about, is a
20 person's reputation. It's up to you, as the finders of
21 fact in this case, to determine what injury my client
22 sustained to her reputation. You should recall that a
23 lot of people never found out that my client's -- the
24 complaint that Breed made against her at the Judicial
25 Conduct Commission was dismissed. Mr. Kelley, arguably,

1 never told the Board of Directors. Mr. Birdwell, says he
2 didn't find out that the complaint had been dismissed
3 until he got sued. That's how he found out. He didn't
4 find out until he got sued.

5 There's been a lot of hocus pocus here about, you
6 know, the lawsuit is a self-publication. That's not the
7 law. All right. You're entitled to vindicate your name.
8 If you file a lawsuit, and somebody from the *Island*
9 *Packet* goes and digs it up two weeks later, that's not a
10 publication that's held against you. That's to the good
11 of the *Island Packet*, because it helps them sell
12 newspapers. But it's not something my client did. She's
13 entitled to vindicate her name.

14 And at least one person on that Board of Directors
15 didn't know that she'd been cleared until she brought the
16 lawsuit. That's because Mr. Breed and Mr. Kelley were
17 not necessarily proud of their handiwork when it didn't
18 work out.

19 Again, back to reputation damage. It's up to you to
20 decide. I can suggest a number, and the number I'm going
21 to suggest is six hundred --

22 MR. HALIO: Objection, your Honor. No basis.

23 THE COURT: Okay. You can go ahead at this
24 juncture.

25 MR. MATHISON: I can suggest a number. The number

1 I'm going to suggest is \$500,000.00. And I'm going to do
2 that for several reasons. One, you're going to see that,
3 in the record, there's a financial statement from the
4 defendant, Community Service Associates. You're going to
5 see that they have an unallocated reserve fund. That is,
6 they already have a reserve fund where they're collecting
7 to pay for things that they need. Improvements in
8 infrastructure and that sort of thing.

9 But as a result of charging assessments, which are
10 greater than their expenses, they have built an
11 unallocated reserve fund of 6.7 million dollars. That's
12 right on Page 11. You'll be able to find it. All right?

13 We're not saying that Maureen Coffey's reputation is
14 so exalted that she needs all of that money. What we're
15 saying is less than ten percent of that money would send
16 a message, I think, to the people at Community Services
17 Associates, that they probably need to change the way
18 they do business. They just can't heap abuse on people.

19 However, I can suggest it. That's all I can do.
20 It's up to you. You could make that award, or you could
21 make less, or you could make a lot more. It's a function
22 of how badly you think the reputation has been injured,
23 and what do you think it would take to compensate for it
24 under the circumstances.

25 Remember that what's at stake here, at least on the

1 letter, on the libel, is my client's partiality. And the
2 argument that she's not impartial goes right to the core
3 of what she does for a living.

4 Last, you're entitled to award punitive damages, and
5 I can tell you that the *Constitution* places a limitation
6 on how much you can award. Because of the due process
7 clause, what you were to assess against the defendant has
8 to be proportional to the actual damages that you find.

9 And by actual, I'm talking about special damages
10 would be the monetized numbers, which you're entitled to
11 find. Reputation damage is called general damages. And
12 if you award punitive damages, it has to be proportional
13 to what you've awarded as actual, which consists of both
14 monetized special damages and reputation damage. I can
15 suggest a ratio, but basically, the way it works from a
16 constitutional standpoint is --

17 MR. HALIO: I'm going to object to that argument,
18 your Honor, about what the law is, as far as the ratio.

19 THE COURT: Okay. You can go a little bit further,
20 but let's be done. And you're wrapping up your time
21 anyway.

22 MR. MATHISON: I am, your Honor.

23 THE COURT: Thank you.

24 MR. MATHISON: Constitutionally, I believe that
25 there will be a charge that there must be a reasonable

1 relationship between the actual damages and the punitive
2 damages. And I would not, certainly on the behalf of a
3 judge, recommend that you award more than twice the
4 amount of punitive damages if you make a substantial
5 award of actual damages. And you should bear in mind
6 that these things are viewed, and a verdict to be beyond
7 constitutional challenged has to be reasonably balanced.

8 I'm reserving 15 minutes to talk to you, largely
9 about what my colleagues will argue after I sit down.
10 And I appreciate the opportunity to talk to you.

11 THE COURT: Thank you, Mr. Mathison.

12 MR. HALIO: If it please the Court.

13 THE COURT: Mr. Halio.

14 CLOSING ARGUMENT ON BEHALF OF
15 DEFENDANTS, MR. HALIO:

16 MR. HALIO: Good afternoon, ladies and gentlemen.
17 Thank you for bearing with us over the course of the last
18 week and a half. I want to thank you for myself, and on
19 behalf of Celeste, Kelly, and George and Cary.
20 Obviously, this is an important case for all of us, and
21 we appreciate your attention.

22 I've been doing this a long time. I've seen some
23 attentive juries, and you guys are in that category. You
24 all have been paying attention, and we appreciate it.

25 Now, we are advocates. You're the finders of fact.

1 And it's up to you all to determine what the facts were
2 when we say is not evidence. However, I will tell you,
3 and you will have the evidence with you, that there was a
4 couple of things that were misstated by Counsel, in
5 regard to the letter, which is, of course the focus of
6 this lawsuit. And that is, that, in 2008, Otis Coffey
7 was written in the letter to be the primary suspect. It
8 does not say that. It says that:

9 *In 2008, several months ago, our community again was*
10 *the victim of a rash of burglary cases. The route of*
11 *travel, target homes, times, dates, and M.O. were very*
12 *similar to the cases of approximately three-and-a-half*
13 *years ago, where Otis Coffey was the primary suspect.*

14 So nobody said in the letter that, in 2008, Otis
15 Coffey was the primary suspect.

16 Conditionally, it was represented to you that, in
17 the letter Mr. Breed wrote, that there had been a
18 positive identification of Otis Coffey on the night of
19 May 20, 2008. In fact, what the letter stated was that
20 the suspect was confronted and identified by our officer.
21 The word *positive* was never used in that. And in fact,
22 if you will recall, Otis Coffey was indeed identified as
23 a suspect by John Jolin, who is the plaintiff's primary
24 witness in this case.

25 And the point of all that is, that it's up to you

1 all to remember the evidence. It's up to you all to
2 remember what happened. And it's up to you all to read
3 the letter and compare and determine what happened,
4 because that's your job.

5 Now, there's also been a lot of mudslinging going on
6 from the plaintiff's side in this case. A lot of things
7 have been brought into this case that just really don't
8 have anything to do with anything, or that have been
9 brought into the case to sort of cloud the issue.

10 And one of the things that the plaintiff has brought
11 into this case is this man named John Thomas Levy, who
12 was arrested for some sexual-related crimes in 2004.
13 We're not here about an investigation into sexual-related
14 crime. We're here about the investigation into a series
15 of property crimes, thefts, things like that. It's
16 apples and oranges that he's trying to compare. And John
17 Thomas Levy has simply been brought up as an attempt to
18 cloud the issue with regard to whether or not the
19 property crimes of 2004 and 2008 were actually linked to
20 Otis Coffey. And if you recall, in 2008, Mr. Levy was in
21 jail.

22 Now, what I'd like to direct you to is the law --
23 what I'd like to talk for a while is the law that's
24 applicable to this case. And the Court has ruled that
25 the plaintiff is a public official. Now, she is the

1 judge for the Town of Hilton Head Island. She is, in
2 fact, the judicial branch of the Hilton Head Island
3 government, and that means that there's a special set of
4 rules that applies to a defamation case. And that's
5 because the United States Supreme Court has extended
6 constitutional protections to criticism of public
7 officials under the *First Amendment*. In other words,
8 freedom of speech.

9 Now, the rules are that the burden of proof is on
10 the plaintiff to prove by clear and convincing evidence
11 that there was a statement made that was false and
12 defamatory; that it was made with actual constitutional
13 malice; and that the statement was not privileged.

14 Now, let me talk to you about what a few of those
15 terms mean, because we all know that there's different
16 levels of proof in a case. If you watch *Law and Order*,
17 you know that the criminals have to be convicted beyond a
18 reasonable doubt. If you have an ordinary civil case,
19 the standard is a preponderance of evidence. In other
20 words, you've just got to tip the scale a little bit.

21 Well, clear and convincing evidence is a higher
22 standard than preponderance of the evidence, but a lower
23 standard than beyond a reasonable doubt. Clear and
24 convincing evidence is that degree of proof which will
25 produce in the mind of the trier of fact a firm belief as

1 to the allegations sought to be established. Such proof
2 is intermediate, more than a mere preponderance, but less
3 than is required for proof beyond a reasonable doubt.

4 Clear and convincing evidence requires that the
5 evidence must be found to be credible; the facts to which
6 the witnesses testify must be distinctly remembered;
7 testimony must be precise and explicit; and the witnesses
8 must be lacking in confusion as to the facts in issue.

9 The evidence must be of such a weight that it
10 produces in the mind of the trier of fact a firm belief
11 or conviction, without hesitancy, as to the truth of the
12 allegations sought to be established.

13 What is actual constitutional malice? Well, actual
14 constitutional malice is not simply ill will. It's not
15 saying something about somebody with just a bad, you
16 know, I don't like the guy, so I'm going to make a bad
17 statement about him. Actual constitutional malice is a
18 statement made with knowledge that it was false, or with
19 reckless disregard for the truth.

20 In cases involving the defamation of a public
21 official, the plaintiff must prove the defendant acted
22 with constitutional actual malice, that is, with
23 knowledge that the statement was false, or with reckless
24 disregard of whether it was false or not.

25 Actual malice means the publisher of the statement

1 had knowledge the statement was false, or acted with
2 reckless disregard as to whether or not it was false.

3 A reckless disregard for the truth requires more
4 than a departure from reasonably prudent conduct. There
5 must be sufficient evidence to permit the conclusion that
6 the defendant, in fact, entertained serious doubt as to
7 the truth of this publication. Further, there must be
8 evidence that the defendant had a high degree of
9 awareness of probable falsity.

10 Also, a couple of -- a couple of concepts you all
11 need to think about in the context of this case are
12 privileges. Privileges are applicable in defamation
13 cases. And there's a couple of different kinds of
14 privilege. And basically, what a privilege means is
15 that, if you do something, you can't be sued for it.

16 And there's two kinds of privileges. The first is
17 an absolute privilege, and the second is a qualified
18 privilege.

19 Now, an example of the absolute privilege is found
20 in *Rule 13* of the *Code of Judicial Conduct* that Judge
21 Howard talked about yesterday, in which he said -- in
22 which the rule says that you can't sue somebody for
23 filing a complaint with the Judicial Commission. And
24 that's something that you all need to remember, because
25 there's been a lot of stuff mixed up here today, not --

1 mixed up here over the last week-and-a-half, and it
2 hasn't really been separated out. And I'm sure that the
3 plaintiff was upset when a complaint was filed against
4 her, a grievance was filed against her, with the
5 Commission, but that is absolutely privileged, and cannot
6 be the basis of the lawsuit.

7 Now, a qualified privilege is different, and I'm
8 going to give you an example. If somebody -- if two
9 people live in a gated community, and they're concerned
10 about their security, they're entitled to interact with
11 each other, and they're given a privilege, because they
12 have a common interest in security. In other words, you
13 ought to be able to talk to your property manager about
14 security issues, and he ought to be able to talk to you
15 about security issues, without the fear of either one of
16 you getting sued. And we believe that the qualified
17 privilege is applicable to this case, certainly in the
18 context of Mr. Kelley and his board of directors, and
19 perhaps in additional context in this case.

20 Now, finally, expressions of opinion. Expressions
21 of opinion regarding the performance of public officials
22 are also safeguarded under the *Constitution*. These are
23 people that work for you; you ought to be able to express
24 your opinion about their performance of their duties.

25 Now, the *Code of Judicial Conduct* is the applicable

1 to all judges, including a municipal judge. And the rule
2 of no harm/no foul does not apply in the case of the Code
3 of Judicial Conduct.

4 As Judge Howard told us yesterday, when you put on
5 the robe, you start living in a glass house, and people
6 are looking at whatever you do, and your life changes for
7 you, as he described it.

8 And Cannon 2 says: *A judge shall avoid the*
9 *impropriety and the appearance of impropriety in all of*
10 *the judge's activities.*

11 And that's what this case is all about. Is what the
12 plaintiff did as described in George Breed's letter, did
13 that give the appearance of impropriety to a reasonable
14 person such as George Breed?

15 Mr. DeLoach, who is also a lawyer, and who is also
16 an employee of the Town of Hilton Head, stated that
17 criticism is an occupational hazard for judges. In fact,
18 the United States Supreme Court said, in 1947, that
19 judges are supposed to be men of fortitude, able to
20 thrive in a hearty climate.

21 So the first question, the first issue, that the
22 plaintiff would have to prove, first, -- so the first
23 thing that the plaintiff would have to prove is that the
24 letter was false. And in that regard, you will need to
25 match up the letter with the testimony that we relied on,

1 which was the plaintiff's testimony. And there are
2 basically three incidents when we're dealing with here.
3 The first occurred in 2004, involving a -- involving a
4 trespassing incident with Otis Coffey.

5 And the plaintiff was on the way to Charleston, and
6 her -- Otis was with his father. And during the course
7 of the conversation, she said, *All right, Dad, hand the*
8 *phone to the officer.* And she proceeded to speak with
9 the police officer.

10 And then she said, again, in her testimony: *I said,*
11 *'Dad, hand the phone to somebody so that I know what's*
12 *going on.'*

13 And as you recall, Judge Howard said, that, in
14 itself, is probably not an ethical violation. However,
15 you need to tack this on to what happened later to
16 understand why Mr. Breed felt like he did, and why he
17 included this as one of the items in the letter.

18 And of course, the other -- the other incident
19 occurred in 2008. And it involved the investigation of
20 Otis Coffey as a suspect in the crimes -- I'm sorry, this
21 was 2004. The investigation in the 2004 where not only
22 one, but two different police officers, came down to talk
23 with the plaintiff in her office. Now, she only
24 remembers the one. They've gone to great lengths to try
25 to show that Captain McSwain did not go to see her in the

1 office. But why would Captain McSwain come in here and
2 tell you that he had been in her office if he hadn't?
3 He's the Captain of the Beaufort County Sheriff's Office.
4 He's got no ax to grind in this case. And he came down
5 and he told you that he met with her.

6 And what he said and what Brian Baird said that the
7 plaintiff told them is essentially the same thing. As
8 she recalls, she was asked to help schedule her brother's
9 lie detector test, which she should not have gotten
10 involved with, by the way, because that turns out in
11 Otis' favor, somebody finds out about it, then you got a
12 real problem with, well, did the Judge have anything to
13 do with this. So that's a problem. That was not in the
14 letter, but that was a problem -- that is a problem.

15 And then she says she told the officer that she was
16 going to -- going to get her brother out of Sea -- out of
17 the area.

18 So, when it came time the day of, he called me up
19 and said that he couldn't do it because he didn't think
20 they would only ask him those questions; that he had done
21 other stuff that he didn't want to go into, which I
22 assume had to do with pot, but I don't know.

23 And so I said, All right, I said, Well, listen. It
24 doesn't look good if you're in my jurisdiction and you're
25 a suspect in a crime, so go work at the restaurant in

1 Tybee.

2 And then again, she said: I told Baird that he
3 didn't want to take a lie detector test. I didn't like
4 hiding from law enforcement, I said, but it doesn't look
5 good if you're suspected of crime and living in my
6 jurisdiction.

7 And that was the second thing that Mr. Breed pointed
8 to in his letter as something that didn't strike him
9 quite right. The fact that you have a judge moving her
10 brother, who is a suspect, and everybody says, everybody
11 agrees, he was a suspect in 2004. Everybody -- he who
12 took issue with the fact that she took a suspect and
13 moved him to Georgia. And I think that's reasonable, for
14 a reasonable person to assume or to conclude that that's
15 not right. That's not right for a judge to take her
16 brother and move her [sic] out of state during the middle
17 of an investigation.

18 Then there was the third incident that occurred in
19 2008. And that was shortly after the night of May 20,
20 2008, and that involved poor Stephen Wright, who had just
21 come down here from Indiana; just gotten a job with CSA
22 Security; is driving his patrol car around the
23 plantation; and says hello to the Judge. And she says,
24 Stop harassing me. I'm the judge. You all have got to
25 stop harassing my family.

1 And here's her testimony on that: And I tell them
2 they've got to stop harassing my mother, and that I was
3 having Otis move out. And tell Breed I'll get with him
4 next week. Which meant since he apparently wanted Otis
5 and my mom to meet with him, I was going to go meet with
6 him. And that's the end of it until I get served with
7 this.

8 And then she goes on with the conversation:

9 Did you mentioned to him that you were the judge.

10 I did.

11 How did that come up?

12 I said, 'Oh, you're new. You don't know me. I'm
13 the judge or something. I don't know exactly what I
14 said, but something like that. You guys have got to stop
15 harassing my mother. I'm moving my brother out.'

16 Which, he didn't know about the situation.

17 So that's what Mr. Breed was complaining about in
18 his letter, and it matches up with the plaintiff's own
19 testimony.

20 And in this last instance, it gives the appearance
21 that the plaintiff is trying to throw her weight around
22 as the town judge. I'm the judge; you all have got to
23 quit harassing my family. And poor Stephen Wright, he
24 took off, and he went back to the office. And he said,
25 Mr. Breed, You're not going to believe what just

1 happened. And he told him what happened and he wrote it
2 up.

3 And if you'll recall Judge Howard, Judge Howard said
4 that was not good. That was not a good thing for a judge
5 to have done on that occasion.

6 Now, in making your decision in this case, you have
7 to decide, first of all, if there was something in the
8 letter that was false, and we contend that there isn't.
9 The sentences that the plaintiff has seized on in this
10 case as being -- the primary one seized on as being
11 allegedly false are that Mr. Breed then complained about
12 the plaintiff's performance, based on these statements.

13 And it seems to me that it's reasonable to conclude
14 that, if you have a judge out there moving a suspect out
15 of state; and telling a stranger, police officer, I'm the
16 judge; quit harassing my family; that you've got a
17 problem there. And it's reasonable to conclude, I
18 believe, that that judge is not fair and partial. How
19 could she be fair and impartial? How is that possible?
20 And that's the same thing that Judge Howard told you
21 yesterday.

22 And what did Mr. Breed say about it? And of course,
23 the question has been raised as to why Mr. Breed did not
24 take the stand. Ladies and gentlemen, Mr. Breed did take
25 the stand for nine hours in April, 2012. And if you

1 recall the testimony that was read to you, that took a
2 good three hours to read it, and every question that Mr.
3 Breed could have been asked was asked by Mr. Mathison. I
4 got to give Mr. Mathison credit. He asked every single
5 question. And he asked Mr. Breed every single question
6 over the course of nine hours. And we got to get out of
7 here sometime. We got to go back to our normal lives,
8 and I wasn't going to have George Breed sit on the stand
9 for another nine hours, when he's already testified to
10 everything under the sun in this case.

11 And what did George Breed say in his deposition with
12 regard to his state of mind?

13 *Is it your opinion that Judge Coffey was biased,*
14 *partial, or prejudiced?*

15 *I believe that, that's reflected in here. I believe*
16 *that to be the truth as reflected in this letter,*
17 *referring to the scenario described in the letter.*

18 Remember that the standard in a defamation case
19 involving a public official is what is in the mind of the
20 person who made the statement. And that's what I want
21 you all to think about when you get in there. You got a
22 lot of stuff you got to consider. There's a lot of
23 things -- subjects that's been brought up. And I can
24 tell you right now, ladies and gentlemen, I'm not going
25 to have time to go over everything that we've talked

1 about during this trial, and I don't need to. Because
2 you all heard it, you all listened to it, and you all,
3 once you all get the rules from the Judge on what you're
4 supposed to do with it, I've got full and complete
5 confidence that you all will go back there and review all
6 the evidence, and come out with a proper verdict. So, if
7 I skip something, it's not because I forgot about it;
8 it's not because I didn't think it's important; it's
9 because I don't have enough time to go over it all.

10 There's one issue that I wanted to talk to you about
11 with regard to the plaintiff we've talked about and the
12 three statements she made. We've talked about the
13 polygraph situation. And again, this is not something
14 that was seen in the letter, but it's something that came
15 out during the testimony. And it deals with -- it's
16 relevance to the issue of boundary lines.

17 You know, we've all got boundary lines in life.
18 We've all got laws that we've got to comply with. And
19 judges, inside the boundary lines, they've got another
20 boundary line. They've got special rules that we talked
21 about earlier. And the other thing that I found
22 disturbing in this case was that the plaintiff used the
23 town prosecutor as her free lawyer in her separation
24 agreement. And there's people -- you know, did she take
25 a week off from court to help her take a week off from

1 court? I don't know. But that's really inappropriate.
2 And it's emblematic of the conduct that occurred in this
3 case.

4 Now, some of the evidence I will talk about that's
5 been put in as evidence of, alleged evidence, of actual
6 malice has to do with the alleged harassment of the
7 Coffey family, which I really I don't -- I don't get.

8 There was a ticket that was given by, a warning
9 ticket, that was given by Mr. Jolin on May 21st for
10 parking improperly. And I asked him why did he give the
11 ticket. He said because the car was parked improperly.

12 And I showed him the picture of where it was parked.
13 And he said, *No, this one wasn't where it was parked.*
14 *This is where it was parked on another occasion. On this*
15 *occasion the car was improperly parked in a cull de sac.*
16 *And on this occasion, it was improperly parked in the*
17 *street.*

18 So I don't know why the security people are supposed
19 to ignore an improperly parked car, and I don't know how
20 you can call that harassment.

21 Similarly, this issue has been raised about a
22 criminal, *criminal*, investigation. And the Judge is
23 going to charge you at the end of the case on what a
24 security business can and cannot do. I know that I have
25 pulled that out and -- here it is. And again, this is

1 the stuff that's here to try to confuse you. Were they
2 conducting an illegal criminal investigation during this
3 period of time. And the Judge is going to charge you
4 about a security business. And it's people whose
5 personnel -- *the provision of personnel whose duties*
6 *include watching over, protecting, or defending people or*
7 *property, against intrusion, damage, injury, or loss, and*
8 *includes, but is not limited to, the following*
9 *authorities or responsibilities.*

10 And I'm going to skip to the pertinent part:
11 *Observe for and react to hazards or hazardous situations;*
12 *observe for and react to violations of law or policy;*
13 *observe for and react to emergencies; observe for and*
14 *react to thefts or other incidents; apprehend or report*
15 *intruders or trespassers; and maintain order or*
16 *discipline.*

17 What the plaintiff would have you conclude is that
18 the security people should sit around doing nothing.
19 Wait for crime to happen, go down, secure the scene, call
20 the Beaufort County Sheriff's Office, and then just back
21 off. There's nothing wrong with a security company going
22 out and patrolling the areas where crimes have occurred.
23 That's their job. That's their responsibility. So this
24 thing about a criminal investigation is a red herring,
25 what we call a red herring.

1 And one word in the email from Mr. Breed to
2 Florencio, one word, it says *stakeout*, has now become a
3 big issue. Well, you heard what the stakeout consisted
4 of. There's no stakeout of the Coffey's residence going
5 on in this situation.

6 The one officer, Fryman, is somewhere off the map.
7 And Sargent Jolin is over here by the X. And the 4
8 Gadwall is the way down here. And that's, supposedly, a
9 stakeout, I guess.

10 It's unfortunate that the word was used in the
11 letter, but there was no stakeout going on and no
12 criminal investigation at that time.

13 Now, let's talk a little bit about the witnesses.
14 John Jolin, of course, is the lynch pin of the
15 plaintiff's case, and if you find him to not be credible,
16 I would say that, at that point, you would stop your jury
17 deliberations, and you would find in favor of the
18 defendant.

19 If he's not credible, they got a real problem. When
20 you evaluate his testimony, you need to remember, first
21 of all, that he is not a, as Mr. Mathison called him, a
22 disinterested witness. He is first and foremost a
23 disgruntled former employee, just like his father figure,
24 Mr. Bill Waxel. There's no way he's an independent
25 witness. He talked to the plaintiff's attorneys over and

1 over in this case, on the phone, in person. He's given
2 recorded statements. He's given written statements. He
3 gave a deposition. If he's credible, why do you need to
4 meet with him so much; why do you need to take his
5 recorded statement; why do you need to get a written
6 statement from him; and why do you need to rehearse him
7 before the trial? In 30 years of doing this, I have
8 never heard a witness admit that he got together with the
9 opposing attorney and actually rehearse the testimony
10 before the trial.

11 Mr. Jolin has a rather unusual memory. And for the
12 first time during the trial, I don't see Mr. Jolin here.
13 I don't think he is a disinterested witness. He's
14 certainly entitled to be here, but I don't think -- I
15 found that to be kind of unusual.

16 Anyway, with regard to his memory, supposedly, he's
17 sleeping; George Breed calls him; wakes him up; and he
18 remembers exactly what George says, word for word. Then,
19 the Detective Florencio calls him five minutes later;
20 talks to him for 25 minutes; and he can't remember what
21 they talked about, other than, well, yeah, now he said he
22 was identifying Otis Coffey, and it's based on his having
23 seen him at the gate previously.

24 He forgot about the second trip to the Judge's
25 office when he supposedly broke down and cried. Now, how

1 are you going to forget something like that? Mr. Jolin
2 is, at minimum, a flip-flopper. He got into this chase
3 with Otis Coffey, and he got all excited about it. And
4 he called everybody and said, I'm chasing Otis Coffey; I
5 almost got Otis Coffey.

6 He sends his corporal, Corporal Fryman, to 4
7 Gadwall, which, of course, is the Coffey residence. And
8 then he says, well, you know, maybe it's only 80 percent.

9 And then, he tells Detective Florencio, well, no, I
10 did see him; I made a positive identification. Then he
11 flip-flops again and says I'm not going to sign the
12 warrant.

13 And then he got up on the stand and told you that he
14 had lied to Detective Florencio. And another thing that
15 came out during the deposition -- I mean during the
16 testimony, we've talked about records and the absence of
17 records, is Mr. Jolin said that, when he went to Mr.
18 Mathison's office to rehearse for the trial testimony, he
19 gave Mr. Mathison not only his phone number, but the
20 phone number from the control room or the operations room
21 where this conversation, telephone conversation, had
22 allegedly occurred.

23 MR. MATHISON: Objection.

24 THE COURT: Basis?

25 MR. MATHISON: Not in evidence.

1 MR. HALIO: That's what he said. He said he gave
2 him both phone numbers.

3 THE COURT: Okay. Go ahead.

4 MR. HALIO: And he knew the numbers. Even if he
5 didn't say it, he knew the numbers. And there's no
6 records. No records here. You know how easy it is to
7 call AT&T and say, we need the records for the operations
8 room; we need the records for my phone number; Sergeant
9 Jolin; Jolin's number? And where are they?

10 So, what did Mr. Breed do after all this came down?
11 What did Mr. Breed do? This guy that supposedly was
12 putting the pressure on Mr. Jolin to lie. Mr. Jolin
13 submits his resignation. And George Breed said, don't
14 leave, stay. And then when he said, I can't sign the
15 warrant -- I can't sign the affidavit for a search
16 warrant, he said, well, son, don't sign it.

17 And according to Mr. Jolin, he didn't even want him
18 to get a case number, because then he had blown up the
19 incident into a criminal case. Does that sound like
20 somebody who's putting the pressure, putting the squeeze,
21 on Mr. Jolin to lie?

22 Now, let's talk about somebody who didn't appear at
23 trial, and that would be Otis Coffey. We've got in
24 evidence here, and it was from Officer -- Detective
25 Florencio's file, a rap sheet on Mr. Coffey. You'll have

1 the opportunity to review that when you get in the jury
2 room. That's Defendants' Exhibit number 4. I would
3 suggest that you do so.

4 If you will recall, in 2004, Otis Coffey was
5 arrested for trespassing. Shortly after that, the
6 plaintiff had to test -- the conversation with Mr. Baird,
7 and also, Mr. -- Captain McSwain, one or two of them.
8 It's the same basic conversation, in which she said Otis
9 is being moved out. This occurs in December. What
10 happens? The property crimes stop.

11 2007, 2008, Otis Coffey comes back to Sea Pines.
12 They have this incident on May the 20th, the chase
13 incident, have the big to-do at the Coffey residence.
14 Again, the plaintiff says, she going to have -- she's
15 going to move him out again. And this time, she didn't
16 move him out-of-state; she just moved him out of the
17 Plantation.

18 And what happens? The crime stops again. According
19 to Detective Florencio, the crime stopped. And according
20 to Captain McSwain in 2004, the crime stopped. Now, was
21 that simply a coincidence? I don't think so.

22 Another issue that has been raised in the context of
23 this case is what happened to evidence? We contend that
24 there was no -- that, in many of these situations, there
25 was no evidence in the first place. Where's the video of

1 the towing? You know, nobody asked the policeman when
2 the video tape goes on. It's my understanding this goes
3 on when you put on the blue light. So I don't know where
4 the issue is in regard to the towing.

5 We have a picture here showing the car parked in the
6 middle of the street. The telephone conversations,
7 according to Mr. Breed, there was no telephone
8 conversation.

9 And let me tell you something about some of the
10 things that happened in this case as far as timing.

11 THE COURT: Mr. Halio, you have ten minutes.

12 MR. HALIO: Thank you, Judge.

13 MR. HALIO: The case was brought in 2008, and you'll
14 hear this. It was then stricken from the docket,
15 pursuant to Rule 40(j). Then was brought again in 2011.
16 And then, some time in 2011, the plaintiff served what we
17 call discovery requests. And this is how we get
18 information from people. So it was three years, over
19 three years, around three years, after this happened that
20 the plaintiff first said, oh, this is what I want from
21 you all. And now we're, I mean, I mean, we're doing
22 something with the evidence? Well, if it's so important,
23 why didn't you ask us for it back in 2008? Why did you
24 sit around for three years and you didn't do anything?

25 Now, let me get on to these allegations of an

1 alleged affair between Mr. Jolin and the plaintiff. I
2 want you to know that a directed verdict has been granted
3 to Mr. Breed in that regard. That means Mr. Breed,
4 there's no evidence linking Mr. Breed to any of this, any
5 of these alleged conversations. Which, I don't know from
6 -- I can't tell from the evidence, did it happen; did it
7 not happen? One witness says there were some
8 conversations. One says there are not conversations.
9 That's something you all will have to determine as the
10 triers of the fact, was there some gossip going along.
11 But Mr. Breed has been let out. So the only person, the
12 only entity, that could be held libel for the alleged
13 verbal defamation would be CSA.

14 And your job, one of your decisions, the decisions
15 that you'll have to make, is, basically, if you find that
16 this type of conversation occurred, are you going to hold
17 CSA libel for what I would describe as water cooler talk,
18 smack talk. You know, a lot of that stuff goes on in the
19 workplace. There's no management -- if it happened,
20 there's no management involved. And you'll have to
21 determine if something that CSA could be held libel for.

22 Now, I just wanted to talk for a couple of minutes
23 about damages. It's pretty clear that, in this case,
24 there's been some -- it's a little bit of over-reaching
25 on the part of the plaintiff with regard to the damages.

1 The Judge is going to charge you that, in regard to
2 damages, if you reach that point, you can't speculate.
3 She can't recover for stress associated with filing of
4 the complaint, her marital stress, her kids, her family
5 court litigation, her violent spouse. So how do you
6 separate it all out? I don't think you can do that. I
7 don't think you can separate it out.

8 And if you remember that the testimony from the
9 psychiatrist or the psychologist, Dr. Geiger, the
10 grievance is mentioned in only four occasions. So
11 there's 36 visits to Dr. Geiger for the alleged
12 defamation is really speculative.

13 And how about the contract with the Town? Nobody's
14 guaranteed employment. The plaintiff's not guaranteed
15 employment. She had a contract with the Town for a
16 certain number of years. When that ended, she got
17 another contract, but now she's complaining about that.
18 She got a raise. She's complaining about the raise. I
19 don't know about you all, but things have been tough
20 recently. Revenues, apparently, at the Town of Hilton
21 Head, have been down. I know my revenues have been down.
22 I didn't get a 1.4 percent raise. And if somebody had
23 given me a 1.4 percent raise, I wouldn't be complaining
24 about it. And if somebody had given me a two-year
25 contract, I wouldn't have been complaining about that

1 either.

2 And one of the things I learned as a sports fan, is
3 that sometimes it's better to have a two-year contract,
4 because when the two-year contract's over, you get to
5 re-negotiate. And when it's time to re-negotiate, things
6 might be better. So I don't think those are any -- that
7 those are -- I think the damage in this claim is highly,
8 highly speculative.

9 Now, at the end of the case, you're going to be
10 given -- or tomorrow, you're going to be given -- the
11 Judge is going to charge you as to what the law is.
12 She's going to give you a form in which you're going to
13 answer a number of questions. And we would -- we believe
14 the evidence shows that, in this case, the CSA and George
15 Breed were exercising their constitutional right to
16 complain about a public official.

17 As far as her employer is concerned, I think that
18 CSA is entitled to complain to her employer. She is a
19 public official. George Breed is entitled to express his
20 opinions on the plaintiff's fitness to be a judge. And
21 everything that George put in that letter is true, and
22 has been confirmed by the plaintiff in her own testimony.

23 I think you'll find that the communications with the
24 board were privileged, and that any publication in this
25 case was limited, and that the -- if it was publicized at

1 all, it was publicized more by the plaintiff than anybody
2 under the -- than anybody else.

3 So I urge you to keep your focus on what the case is
4 about. It's about the letter. Is it false? If it was,
5 was it defamatory? Is it privileged? And if all of
6 those things are met, then you have to answer the
7 question of whether it was said with knowledge that it
8 was false.

9 And I think when you look at all that and when you
10 examine all the evidence in what has turned out to be a
11 very strange, yet, interesting case, I think you'll check
12 the box in favor of CSA, and find in the favor of CSA and
13 George Breed. And I thank you very much for your
14 attention.

15 THE COURT: Thank you. Mr. Mathison.

16 MR. MATHISON: Thank you, your Honor.

17 CLOSING ARGUMENT IN REBUTTAL

18 ON BEHALF OF PLAINTIFF, MR. MATHISON:

19 MR. MATHISON: I don't think that saying someone's
20 having sexual relationship with a law enforcement
21 officer, if she's a judge, is water cooler talk or smack
22 talking. The fact of the matter is, we couldn't put that
23 statement in George Breed's mouth. You heard his
24 deposition. Unless you had a document with which you
25 could impeach him, his answer was pretty definitely, I

1 don't recall my thought process. He said that when
2 looking at documents that he had prepared, and asked what
3 was in them.

4 But we do have testimony leading directly back to a
5 person who'd worked Sea Pines Security for a very long
6 time, under the leadership of George Breed, and that was
7 Randy Woods. The testimony was clear from Mr. Waxel
8 that, on three occasions while he was at work, Mr. Woods
9 told him about this affair, and he ultimately told Mr.
10 Jolin. The rumor was so widespread that Mr. Jolin's wife
11 heard about it.

12 In addition, during the period of abatement, if you
13 will, in this lawsuit, where the people at Community
14 Service Associates thought the case had been dismissed,
15 when it had just been taken off the roster under Rule
16 40(j), Mr. Woods called Jolin and apologized,
17 essentially, for saying the things that, apparently, at
18 that point, had become the water cooler talk and smack
19 talk that Mr. Halio believes it was.

20 First, he's raised a specter of several privileges.
21 We don't in any way suggest that Rule 13 doesn't say what
22 it -- doesn't mean what it says. And what that is, is
23 that, by virtue of sending the complaint to the Judicial
24 Conduct Commission, you can't -- there are no
25 consequences for that if that's all you do. All right.

1 The rule says that you're immune, by virtue of anything
2 that goes on in that proceeding, inside the proceeding.
3 And it says that -- and we're not here -- if it had just
4 gone there, we wouldn't be here. Instead, it went other
5 places. It went all over the place. And consequently,
6 we're not dealing with an absolute privilege, we're
7 dealing with qualified privileges.

8 And in order to determine whether a qualified
9 privilege applies, the first thing you look at is you see
10 whether it exists at all, this so-called privilege of
11 fair comment, and wrapping yourself in the *First*
12 *Amendment*. That all is something that has occurred very
13 late. When this was initially done, it was not public
14 comment; it was not done as a citizen; it was done,
15 basically, in the back door. It was done between a 15-
16 year friend, that is Mr. DeLoach, to Mr. Breed. It was
17 about as sub silentio as you could get. You'll see the
18 letter. There are several copies of it in the evidence
19 that you'll review. And in each case, you won't see any
20 copy being indicated to anyone, when, instead, it was
21 copied to a whole bunch of people who are outside the
22 circle of Rule 13. We wouldn't be here if that hadn't
23 happened. Mr. Halio knows that.

24 So the question is, when you look at qualified
25 privileges, such as the community of interest privilege,

1 has it been exceeded? If it's been exceeded, or if bad
2 faith has been committed, the privilege does not apply.
3 And I submit to you that, in order for public comment to
4 be reasonable and within whatever privilege applies, it
5 needs -- the statements need to be true and fair. Was
6 this true and fair?

7 You notice Mr. Halio never addressed the allegation
8 that my client had been bias, partial, and prejudiced in
9 her adjudications. He never said anything about that,
10 because he concedes that that's wrong. He just didn't
11 want to address it so that you wouldn't have to think
12 about it. At least as to that, why would there be a
13 privilege to say something that's just egregiously wrong?
14 There isn't. And the excessive publication of things
15 that are wrong, beyond who needs to know, is not
16 privileged.

17 If the board of directors had had some authority,
18 the ability to tell Mr. Breed not to send the letter, it
19 would have been, in my opinion, privileged for them to
20 give it to them, for them to participate in it, but they
21 didn't. They were shown the letter gratuitously,
22 afterwards, when nothing could be done about it. The
23 only thing they did, being kept in the dark, basically,
24 for six months, is, without, at least in Mr. Birdwell's
25 case, knowing that Mr. Breed's complaint had been

1 dismissed, they voted to pay Mr. Breed's cost of
2 litigation, including the judgment, if there is, in fact,
3 one, or any settlement he might make.

4 That proves two things. Those people believed him.
5 They thought he was telling the truth; that he knew what
6 he was talking about. That's what defamation is. It
7 also shows that, whether they were responsible or not to
8 start with, they're responsible now. They signed up for
9 the responsibility when they, basically, voted to endorse
10 what he'd done.

11 Mr. Halio told you that Mr. Jolin knew the numbers
12 to the -- his own number and basic -- and essentially,
13 the number at the security office. Actually, what Mr.
14 Jolin said was that he responded to my son by giving my
15 son his land line and his cell phone number. As it turns
16 out, the call from Mr. Breed came on his land line.
17 That's not a recovered call that you can get from Hargray
18 Telephone Company. They don't put them on the bill.
19 It's not something you can find. Or if you can, you
20 can't find it in the course of a weekend, which is when
21 we were making the inquiry.

22 So I admit there has been a directed verdict because
23 Mr. Breed cannot be proved to have said the sexual
24 allegations. But CSA has been proved to have said it
25 through Mr. Woods, and you need to hold them accountable.

1 In addition, the maligning of a person for sexual
2 activities is the standard refuge of the scoundrel. If
3 you're attacked on some basis, and you're looking for a
4 way to disqualify your opponent, you immediately come
5 back and accuse them of sexual impropriety. It's almost
6 gotten to be public debate 101. And it needs to stop.
7 It's not a civil discourse to make things up and spread
8 rumors. And that's what they did.

9 Going over the events, the only one that I think
10 warrants any analysis, beyond its false, on your part, is
11 what Officer Wright testified to. You recall, Officer
12 Wright was the person who tried to put in evidence a
13 document that had never been furnished to us, which we
14 believe had been prepared recently, specifically for this
15 litigation, in place of another document that had been
16 prepared some time in the past, which he had produced to
17 us in discovery. There were material variances in the
18 two affidavits. I can honestly say that, in my
19 considerable experience as a lawyer in court, I've never
20 seen anybody produce two statement with same date, with
21 that kind of lame excuse, and then re-order them so that
22 the later in time became the first in time on the basis
23 that he couldn't recall when.

24 It's interesting to note that, while he professed to
25 be offended by what happened, he testified that he had

1 been in the Coffey residence -- he had been past the
2 Coffey residence three times. He was a second shift
3 deputy, and -- not a deputy -- second shift officer.
4 That means he went to work at 2:00 o'clock. So, in the
5 course of three hours between 2:00 and 5:00 o'clock, he
6 had been down to Gadwall three times. I submit to you
7 that Sea Pines Plantation, being big enough to hold 6,000
8 people, there's no possible way you would drive down that
9 tiny little street to South Beach three times in three
10 hours, unless something was going on, other than just
11 standard or routine patrol.

12 The fact of the matter is, if and to the extent he
13 truly was concerned having these multiple affidavits that
14 each have different facts in them, one of which tracks
15 Mr. Breed's letter more closely than the signed
16 affidavit, I think you could consider his testimony to be
17 highly suspect.

18 Mr. Halio's alluded to the fact that the witnesses
19 put on by the plaintiff have one thing in common, and
20 that is, that some of them are former employees of Sea
21 Pines Security. Trust me, if they had still been working
22 for Sea Pines Security, you would not have heard the
23 truth.

24 In addition, I think that John Thomas Levy being
25 described as mudslinging and a red herring is remarkable.

1 These are the same people that want you to find that the
2 end of crime in massive quantities cannot be connected to
3 an arrest or a departure. It's every bit as likely that
4 John Thomas Levy being arrested in October of 2004 caused
5 the end of what was being described as a crime spree, as
6 is the fact that Mr. Coffey moved to Tybee, where he
7 could come back whenever he wanted.

8 I don't believe that there is evidence in the record
9 that establishes the principle thrust of what's in the
10 letter, which is that my client, Maureen Coffey, in any
11 manner, interfered with an investigation.

12 And last, Mr. Halio touched on what is an
13 investigation and who is entitled to do it. And you will
14 hear a charge which will clarify that. The inference
15 given off by the letter that Breed wrote on June 6, 2008,
16 is that my client was interfering with an investigation
17 of Sea Pines Security. By law, they do not have the
18 power to investigate felonies of the kind they were
19 describing, that is, breaking and entering, burglary of
20 whatever degree, or a peeping Toms.

21 There is evidence in the record that Mr. Breed
22 himself believed that the peeper and the burglar were one
23 and the same; that a person who was looking for places,
24 casing the joint, if you will, in an effort to determine
25 where he might commit his next burglary, was often

1 conflated or confused with the peeper.

2 I would commend to you the evidence that's in the
3 record. There's a great deal of it. It's been discussed
4 in great detail by a number of witnesses, argued and
5 analyzed by a team of lawyers. At least my opponents
6 have a team. And I ask you to do what it is that you
7 came here to do, and that's reflect the way the American
8 system works.

9 Everybody in this room believes in the jury system.
10 We believe that you're the people that should be making
11 this type of decision, not plutocrats or folks from on
12 high. You've heard the evidence. Once you hear the
13 Judge's charge, we would ask that you return a verdict
14 that properly reflects the injury done to my client.

15 Thank you very much.

16 BY THE COURT:

17 THE COURT: Thank you, Mr. Mathison. Ladies and
18 gentlemen of the jury, you have now heard the closing
19 arguments from the lawyers. What is left in this case is
20 my charge on the law, and then I'll also, of course, send
21 this to you for your deliberations.

22 I can tell you that my charge on the law will take
23 about 45 minutes in this case, which is lengthy. Based
24 on the hour, and just based on the length of this trial
25 as well, I'm going to have you come back in the morning,

1 and that is when I'm going to charge you on the law
2 that's applicable to this case. And then we are going to
3 send this case to you for your deliberations.

4 Additionally, they will be ordering lunch for you,
5 so you can continue your deliberations as long as you
6 need to.

7 Again, ladies and gentlemen, although you have heard
8 all of the evidence and you have heard the closing
9 arguments, you have not heard the charge on the law in
10 this case. And it would be, again, highly inappropriate
11 for you to do any independent research, to read anything
12 in regards to this case, or certainly, to speak to anyone
13 in regards to this case. I simply ask you go home, get a
14 good night's sleep. Return tomorrow at 9:30, where I am
15 going to charge you on the law, and send this case to
16 you.

17 Thank you again for your attention today, you all.

18 MR. HALIO: Thank you, your Honor.

19 THE COURT: Thank you.

20 JUROR: 9:30, your Honor?

21 THE COURT: Yes, sir, 9:30. Thank you.

22 JURORS LEAVE COURTROOM 5:13 P.M.

23 BAILIFF: The jury is clear and the door is closed,
24 your Honor.

25 THE COURT: All right. You all, why don't we just

1 go ahead and take five-minutes break. And I think Mike
2 needs to go outside. And then we'll come on back, and
3 we'll talk about the jury charge and verdict form. Okay?

4 OFF THE RECORD 5:15 P.M.

5 BACK ON THE RECORD 5:35 P.M.

6 DISCUSSION REGARDING JURY CHARGE

7 AND VERDICT FORM. PRESENT: THE

8 COURT, MR. MATHISON, MR. MICHAEL

9 MATHISON, MR. HALIO, MS. JONES,

10 MS. JOLLEY:

11 THE COURT: All right, you all. I want to go
12 through each side of your jury charges. I can tell you
13 that Allison's been working on it. I'm going to go
14 through the defendants first. Defendants first request a
15 charge -- it proves to be a straight charge on defamation
16 and actual malice. I can tell you that I am charging
17 Anderson's, to the extent I have to, but I've cut out
18 some that is just repeating back and forth. I think it's
19 clear. You talk about actual malice, obviously. The
20 language, I can tell you, from *Elder versus Gaffney* is in
21 there. It's a subjective standard. That is in there.

22 I was going to make sure that the actual malice
23 standard does not satisfy merely through a showing of ill
24 will or malice in an ordinary sense of the term. Is that
25 in our charge?

1 LAW CLERK COPPAGE: Yes, ma'am?

2 THE COURT: Let me just double-check and make sure,
3 you all. Mr. Mathison, pipe in whenever you --

4 MR. MATHISON: I don't have their charges, so I'm
5 not in a position, your Honor.

6 MS. JOLLEY: There's another copy I gave Mike last
7 week.

8 THE COURT: There you are.

9 MR. MATHISON: Thanks.

10 THE COURT: Yes, it's in there. Got it. Okay. The
11 next part where you ask -- I'm sorry, you didn't number
12 them, so Mr. Mathison, I'll just start by reading you the
13 first couple of lines of each of their charges.

14 MR. MATHISON: All right.

15 THE COURT: Okay? It starts off, and it's their
16 Page Number 7.

17 *The actual malice standard is not satisfied merely*
18 *through a showing of ill will or malice in the ordinary*
19 *sense of the word, which is obviously good law that's in*
20 *my charge.*

21 MR. MATHISON: Okay.

22 THE COURT: Okay?

23 MR. MATHISON: I don't think that editorial choice
24 is appropriate here. It's not a newspaper case.

25 THE COURT: Well, editorial, I think you could have

1 someone who edits their own document.

2 *There must be evidence the defendant purposely*
3 *avoided the truth.*

4 And obviously, this is a media case. How about a
5 word choice instead? I mean, it is good law.

6 MS. JOLLEY: Okay.

7 THE COURT: I mean, I could just say, you know, word
8 choice or -- what's something better than word choice?

9 MS. JOLLEY: Word choice is --

10 THE COURT: Okay. Can we --

11 MR. MATHISON: I don't mind the pertinent part,
12 *There must be evidence at least the defendant purposely*
13 *avoided the truth.* I don't -- I think that's true.

14 THE COURT: Yes, I think it is truth. Okay. As to
15 their next request on Page 8, *Erasure of a tape recording*
16 *when done as part of a routine practice is not evidence*
17 *of actual malice.*

18 And again, you say this comes from *Peeler versus*
19 *Spartan Radiocasting.* Have you had a chance to look at
20 that?

21 MR. MATHISON: I have not.

22 THE COURT: I want to make sure that it is
23 applicable to this case.

24 MS. JOLLEY: Sure. It was cited, your Honor, I
25 believe, in *Elder.*

1 THE COURT: Okay.

2 MS. JOLLEY: But I - I could look over it now, if
3 you want me to.

4 THE COURT: Okay. Your notes.

5 THE COURT: And Allison, do you see that in there,
6 or did you not put it in because --

7 LAW CLERK COPPAGE: Ma'am?

8 THE COURT: This one, the erasure of a tape
9 recording. That one I've got.

10 LAW CLERK COPPAGE: That one is going to go after
11 the spoilation and the extreme --

12 THE COURT: Got you. Okay. Okay, Allison has that
13 in here.

14 MS. JOLLEY: Okay.

15 THE COURT: Unless somebody can go ahead and -- got
16 it. Okay. But I don't see it on here. 40(j), Section
17 40(j). Oh, gotcha. Erasure of tape recording. Okay.
18 All right. As of right now, it is in. Now, Page Number
19 9.

20 MR. MATHISON: Clear and convincing.

21 THE COURT: Obviously, that's the standard. I'm
22 charging it. And again, I go through the clear and
23 convincing evidence. But I will tell you, I think both
24 sides did a very good job in your closing argument
25 explaining that.

1 Number 11, obviously, it seems like -- I think the
2 rest of them all had to do with civil conspiracy, so they
3 wouldn't apply. I'm sorry. If you go to Page 15,
4 that's when you start up again with defamation. To prove
5 special damages. No, that goes to conspiracy, as well.
6 Sorry.

7 MS. JOLLEY: The next one is 16. That's the
8 punitive damages one.

9 THE COURT: Yes. Obviously, I go through, and I
10 actually do charge the *Gamble* factors. That's already in
11 my charge. Clearly, that's the standard.

12 Your number 17 is in my charge. I explained it on
13 the plaintiff has the burden of proving falsity, as a
14 public official.

15 MR. MATHISON: Does 17, doesn't give offense.

16 THE COURT: Pardon?

17 MR. MATHISON: I said I'm fine with 17. It's the
18 law as I understand it.

19 THE COURT: Let's look at Number 18.

20 MS. JOLLEY: The next few are all about privilege,
21 your Honor.

22 THE COURT: Okay.

23 MS. JOLLEY: If you want to charge *Anderson* with
24 that, that's --

25 THE COURT: The *Anderson* is so long, you know.

1 MS. JOLLEY: I know. That's what we were trying to
2 do is --

3 THE COURT: I can tell you, the two portions of
4 *Anderson* that I have in mind right now that are just very
5 lengthy are fair comment and criticism, and the absolute
6 and qualified privilege charges. I mean, they go on for
7 pages. So I can tell you, as of right now, I have them
8 in, and I'm going to -- to the extent that he repeats
9 himself, which sometimes happens, I'm going to pare it
10 down. So I'm going to go ahead, and I'll go through his
11 charge and --

12 MS. JOLLEY: Okay.

13 THE COURT: -- do that. Okay. I've got as far as
14 the elements of a qualified privilege, which you've asked
15 in 20. That's part of the charge that I have in there.
16 And then, of course, your Number 21 is the fair comment
17 and legitimate criticism of a public official, and that's
18 in my charge, again.

19 MR. MATHISON: Are you --

20 THE COURT: I'm going to do my best to pare it down,
21 although, I see your request to charge is what I have
22 right now.

23 MS. JOLLEY: Okay.

24 THE COURT: We will do our best.

25 MR. MATHISON: Your Honor, I need a charge, if

1 you're going to charge 20, that --

2 THE COURT: 20?

3 MR. MATHISON: -- the privilege -- what's on Page

4 20.

5 THE COURT: Got that.

6 MR. MATHISON: To the effect that, if you exceed the

7 scope of --

8 THE COURT: Absolutely. That's all a part of

9 Anderson's.

10 MR. MATHISON: Okay.

11 THE COURT: If you've read the whole thing, that's

12 what it is. You can certainly exceed the privilege.

13 MR. MATHISON: Or you can act in bad faith and lose

14 the benefit of the privilege.

15 THE COURT: Exactly.

16 MS. JOLLEY: Um-hmm.

17 THE COURT: Okay. We are now on -- this is just --

18 Number 26, basically is you're explaining absolute

19 privilege, and then qualified privilege, which I'm going

20 to charge again, Anderson's. Okay. And same thing with

21 through 20 -- 27 and 28, it's going to be --

22 MS. JOLLEY: Okay.

23 THE COURT: -- I'm going to charge Anderson's, and

24 it's obvious to that. Then, just so we're clear, you had

25 also requested a charge on -- no. I'm sorry. In

1 reference to their spoliation charge, you requested the
2 Peeler charge, which I think I've gone ahead and done.

3 You have also requested a charge, Mr. Halio, on
4 pre-existing condition, because Judge Coffey previously
5 had headaches. And also, the immunity from civil suits,
6 Rule 13. Is that correct?

7 MR. HALIO: That's correct, your Honor.

8 THE COURT: Okay. Okay. All right. Now, let's
9 take a look at the plaintiff's now. Okay. Number -- I'm
10 sure this is Plaintiff's Number 1. You didn't even
11 number your pages, let alone not number your requests,
12 so. All right. Plaintiff's Number 1, jury trial of
13 defamation of a public official, that's already in the
14 standard charge.

15 Number 2, which starts out, *actual malice means*, I'm
16 going to charge, as I told you, defamation. Let me ask
17 you, the language, Allison, --

18 LAW CLERK COPPAGE: Yes, ma'am.

19 THE COURT: -- from the second parts of his
20 requests, *Any direct or indirect evidence relevant to the*
21 *defendant's state of mind is admissible to prove actual*
22 *malice*. I don't know if that's really -- I mean, it's a
23 comment; it's admissible. Of course, it's been admitted.

24 MR. MATHISON: It comes -- it's a direct quote.
25 It's a direct quote out of *Anderson*, your Honor, at 365

1 *South Carolina, 596, 619 S.E.2d 432.*

2 THE COURT: Where in Anderson is it?

3 MR. MATHISON: That's *Anderson versus Augusta*

4 *Chronicle.*

5 THE COURT: Oh, okay.

6 MR. MATHISON: That's Judge Anderson.

7 THE COURT: Well, it says to the defendant's state

8 of mind is admissible to prove the actual malice. Well,

9 it's been admitted in the case.

10 MR. MATHISON: Well, I want them to know that what

11 they heard was properly admitted.

12 THE COURT: Do you have a copy of *Anderson versus*

13 *Augusta Chronicle?*

14 MS. JOLLEY: I do.

15 THE COURT: Can you give that to me, if you would.

16 MR. HALIO: I got it. I got it right here.

17 MS. JOLLEY: Okay.

18 THE COURT: Okay. I'm looking at this. I think I

19 can charge that the portion of it that states that a

20 plaintiff will rarely find success in proving awareness,

21 that a statement is false from the mouth of the defendant

22 themselves. Therefore, any direct or indirect evidence

23 relevant to the defendant's state of mind. I can say

24 maybe consider to prove actual malice.

25 MR. MATHISON: That would be fine.

1 THE COURT: I mean, that's really what it is.

2 Bear with me. I just want to make absolutely sure
3 it gets in the final form. Sometimes I worry that it
4 doesn't.

5 I'm sorry, you all, but just give me a second.

6 Okay. That takes care of that portion of your
7 request.

8 MR. MATHISON: The circumstantial evidence charge is
9 important, your Honor.

10 THE COURT: Okay. Any objection to that?

11 MS. JOLLEY: That's the one from the second page?

12 THE COURT: Yes. That's the one from the second
13 page.

14 MR. HALIO: I'm sure you've got a standard
15 circumstantial charge; don't you, Judge?

16 THE COURT: I do have a standard circumstantial
17 evidence charge, as well as direct evidence.

18 MR. HALIO: Okay.

19 MR. MATHISON: I think that it needs to be presented
20 in this context so they can understand why what Andy
21 argued were red herrings probably needed to be proved.

22 THE COURT: Well, and I've already just prior
23 explained direct and indirect evidence, obviously, which
24 is the same thing, but okay. Okay.

25 Okay. Okay. I've got it in, as well. All right.

1 Any objection to the next one? Defamation is actionable,
2 per se, when the defendant's statements charge the
3 plaintiff with unfitness in her business or profession.

4 MS. JOLLEY: Your Honor, I don't think that's
5 applicable in this case where she's been found to be a
6 public official.

7 THE COURT: It isn't. The next one is the fair and
8 honest criticism, which is in there.

9 MS. JOLLEY: You're not charging this language, are
10 you? We object to the first one here. That's not
11 exactly what Oswald says.

12 THE COURT: Yes. I'm not. I'm charging my fair
13 comment and criticism. I'm charging from Anderson.

14 MS. JOLLEY: Okay.

15 THE COURT: Okay. The portion of his in here that
16 comes straight from Anderson is: *Fair and honest*
17 *criticism in matters of public and service is privileged,*
18 *but the privilege limited strictly to comments and*
19 *criticisms, and does not intend to protect false*
20 *statements, imposed inferences, indications of evil*
21 *motives or criminal conduct, in truth of what he alleges*
22 *to be the facts.*

23 *It is for you, the jury, to determine whether the*
24 *criticisms or statements affecting a public official are*
25 *a public matter cease to be fair and honest.*

1 That's straight from Anderson. That's what I'm
2 going to -- that's what I'm going to charge. Okay.

3 MS. JOLLEY: You're leaving out the rest of Anderson
4 on fair comment?

5 THE COURT: Oh, no.

6 MS. JOLLEY: Okay.

7 THE COURT: That's the one that's super lined, that
8 I have not even been through and talked about that.

9 MS. JOLLEY: Oh, okay.

10 THE COURT: Sorry. That's just the start.

11 MS. JOLLEY: Okay.

12 THE COURT: I am going to tell you, I haven't read
13 all the way through it yet even, so. But for the next
14 one that Mr. Mathison -- *because the defendant is not a*
15 *media defendant, the plaintiff does not need to prove*
16 *special or actual injuries, opposed to general damages.*
17 Okay.

18 MS. JONES: We object to that, your Honor.

19 THE COURT: Okay. Yes.

20 MR. HALIO: I think that one's inaccurate.

21 THE COURT: That's not correct charging of the law.
22 Okay. Okay. I've already done this from-your-mouth
23 allegation.

24 Oh, I did the next one, too. We've already got --
25 you can present circumstantial evidence. Well, your last

1 requested charge, it doesn't explain anything,
2 considering this jury doesn't know what the *New York*
3 *Times* standard is.

4 MR. MATHISON: I've rephrased it. I'm showing Kelly
5 the way I would put it so that they may understand.

6 THE COURT: Okay. I don't think we need to
7 reference the *New York Times* standard. I think just the
8 charge in defamation includes the *New York Times* standard
9 nowadays, so.

10 MR. MATHISON: This, I think, is the way I would
11 phrase it to make it clear. And that was the decision.
12 That was the holding in the *Metts* case.

13 THE COURT: Well, you need to show me where it is.
14 Why don't you go ahead and give me the *Metts* case so I
15 can make sure it's there.

16 MR. MATHISON: All right.

17 THE COURT: Comment on the law. Is that in, the
18 standard charge in *Anderson's*? I wondered if it was in
19 *Anderson's*.

20 MR. HALIO: It's in one of the big files.

21 MS. JOLLEY: I thought *Metts* was in *Anderson*, but I
22 don't remember where.

23 MR. MATHISON: No, *Metts* is a 2009 case. It's
24 fairly recent. I can give you the citation. Hold on one
25 second.

1 THE COURT: I've got the citation right here,
2 because I have a copy on that. I have a copy here.

3 Any chance you can get a copy of it? Can you pull
4 it up, Allison? Sorry. I know you're doing two
5 different things at once. You don't have a computer?

6 MS. JOLLEY: Do you want me to email it to you?

7 THE COURT: Actually, do you have it right there?
8 Can you just pull it up and hand it to me? I just want
9 to make sure it's --

10 MS. JOLLEY: I can. It's going to die in just a
11 second, unfortunately, but yeah.

12 THE COURT: Okay. If anyone could just pull it up.

13 MS. JOLLEY: Okay.

14 THE COURT: Looks like just copies. It's *Metts*
15 *versus Mimms*.

16 MR. MATHISON: Here.

17 MR. HALIO: I think I got one here.

18 THE COURT: Do you have it?

19 MR. MATHISON: It's the interesting case where --

20 THE COURT: No, I know what case it is. I just want
21 to make sure that what you said comes from it, exactly,
22 or we do some version of it.

23 MR. HALIO: Here you go.

24 THE COURT: Thanks. Maybe Mr. Halio can point to me
25 where he got it from. A jury may infer. That's what I

1 want, a jury may infer.

2 MS. JOLLEY: It's right here, your Honor.

3 THE COURT: Let me see it.

4 MS. JOLLEY: It's right before the conclusion.

5 THE COURT: *The jury could include infer reckless*
6 *conduct sufficient to the 'New York Times' standard.*

7 Yes. Yes. Okay. Hold on a second. *Looking at the*
8 *totality of the evidence.*

9 MR. MATHISON: That's what I was arguing, that just
10 kind of like the pail that you just pitch things into.

11 THE COURT: Yes. *Conduct sufficient to meet the*
12 *'New York Times' standard. Actual. May infer reckless*
13 *conduct.*

14 MS. JOLLEY: It says infer? This says infer.

15 THE COURT: Yes. Yes. I think it's fair game. I
16 think it's fair game.

17 MR. MATHISON: Thank you, your Honor.

18 THE COURT: Okay. Okay.

19 MR. MATHISON: And you're going to use my
20 re-expression of it?

21 THE COURT: Yes.

22 MR. MATHISON: Okay.

23 MS. JOLLEY: She's charging they have the burden of
24 proof. Is it in here? Burden of truth with them. But
25 we don't -- they have the burden. We can't plead truth

1 as a defense.

2 THE COURT: They have the burden of proving truth.

3 MS. JOLLEY: Right. So we don't want to say
4 anything about that.

5 THE COURT: Yes. Okay. So we're going to put in --

6 Okay. I'm just going to put it right here. The
7 jury may infer reckless conduct sufficient to the New
8 York Times standard.

9 Okay. Great.

10 Okay. All right. Got that in, as well. All right,
11 Mr. Mathison.

12 MR. MATHISON: Yes, ma'am. I have one other thing
13 I'm going to ask you to charge.

14 THE COURT: Yes, sir.

15 MS. JOLLEY: This is a federal case.

16 MR. MATHISON: It is a federal case.

17 MS. JOLLEY: We object.

18 THE COURT: What is it?

19 MR. MATHISON: Kelly objects because it's a 4th
20 circuit case. It's not South Carolina case.

21 THE COURT: Have you found anything similar?

22 MR. MATHISON: We couldn't find anything under South
23 Carolina law.

24 THE COURT: Yes.

25 MR. MATHISON: That's the best definition we could

1 find.

2 THE COURT: Well, I'm already giving you your
3 spoilation charge.

4 MR. MATHISON: Well, you might want to give them
5 some guidance as to when you're supposed to start being
6 vigilant about these things.

7 THE COURT: Well, I don't know. Let me think about
8 that one. And I can tell you, quite frankly, as far as
9 electronic documentation, I mean, that is the truth and
10 that is the law.

11 All right. Well, let me just think about that.
12 Obviously, it's not a South Carolina law, but.

13 MS. JOLLEY: Your Honor, I haven't read the case,
14 but we all know that the rules governing --

15 THE COURT: Right.

16 MS. JOLLEY: -- that in federal court are very
17 different than in South Carolina at this point.

18 THE COURT: Let me go do a little research. I
19 actually spoke on electronic discovery. And this clearly
20 was something that was set out. And I will say, where
21 this was contemplated was in -- and I don't think they've
22 been adopted yet, not that I know of, but there are some
23 new proposed rules that left the Supreme Court, and they
24 haven't gotten --

25 MS. JOLLEY: Right.

1 THE COURT: They've left the Supreme Court, and they
2 haven't gotten --

3 MS. JOLLEY: They have not been.

4 THE COURT: I don't think they've come out yet. Am
5 I correct in saying that?

6 MS. JOLLEY: You're correct, your Honor.

7 THE COURT: That's what I recall, is that they
8 haven't come back yet. All right. Let me look at that.
9 Let me just double-check my notes and make sure, but I
10 don't remember that they came out.

11 MS. JOLLEY: May we have that site just so I can
12 look it up?

13 THE COURT: Sure. It is *Silvestri*,
14 *S/i/l/v/e/s/t/r/i*, versus *General Motors Corporation*.
15 And it's 271 Federal 3rd, 583, 591, 4th Circuit. And
16 that's a 2001 case.

17 MS. JOLLEY: Okay. Thank you.

18 THE COURT: Okay. I want to go over really quickly,
19 too, you all, as far as what I'm going to charge as
20 damages, just so -- to be considered by the jury. Okay.
21 I'm going to say:

22 *In this case, the plaintiff must plead and prove*
23 *constitutional actual malice and special damages. A*
24 *plaintiff who proves that they are entitled to special*
25 *damages may recover as special damages any expenses or*

1 loss of value that can be attributed to the slanderous
2 and libelous statement.

3 I guess I should say and/or libelous statement.

4 Special damages consist of specific, identifiable
5 economic or material losses to the plaintiff as a result
6 of the defamation. Special damages are tangible losses
7 or injury to the plaintiff's property, business,
8 occupation, or profession, which are capable of being
9 assessed monetarily, and which result from injury to the
10 plaintiff's reputation.

11 Special damage is a manifestation of injury to
12 reputation, which is computable in money or capable of
13 being assessed at monetary value.

14 Once the plaintiff has proved special damages, you
15 may then consider general damages for the plaintiff,
16 which would -- general damages would include injury to
17 reputation and standing in the community, embarrassment,
18 personal humiliation, mental anguish, suffering, wounded
19 feelings caused by injury to reputation.

20 Any judgment of that, you all?

21 MR. MATHISON: No, your Honor.

22 THE COURT: Okay.

23 MS. JOLLEY: No, your Honor.

24 THE COURT: And then, that's 3. Yes. Okay. Then
25 lastly, I say:

1 If you find the plaintiff is entitled to special
2 damages, along with, you know, special damages, then you
3 may also consider awarding the plaintiff punitive
4 damages.

5 And then I go into the punitive damages are imposed
6 as if punishment. I explain a little bit what punitive
7 damages are. And then I'm going to go through and say,
8 of course, they must be proved by clear and convincing
9 evidence.

10 And additionally, I'll go through the Gamble
11 factors, which I'll tell you, I don't usually charge, but
12 I'm going to allow it. But in this case, I'm going to.
13 Okay?

14 So, I'll charge the Gamble factors. All right. I
15 just wanted you all to know that.

16 MS. JOLLEY: Okay.

17 THE COURT: Okay. I just thought that was important
18 to know, based on how we're going to now do our proposed
19 verdict form.

20 MS. JOLLEY: Okay.

21 THE COURT: Okay?

22 MS. JOLLEY: And your Honor, based on that, I
23 suspect we're going to need to make some changes, of
24 course, to what we submitted earlier, obviously.

25 THE COURT: Absolutely.

1 MS. JOLLEY: Because of how that's going, so.

2 THE COURT: Okay. So let's look now, you guys, at a
3 verdict form.

4 All right. Let me see this.

5 Well, first off, we're getting rid of an association
6 of Sea Pines Property Owners Association. Looks like
7 he's here.

8 Okay. Well.

9 Okay. I can tell you, I mean, obviously, what you
10 all gave me is not the standard, but.

11 MS. JONES: No, it's not.

12 THE COURT: It's actually, as you go through there,
13 kind of the way you laid it out really does probably
14 answer the questions.

15 Mr. Mathison, if we can go through it.

16 MR. MATHISON: First thing I want to do is, I want
17 to take *public official plaintiff* off the top of it. I
18 mean, if you want to put verdict form.

19 THE COURT: Oh, no, no, no, no, no. It's going to
20 have a regular caption. It's going to have a regular
21 caption. It's not going to say that.

22 MR. MATHISON: Okay.

23 THE COURT: Okay. All right. *The plaintiff has*
24 *proved by clear and convincing evidence that the*
25 *defendants -- now, the defendants published a false*

1 *statement of fact of and concerning plaintiff.*

2 Now, my question is this. The only concern I have
3 is that now we have to also address separately CSA and
4 their slander versus -- which is a pain in the rear end,
5 you all.

6 MS. JONES: This needs to be re-done.

7 THE COURT: Well, I know it does, but.

8 MS. JONES: Given the posture of a case right now.

9 THE COURT: Let me ask you this.

10 MS. JONES: Could we do it this evening and give it
11 to you in the morning?

12 THE COURT: Do you want me to give it to you -- but
13 I want you all to agree on it in the morning, I mean,
14 quite frankly. I mean that's where the problems are.

15 MS. JOLLEY: Well, I think you're right. I mean, we
16 have to CSA and Breed on the form.

17 THE COURT: I think you do, too.

18 MS. JONES: Yeah.

19 MS. JOLLEY: They have -- I mean.

20 THE COURT: I think you do, too.

21 MS. JONES: I think it's just got to be completely
22 re-done.

23 THE COURT: I think it, as well. Okay.

24 MS. JONES: And re-typed so --

25 THE COURT: Well then, this is what we're going to

1 do. You all are going to work on it tonight, and you are
2 going to exchange it. You're going to send your copy to
3 Mr. Mathison by midnight tonight, and he's going to send
4 you any comments. And I want you all to come in here
5 with, literally, one version. And then you can fight
6 over if there's certain things on it you do not like. I
7 do think it's got to through specifically.. I think it
8 has to step through the, you know, published a false
9 statement. I think it has to do all of that, and I think
10 it does have to separate out as to slander and libel.

11 MS. JONES: Our deadline's midnight and Mr.
12 Mathison's response deadline is?

13 THE COURT: Well, I don't know.

14 THE COURT: Do you all need till midnight?

15 MR. HALIO: 1:00 a.m.

16 THE COURT: How much do you need? Can we do 10:00
17 a.m.? Can we do 10:00 p.m. and midnight? What can we
18 do?

19 MS. JONES: Sure. Sure.

20 THE COURT: Why don't we do 10:00 p.m. and midnight?

21 MS. JONES: Midnight? Then he's got to stay up -- I
22 don't know. It doesn't make any difference.

23 THE COURT: He can do it. He's going to make Mike
24 do it anyway. And Mike, I know you were absolutely
25 perplexed on that door being locked. The actual rule is,

1 is that, in closing arguments, typically, the door is not
2 locked. It's only locked during the jury charge.

3 However, because this is civil court and we have to run
4 on a little bit of a skeletal budget, poor Winston can't
5 be in more than one place at a time. Therefore, out of
6 an abundance of caution, they go back and lock it.

7 I will also tell you that sometimes I will ask that
8 it be locked, and it's really out of common courtesy.
9 You don't want to do it while the other side is arguing.
10 Because when you get up and walk out the door during a
11 closing argument, that jury is all looking at you, and
12 they are not listening to the person arguing.

13 So technically, it probably shouldn't have been
14 locked unless I ordered it to, but that is actually okay,
15 because sometimes I ask them to. So they were just --

16 MR. MICHAEL MATHISON: Sorry. I apologize.

17 THE COURT: -- being respectful to the lawyers. I
18 will tell you that much, and particularly in a case
19 that's lasted a week and a half, you know. Okay.

20 MR. MICHAEL MATHISON: I apologize to Mr. Halio.

21 THE COURT: No.

22 MR. HALIO: I didn't realize it.

23 BAILIFF: We usually announced that they're locked.

24 THE COURT: And that's true, too. Usually, you
25 know, they say that the doors have been secured, because

1 that's usually when I'll say secure the doors. So I know
2 you were perplexed and you were like what? So I don't
3 want you walking away with any misconceptions. You
4 probably have gotten more, literally, out of this last
5 week and a half trying a case than you ever learned in
6 law school. I am absolutely sure of that. So I think
7 it's a great experience. And I think it's been really
8 good that you've been here. Plus, I think you've really
9 helped your dad in the case. So, anyway.

10 MR. MATHISON: Isn't much doubt about that.

11 THE COURT: Absolutely. All right, guys, so you
12 know what you're doing as far as the proposed verdict
13 form. You all, I need you, then, to send it on to -- and
14 I want you to carbon it to two places. I want you to do
15 to my law clerk at cmullenlc@sccourts.org, and also to
16 cmullenj@sccourts.org. We're both the same. I'm just J
17 and she's LC. So get it to me, and so we can take a look
18 at it at midnight.

19 Okay. All right. Anything else we're concerned --
20 one other thing I did want to bring up to you all. What
21 I'm going to endeavor -- endeavor to do, I should say.
22 I've had a lot of misspeak in this trial. I'm going to
23 try to have a clean enough copy that I am going to let
24 you all look at it tomorrow ahead of time to see. And
25 I'm embarrassed to say the only reason why I don't do

1 that is because, usually, we never have a clean enough
2 copy. That's really usually the entire reason. So I'm
3 hopefully having a clean enough copy.

4 They're coming back at 9:30. I will be here by 9:00
5 o'clock. I would hope that by about 9:10 or so I can
6 give you each a copy, let's look at it.

7 I want a clean charge in this case, quite frankly.
8 I think there's so much going on. I think the law of
9 defamation, and particularly because she's been found as
10 a public official, is very complicated for this jury.
11 And it doesn't behoove anyone to have a bad charge or
12 that something that we have missed that we end up
13 highlighting at the end. So that's why I just think it's
14 important in this case, probably more than most. Not
15 that it's not important at all, but again, more than
16 most.

17 All right, you all. Have a great night. I will see
18 you tomorrow morning. I will tell you, I enjoyed your
19 all's closing arguments. They were very good. You all
20 have made me a believer in limiting closing arguments
21 now. I think it made you focus on what was important, as
22 opposed to going on and on. So I thought it was really
23 good. So, I appreciate it from both of you. I thought
24 it was great.

25 END DAY SIX, TUESDAY,

1 JUNE 5, 2012, 6:15 P.M.

2 BEGIN DAY SEVEN, WEDNESDAY,

3 JUNE 6, 2012, 10:35 A.M.

4 REVIEWING JURY CHARGE AND

5 VERDICT FORMS:

6 THE COURT: All right, you all. Let's start, I
7 suggest, on the charge, and we just go through it by
8 page.

9 MS. JOLLEY: Okay.

10 THE COURT: And let's -- anything that's wrong, let
11 me know right now, or forever hold your piece. Anything
12 on one, two, three, four?

13 MS. JOLLEY: One thing, your Honor.

14 THE COURT: Yes.

15 MS. JOLLEY: Under the principal's liability for
16 agents defamatory statement.

17 THE COURT: Yes.

18 MS. JOLLEY: Where it talks about apparent
19 authority.

20 THE COURT: Yes.

21 MS. JOLLEY: We would ask that a sentence be added,
22 which is directly from here saying the doctorate of
23 apparent authority focuses on the principal's
24 manifestation to a third party that the agent has certain
25 authority.

1 THE COURT: The principal's manifestation. Okay.
2 MS. JOLLEY: Right. It's all about principal. I
3 think it was just left out.
4 THE COURT: I'm sorry. Exactly. Okay. Yes. Can I
5 have the --
6 MS. JOLLEY: Sure.
7 THE COURT: Yes. Thank you. Actually, will you
8 give it to Allison.
9 MS. JOLLEY: Absolutely.
10 THE COURT: That's your only copy, so.-
11 MS. JOLLEY: I'm sorry. I wrote *directly* on it.
12 THE COURT: No, no, no, no. Go ahead, and Allison
13 will you just stand right there. If you don't mind, I'm
14 going to make you stand.
15 LAW CLERK COPPAGE: No, not at all.
16 THE COURT: Will you go ahead and type it in.
17 Allison, can you pull it up and just type it in right now
18 as it is?
19 LAW CLERK COPPAGE: Yes, ma'am.
20 THE COURT: We're just going to have to do it. I'm
21 sorry we're moving so slow this morning, it's just --
22 this is probably the most --
23 MR. HALIO: You don't have to say it.
24 THE COURT: I want to use the word *dense*, but then
25 again, that wouldn't be the right word either. It's just

1 a very difficult charge for this jury to wrap their head
2 around, and I just --

3 MR. MATHISON: May I inquire what's being typed in?

4 THE COURT: Go ahead. I'd just read it. Allison,
5 you type it, and then you can read it. It's the correct
6 law.

7 The rest of it is okay, though, Kelly?

8 MS. JOLLEY: The apparent authority?

9 THE COURT: Yes. Yes.

10 MS. JOLLEY: Yes, your Honor.

11 THE COURT: Okay. You were just going to put this
12 at the end of it, right?

13 LAW CLERK COPPAGE: I put it at the very end, yes,
14 ma'am.

15 THE COURT: Yes. Perfect. Okay. Now read it to
16 Mr. Halio -- or Mr. Mathison, once you've typed it in.

17 LAW CLERK COPPAGE: *Doctrine* -- this is going after
18 *find the principal*. It says, *Doctrine of apparent*
19 *authority focuses on principal's manifestations to a*
20 *third party that agent has certain authority*.

21 MS. JOLLEY: And I think it should start with the --
22 I didn't put the -- do you see the -- sorry. I think
23 I --

24 THE COURT: That's okay. Sorry.

25 MR. MATHISON: That would be the last sentence under

1 *defamation principal liability for agent's defamatory*
2 *statement.*

3 THE COURT: Yes. Yes.

4 MR. MATHISON: I'm fine with that.

5 THE COURT: No need to repeat it. Okay. The rest
6 of Page 5. Kelly, anything?

7 MS. JOLLEY: No, your Honor.

8 THE COURT: Mr. Mathison? Literally, pipe up you
9 all.

10 MR. MATHISON: No, your Honor.

11 THE COURT: Number 6.

12 MS. JOLLEY: None.

13 THE COURT: Number 7.

14 MS. JOLLEY: None.

15 THE COURT: Mr. Mathison, I need to hear from you if
16 there's anything. Okay?

17 MR. MATHISON: Just about where I stopped reading,
18 your Honor.

19 THE COURT: Okay. Number 8. You okay, Kelly?

20 MS. JOLLEY: We actually have no other.

21 THE COURT: Miracles never cease. All right. What
22 I'm going to do is this, Mr. Mathison, let's go now to
23 the verdict form. We're going to take a quick couple-
24 minute break, and then you can finish reading. Okay?

25 MR. MATHISON: If I may.

1 THE COURT: Yes.

2 MR. MATHISON: I think that the totality of the
3 circumstances charge that I requested yesterday, or the
4 totality of the evidence, should go in on Page 6,
5 probably before the last paragraph starting *failure to*
6 *investigate* --

7 THE COURT: Actually, no. It's already in under --
8 Allison where are the --

9 MS. JOLLEY: It's on Page 6. A jury may infer
10 reckless conduct sufficient to constitute actual malice
11 by looking at the totality of the evidence.

12 THE COURT: It's in there.

13 MS. JOLLEY: It's on Page 6.

14 THE COURT: It's on there.

15 MR. MATHISON: Thank you.

16 THE COURT: Okay. All right. Let us look at the
17 verdict form, because -- goodness, goodness. I don't
18 know any other way to say it. Okay. I think what's
19 difficult about this charge, and I just want to go ahead
20 and put this, and say it on the record, because,
21 normally, we should be able to lump Mr. Breed and CSA
22 together, except for the slander comments that can come
23 from CSA employees other than Mr. Breed.

24 So that was my first inclination was to put it
25 together, but then I thought, because of that, I think we

1 have to do it that way. And in practicality, you've
2 indemnified him, so it's not an issue for him, but I
3 think you have to keep it separate, unfortunately.

4 MS. JOLLEY: We have no objections to this, your
5 Honor.

6 THE COURT: Okay. You're good with it?

7 MS. JOLLEY: Yes, your Honor.

8 THE COURT: Okay. You've really looked at it Ms.
9 Jolley?

10 MS. JOLLEY: We did.

11 THE COURT: I just want to make sure.

12 MS. JOLLEY: We did. We looked at it; we talked
13 about it.

14 THE COURT: Okay. I just want to make sure you
15 don't scream afterwards.

16 MS. JOLLEY: We won't scream about that.

17 THE COURT: I saw an email from you 4:52 this
18 morning, which, by the way, is impressive. I think the
19 client should know how hard everyone was working. I
20 think I got one from Mr. Mathison at 12:12 last night,
21 and Ms. Jolley's at 4:52 this morning.

22 MR. HALIO: You didn't you get mine?

23 THE COURT: No. Apparently, I just tuned it out.
24 You know you've got a tough case when you're literally
25 laying in bed at like 4:30 in the morning and this is

1 what you're thinking about, which is what I was doing.

2 MS. JOLLEY: That's really bad.

3 THE COURT: I'm just --

4 MR. HALIO: You're supposed to be -- you're supposed

5 to not be thinking about any more.

6 THE COURT: Apparently, I was.

7 MR. MATHISON: I would only request the change that

8 I discussed with Allison before. I have a single finding

9 of punitive damage, and the amount, and then a check-the-

10 box for either Mr. Breed or CSA, or neither, instead of

11 separate findings.

12 THE COURT: And so, and I was concerned about that,

13 as well, because the question then would become, if

14 they're differing amounts, it's an issue. I actually

15 think that's probably a good idea.

16 MS. JOLLEY: We don't really object, I mean, if you

17 really want that, your Honor. Our concern is that the

18 standard, because it's actual malice, --

19 THE COURT: Right.

20 MS. JOLLEY: -- is against the individual defendant.

21 THE COURT: Right.

22 MS. JOLLEY: And I wasn't -- I'm not sure they're

23 going to get that they have to find that that defendant

24 down here they're checking, --

25 THE COURT: Uh-huh.

1 MS. JOLLEY: -- is linked to the actual malice they
2 have to find to give punitives against that defendant.

3 THE COURT: Right.

4 MS. JOLLEY: It's because the standard is specific,

5 THE COURT: Right.

6 MS. JOLLEY: -- it has to be met for that defendant
7 to give punitives against that defendant.

8 THE COURT: Exactly.

9 MS. JOLLEY: You can't really lump them together.

10 MR. MATHISON: I don't believe it's possible for
11 them to find malice against CSA without finding malice
12 against Breed, frankly.

13 THE COURT: Right. But the question is, --

14 MS. JOLLEY: Well, they could with slander.

15 THE COURT: Yes.

16 MS. JOLLEY: Right? I mean, that's the whole --
17 that's the whole problem with the two separate --

18 THE COURT: Right.

19 MS. JOLLEY: -- claims.

20 THE COURT: My problem is, is that, can the punitive
21 damages amounts be different?

22 MR. MATHISON: That's the --

23 MS. JOLLEY: Well, --

24 MR. MATHISON: That's the difficulty of them
25 differing. Is the jury basically saying Mr. Breed only

1 pays this much and CSA pays that much? Are they saying
2 that a slander is only worth this?

3 THE COURT: Well, I can explain I can explain that
4 portion to them, but I guess the question is, is would
5 that number have to be the same, because CSA can only act
6 through Mr. Breed, except for, again, the slander by the
7 other employees.

8 MR. MATHISON: I think, to eliminate confusion,
9 there should be a single finding of punitive damages, and
10 then they should say against whom, either one or both or.

11 THE COURT: So I think --

12 MS. JOLLEY: I mean, I think that's confusing, too,
13 just because -- I mean, it's confusions inherent in the
14 two claims, but if you want to do it that way -- what do
15 you say?

16 THE COURT: Okay. I would just say that she is
17 entitled to punitive damages. And you're not going to
18 quite get your verbiage in there. Punitive damages.
19 That she is entitled to, I would say, she is entitled to
20 punitive damages, either yes or no. If yes -- okay, if
21 yes or no. And then it would have to be, I guess,
22 against Breed, against CSA, or against both, with a check
23 mark. That's CSA and Breed. And then, if yes to any of
24 the defendants, write the amount of punitive damages.
25 Does that make sense, or does someone know a better way

1 to do it?

2 MS. JOLLEY: Are you leaving out the clear and
3 convincing evidence?

4 THE COURT: Oh, no, it's in there.

5 MS. JOLLEY: Okay. I'm sorry.

6 THE COURT: It says, *The plaintiff prove by clear*
7 *and convincing evidence that she is entitled to punitive*
8 *damages, period.*

9 MS. JOLLEY: Oh, okay.

10 THE COURT: Because I will explain that the charge
11 -- this is what I'm thinking, and tell me if this works
12 for you. Yes or no. Then, after yes or no, do this.
13 And then, against George Breed, against CSA, with the
14 proper wording, against CSA and Breed. Okay? If yes to
15 any of the defendants, write in the amount of punitive
16 damages. Okay.

17 LAW CLERK COPPAGE: My question is, when you make a
18 division between yes and no, you know what I'm saying,
19 against whom are the punitive damages, you need to -- I
20 feel like we need to --

21 THE COURT: Okay. Okay.

22 LAW CLERK COPPAGE: Instead of just saying yes, no,
23 and then listing the three.

24 THE COURT: Well, that's what I want to say. That's
25 why I said yes, but.

1 LAW CLERK COPPAGE: Okay.

2 THE COURT: I mean, is that enough description?

3 You're saying I need to have more description, you think?

4 LAW CLERK COPPAGE: I'll type it up with those in.

5 THE COURT: And we'll just look at it. Okay? And

6 see if it needs some more work.

7 All right. And while she's doing that, you all, I

8 want to send the jury charge back to the jury in printed

9 form. I just think in this case it absolutely has to go

10 back. I don't see any other way around it in this case.

11 I just think we're going to get a bad verdict if it

12 doesn't. So any objection from anyone?

13 MR. MATHISON: I need to think just a little about

14 that. I've got one more objection to what --

15 THE COURT: Your client's bobbing her head saying,

16 yes, it needs to go back. So you better consult with

17 her.

18 MR. MATHISON: Well, of course, I would have to

19 defer to what my client wants.

20 THE COURT: Considering she's also a lawyer, but go

21 ahead.

22 MR. MATHISON: Do I really need to prove by clear

23 and convincing evidence that it was false, or do I just

24 need to prove it was false? I don't think clear and

25 convincing goes to the falsity of the statement. It goes

1 to the knowledge of falsity, once the falsity is proven.
2 I don't think the burden is clear and convincing to put
3 falsity up. I mean, if you understand my distinction. I
4 think the way it is in your charge, the way you charged
5 it, I have the positive or affirmative duty to prove the
6 falsity. No doubt about it.

7 THE COURT: Right.

8 MR. MATHISON: It's different than -- but I don't
9 think I have to prove falsity by clear and convincing
10 evidence.

11 THE COURT: By clear and convincing evidence.

12 MS. JOLLEY: I think that's what's in *Anderson*, and
13 I think that's what's in the case law. I mean, they've
14 lumped it altogether.

15 THE COURT: Yes, I think you do.

16 MR. MATHISON: Well, then, we've got two charges on
17 it, basically. Let's put it this way. You can know
18 something is false, --

19 THE COURT: Right.

20 MR. MATHISON: -- and still not know it in such a
21 way that it amounts to the knowing falsity that makes you
22 libel. All right. Something can be false, --

23 THE COURT: Right.

24 MR. MATHISON: -- and you can not know it's false.
25 I don't think I have to prove that it's false by clear

1 and convincing evidence. I think I have to prove that
2 the person had knowledge.

3 THE COURT: I think you do have to -- I think you do
4 have to prove that it's false by clear and convincing
5 evidence. I do think you do.

6 Go ahead.

7 MS. JOLLEY: No, your Honor. We agree. I was just
8 going to hand up the case, but I think you got it.

9 MR. MATHISON: Thank you, your Honor..

10 THE COURT: Okay. No, that's okay. I'm going to
11 look at it. I think you've got one heck of a burden, so
12 I'm certainly going to make sure it's appropriately
13 charged.

14 Let me ask you, can the jury find -- does the jury
15 have to find general damages? Let's say the jury finds
16 special damages, but not general damages. I guess my
17 question is, is (a) is that possible, and (b) if they
18 don't find general damages, can they still find punitive
19 damages from the special damages?

20 MR. MATHISON: I believe they can.

21 THE COURT: I think they can, too, but my question
22 is, can they -- is it proper that they find special
23 damages but not -- I guess they can decide whether or not
24 she had been defamed.

25 MS. JOLLEY: Um-hmm.

1 MR. HALIO: Right.

2 THE COURT: Okay. I'm just making -- okay.

3 MS. JOLLEY: Yeah.

4 THE COURT: I just want to be clear. Okay.

5 MS. JOLLEY: I think that's right.

6 THE COURT: Because I get -- the punishment is for
7 the special damages. That makes sense. Okay. Okay.
8 Okay.

9 MR. MATHISON: Your Honor.

10 THE COURT: Yes?

11 MR. MATHISON: I would point out that we found a
12 case, the *Peeler* case, actually, --

13 THE COURT: Uh-huh.

14 MR. MATHISON: -- which says, and I'm quoting,

15 *The United States Supreme Court held there must be*
16 *an independent review by the appellate court to determine*
17 *if the evidence in the record supports a finding of*
18 *actual malice by clear and convincing evidence.*

19 THE COURT: Um-hmm.

20 MR. MATHISON: Then it goes on that it cites *Harte-*
21 *Hanks*, and then it says,

22 *The Supreme Court declined to address whether the*
23 *mandatory review of actual malice should also be applied*
24 *to the issue of falsity.*

25 THE COURT: Um-hmm.

1 MR. MATHISON: Further on down, it says that there
2 is no -- Accordingly, we are required -- not required --
3 excuse me -- we are required to conduct an independent
4 direct examination novo review of the record only on the
5 issue of actual malice.

6 So there isn't any requirement that the falsity
7 be exempt.

8 THE COURT: That's in that case.

9 MS. JOLLEY: That's an appellate.

10 THE COURT: That's what they're talking about in
11 that case. I guess if you meet the higher standard of
12 the constitutional actual malice, you have met the
13 standard of the actual malice. I can tell you, I'm
14 looking at a little portion here.

15 MS. JOLLEY: Your Honor.

16 THE COURT: Yes.

17 MS. JOLLEY: In *Erickson*, the Court cites, like,
18 eight different cases for this proposition that,
19 Consequently, to prove fault in the defamation action, a
20 plaintiff who is a public official, or public figure,
21 must prove by clear and convincing evidence that the
22 defendant acted with actual malice in publishing a false
23 and defamatory statement about the plaintiff.

24 The clear and convincing evidence is at the
25 beginning of everything that the plaintiff has to prove.

1 They don't -- I haven't -- I can't find where they break
2 it down, but that's basically what they keep re-stating
3 in all the case law.

4 THE COURT: Okay. Also, I want you all to go to
5 Page 13 of the charge, because I think there's something
6 in here that's incorrect. If you go to the second-to-
7 the-last paragraph.

8 *In order to award punitive damage, you must first*
9 *find the plaintiff is entitled to.*

10 It's not special and general damages; it's just
11 special damages. Special damages, period.

12 *There must be an award of special damages for a*
13 *verdict to be supported.*

14 *The punitive damages for...this rule is premise on*
15 *the fact that... Therefore, if you do not award*
16 *special...*

17 Because she's required to prove special damages in
18 this case.

19 Therefore, if you do not award special damages, then
20 you cannot award punitive damages. Okay. So I've got to
21 take out the *and general*. That's inappropriate. Okay.

22 MS. JOLLEY: Okay.

23 THE COURT: Okay. The one thing I also changed,
24 too, just above that, where it starts, it's actually the
25 -- it's Page 13, third paragraph.

1 Punitive damages can only be awarded where the
2 plaintiff proves by clear and convincing evidence a
3 defendant acted with actual malice -- comma -- that the
4 defendant's actions were willful, wanton, malicious, or
5 in reckless disregard of the truth.

6 That's the proper law, and I just want you to know
7 that that's the change I made on that. Okay?

8 MS. JOLLEY: Okay.

9 THE COURT: Okay. Okay. All right.

10 MR. MATHISON: Your Honor.

11 THE COURT: Yes.

12 MR. MATHISON: With respect to 1(a) and 1(b), and
13 2(a) and 2(b).

14 THE COURT: Yes.

15 MR. MATHISON: Where we have in italics, under each
16 one:

17 *If no for both 1(a) and 1(b), please sign and date*
18 *the form, and advise the Court that a verdict has been*
19 *reached.*

20 THE COURT: Right.

21 MR. MATHISON: I think you should put a period, and
22 then say, if otherwise, please continue with the form.
23 In other words, instruct them to --

24 THE COURT: I didn't want to do that, because I
25 would have to do it on every single question. I'm going

1 to read it to them how they go through it. I mean,
2 they're going to be instructed that they need to answer
3 the question until and in fact they are informed they
4 have to stop. I mean that's -- it just gets very
5 difficult on each question when you start doing that.

6 When I read it to them, I'm hoping it'll be explain
7 -- it'll explain, they can understand it. I mean, they
8 are going to be told to keep going on unless it tells
9 them to stop. That's how I'm going to explain it to
10 them, so, instead of telling them where to go.

11 MR. MATHISON: I hope you don't do that.

12 THE COURT: We're hoping. Okay. So you're making
13 those changes?

14 LAW CLERK COPPAGE: Yes, ma'am.

15 THE COURT: Why don't you do this for me. Why don't
16 you go ahead and change the verdict -- or I'm sorry --
17 change the charge.

18 LAW CLERK COPPAGE: Yes, ma'am.

19 THE COURT: Give that back to me, let me start with
20 that. Then you take the verdict form. And again,
21 they'll have a chance to look at it.

22 MR. MATHISON: May it please the Court.

23 THE COURT: Sir.

24 MR. MATHISON: We've got an issue with respect to
25 the exhibits that we need to take up.

1 THE COURT: Okay.

2 MR. MATHISON: Three of the plaintiff's exhibits
3 ended up marked for identification, and I thought that
4 they were placed in evidence. With respect to the
5 Plaintiff's Exhibit 38, this is the package of material
6 with respect to registered agents.

7 THE COURT: That was strictly for I.D. only. That
8 was for I.D. only on that one.

9 MR. MATHISON: Well, basically, it was taken subject
10 to you -- at that point had their directed verdict motion
11 under consideration.

12 THE COURT: Um-hmm.

13 MR. MATHISON: And I don't want that one in.

14 THE COURT: It's not in, is it?

15 MR. MATHISON: It's not in according to --

16 MR. HALIO: No. That's not in.

17 THE COURT: Yes. Good. Okay.

18 MR. MATHISON: Or is this the one about which judge
19 said gotcha? Is it 38 or 37? On one, I asked that it be
20 admitted, and you said gotcha, but it's not a ruling. It
21 was basically waiting for you to decide.

22 THE COURT: Which one is that?

23 MR. MATHISON: The --

24 THE COURT: That one's not in. Yes. That one's not
25 in.

1 MR. MATHISON: Okay.

2 COURT REPORTER: What number is that?

3 MR. MATHISON: 38.

4 Court Reporter: Okay.

5 THE COURT: 38 is not in evidence.

6 MR. MATHISON: Plaintiff's 36, I offered,
7 specifically, the financial statement. Again, that was
8 at the plaintiff's close. And I offered it in evidence,
9 and it's not clear that it got anything other than marked
10 for identification, and I --

11 THE COURT: Did you move it in?

12 MR. MATHISON: If I didn't move it into evidence,
13 it's because I believe that you were waiting to see
14 whether you were going to grant the directed verdict.
15 What's in here is only probably admissible on the
16 question of punitive damages. And if you had granted the
17 directed verdict, there would be no need.

18 THE COURT: Okay.

19 MR. MATHISON: Moreover, for me to recover, I have
20 to show constitutional --

21 THE COURT: Who testified to that?

22 MR. MATHISON: Nobody. I asked -- it's stipulated
23 to its authenticity. It's a public document. And it is
24 the real thing, and I asked that it be put in.

25 THE COURT: And it's the most recent.

1 MR. MATHISON: Yes.

2 THE COURT: Okay.

3 MR. MATHISON: And it's marked for identification
4 and --

5 THE COURT: And I think it's fair game, other than
6 you've got to put to the page that you want it to, which
7 we're going to take out, but.

8 MR. HALIO: Your Honor, it was never admitted into
9 evidence in the case. Nobody spoke about it. Nobody
10 explained it. And we don't think it's proper for it to
11 come in at this time. He could have asked Birdwell about
12 it. He could have asked Cary Kelley about it. But
13 nobody was asked about it, and it was never entered into
14 evidence.

15 MR. MATHISON: I spoke about it, actually, in my
16 closing argument, your Honor.

17 THE COURT: Right. But you didn't enter it. Do we
18 have anywhere - no one spoke about it, Mr. Mathison?

19 MR. MATHISON: No, no one spoke about it. I offered
20 it as a document stipulated as to its authenticity. I
21 did that at the close of my case.

22 THE COURT: Okay, but you didn't --

23 MR. MATHISON: And --

24 THE COURT: Okay. It didn't get moved in?

25 MR. MATHISON: I don't believe I moved it into

1 evidence, because it was with this one, and you were then
2 debating what you were going to do with their motions.

3 THE COURT: I heard you argue, obviously, that there
4 is a reserve fund that's unidentified for CSA.

5 MR. MATHISON: That's correct.

6 THE COURT: 6.5, is what I heard, as far as a number
7 is concerned.

8 MR. MATHISON: I think 6.7.

9 THE COURT: 6.7.

10 MR. HALIO: And we -- I didn't argue it, because
11 it's not in.

12 MR. MATHISON: May it please the Court. I think
13 that you have the discretion to allow it in. I think
14 it's important for the plaintiff to have it in.

15 THE COURT: Okay. Well, let's do this. During the
16 charge, why don't you let Mike do some research to find
17 out whether or not I can just -- I mean, it has to -- a
18 stipulation has to be that, a stipulation. The other
19 side isn't agreeing to it, so.

20 MR. MATHISON: They stipulated as to its
21 authenticity.

22 THE COURT: Its authenticity.

23 MR. MATHISON: Not its admissibility.

24 THE COURT: Right.

25 MR. MATHISON: But it is admissible. And quite

1 frankly, it should have been moved into evidence by me.

2 THE COURT: You should've asked it again.

3 MR. MATHISON: My problem --

4 THE COURT: Of Birdwell or someone that could
5 have --

6 MR. MATHISON: My problem was that we were in a mad
7 scramble yesterday, and I was basically writing my
8 closing by the time we finished with the motions.

9 THE COURT: Right. I don't think I can let it in,
10 Mr. Mathison, because you didn't get it in for anyone.
11 What's the third one?

12 MR. MATHISON: The third one is Mr. McNeill's second
13 incident report. That one the reporter has -- the first
14 one she has as being entered in evidence, and the second
15 one she has as being for identification only. And I've
16 got no explanation for that, because Mr. McNeill put both
17 of them in, and --

18 THE COURT: He testified about them, correct?

19 MR. MATHISON: Yes.

20 THE COURT: Okay.

21 MR. HALIO: I think you said as to one of them, I
22 recall you saying that he's already testified to it; we
23 don't need it. Something like that. But it's not in.

24 THE COURT: But you asked him about it, and you
25 tried to get it in through Mr. McNeill, correct?

1 MR. MATHISON: Actually, he identified it. I don't
2 know why it's not in the record.

3 THE COURT: Did you ever move it in?

4 MR. MATHISON: He prepared it.

5 THE COURT: My question is, did you ever move it
6 into evidence through him, that you know of? She says
7 no.

8 MR. MATHISON: Actually, I don't know what she says
9 about this one.

10 THE COURT: Do you know, Wanda?

11 COURT REPORTER: Your Honor, I have it as I.D. only
12 on this paper.

13 THE COURT: And that he didn't move it in?

14 COURT REPORTER: You know, that's on paper. On the
15 audio, it could be -- I would actually have to check it.

16 THE COURT: Okay. Well, I think we're going to have
17 some time, so let's check it.

18 MR. MATHISON: To be honest with you, I don't need
19 that one.

20 THE COURT: Okay.

21 MR. MATHISON: I do need this one, and I'd like to
22 have you check and see what was said about this one,
23 because I believe I moved it into evidence, and I believe
24 that you were not inclined to take it when I did.

25 THE COURT: Okay. Okay. So you're not worried

1 about the other one. What number is that?

2 MR. MATHISON: This one is Plaintiff's Exhibit 28.

3 THE COURT: You're not worried about 28. Okay.

4 Well, we'll have her --

5 MR. MATHISON: If you would --

6 THE COURT: Afterwards, we'll have her take a look

7 at the annual report. We need to get going. Okay. Is

8 this what I've got?

9 LAW CLERK COPPAGE: Yes, ma'am. I hope so.

10 THE COURT: Okay. Let's -- okay. Let me see.

11 Okay. I think it's okay. The only thing I've seen is

12 entitled. Is entitled with a D.

13 You all take a look at just what I did on 5. It's

14 not beautiful, but it does the job.

15 MR. MATHISON: That's fine, your Honor. Thank you.

16 THE COURT: Okay. All right, you all. I am going

17 to step down for just literally two minutes. If you all

18 need to, too, you're welcome to. And Mike's in the back.

19 He needs to know he's not allowed to come and go during

20 the charge. I don't blame him if he wants to avoid it.

21 MR. MATHISON: I think he got that impression

22 yesterday, your Honor.

23 THE COURT: Okay.

24 OFF THE RECORD 11:04 A.M.

25 BACK ON THE RECORD 11:05 A.M.

1 BY THE COURT:

2 THE COURT: All right. Let's bring them in, Norman.

3 BAILIFF: Yes, ma'am.

4 BAILIFF: Jurors are entering, your Honor.

5 JURORS ENTER COURTROOM 11:10 A.M.

6 BAILIFF: Your Honor.

7 THE COURT: Thank you. Good morning, ladies and
8 gentlemen.

9 RESPONSES FROM JURORS.

10 JURY CHARGE, BY THE COURT:

11 THE COURT: Mr. Foreperson and members of the jury,
12 you've heard the evidence in this case, and the arguments
13 of both parties. I will now explain to you the law that
14 applies to this case.

15 This case was initiated by the plaintiff, Maureen
16 Coffey, who brought an action for defamation against
17 defendants Community Services Associates, Incorporated,
18 and George Breed, Jr.

19 Now, under our *Constitution* and code of laws, only
20 you, the jury, can make the findings of fact in this
21 case. I'm not permitted to tell you how I feel about the
22 evidence which has been presented, and throughout this
23 trial, I have intended to be fair and impartial to all
24 parties involved.

25 Ladies and gentlemen, to determine the facts in this

1 case, you will have to evaluate the credibility or
2 believability of the witnesses. I've already discussed
3 with you at the beginning of the trial some of the things
4 that you may consider as you decide whether or not to
5 believe a witness's testimony about a particular matter.
6 You can believe as much or as little of each witness's
7 testimony as you think proper. You may believe the
8 testimony of a single witness against that of many
9 witnesses, or just the opposite. You may believe a part
10 of a witness's testimony and disbelieve the rest.

11 You should not determine the truth merely by
12 counting the number of witnesses presented by each side,
13 and throughout this trial, you have but one objective,
14 and that is to seek the truth, regardless of its source.

15 Now, ladies and gentlemen, in a case, evidence may
16 be either direct or circumstantial. Direct evidence is
17 testimony by a witness about what the witness personally
18 saw, heard, or did. Circumstantial evidence is indirect
19 evidence. That is, it is proof of one or more facts from
20 which you can find another fact.

21 Ladies and gentlemen, you are to consider both
22 direct and circumstantial evidence. The law permits you
23 to give equal weight to both, but again, it is for you to
24 decide how much weight to give any evidence.

25 Now, ladies and gentlemen, during the trial of this

1 case, we have had testimony by way of deposition
2 witnesses taken outside the courtroom. That witness may
3 or may not appear personally before you. The deposition
4 was taken in the manner prescribed by law, and you will
5 consider the testimony from that deposition just as if
6 the witness were here upon the stand testifying.

7 You take this deposition testimony in connection
8 with all other testimony, and you assess the credibility
9 of that witness from anything that is in the record that
10 will aid you in doing so. You consider that deposition
11 evidence along with the testimony of the witnesses who
12 have appeared in person; and you determine from all the
13 evidence in the case, whether by witnesses present or by
14 depositions, or whether by exhibits in the case, what the
15 truth of this controversy is, according to the facts as
16 you find them to be; and then apply the law as I give it
17 to you.

18 Ladies and gentlemen, the rules of evidence
19 ordinarily do not permit witnesses to testify to opinions
20 or conclusions. An exception to this rule exists for
21 witnesses that we call expert witnesses, a witness, who
22 by education and experience, has become an expert in some
23 art, science, or profession, may give an opinion as to
24 the subject the witness claims to be an expert in, and
25 may also give the reasons for the opinion.

1 You should consider an expert opinion given by a
2 witness, and like any other evidence, give it the weight
3 you think it deserves. If you decide that an expert
4 witness's opinion is not based on sufficient education
5 and experience, or if you decide that the reasons given
6 in support of the opinion are not sound, or that the
7 opinion is outweighed by other evidence, you may
8 disregard the opinion entirely.

9 An expert witness's testimony is to be given no
10 greater weight than that of other witnesses, simply
11 because that witness is an expert. And you do not have
12 to accept an expert's opinion, even though it is
13 uncontradicted.

14 Ladies and gentlemen, the same constitution and laws
15 which designate and make you the finders of fact, make me
16 the instructor of the law. You must accept the law as I
17 give it to you. If I'm wrong, there's another place and
18 another time for that error to be considered, and if
19 necessary, corrected. But for now, you must accept the
20 law as I give it to you. This means that you should not
21 be concerned with what you think the law should be, but
22 only with what I charge you the law is.

23 The cause of action in this case, ladies and
24 gentlemen, is defamation. The tort of defamation allows
25 a plaintiff to recover from injury to their reputation as

1 a result of a defendant's communication or publication to
2 others of a false message about the plaintiff. The focus
3 of defamation is not on the hurt to the defamed party's
4 feelings, but on the injury to their reputation.

5 Ladies and gentlemen, defamatory communication takes
6 two forms: libel and slander. An action for libel is
7 based on the violation on a person's right to enjoy their
8 good reputation, unimpaired by false and defamatory
9 attacks.

10 Libel is a written defamation, or one accomplished
11 by actions or conduct. Libel consists of the publication
12 of defamatory material by written or printed words; by
13 its embodiment in physical form or any other form of
14 communication that has the potentially harmful qualities
15 characteristic of written or printed words.

16 An action for slander is based on the violation of a
17 person's right to enjoy their good reputation, unimpaired
18 by false and defamatory attacks. Slander is a spoken
19 defamation. Slander consists of the publication of
20 defamatory matter by spoken words, transitory gestures,
21 or by any other form of communication other than those
22 defined as part of libel.

23 Ladies and gentlemen, a principal may be held libel
24 for defamatory statements made by an agent acting within
25 the scope of his employment or within the scope of his

1 apparent authority. Apparent authority arises if a third
2 party believes that an agent has the authority to act for
3 another person or company, called the principal, when
4 that authority has not, in reality, been granted. If an
5 agent acts with apparent authority, the agent's acts
6 legally bind the principal.

7 Ladies and gentlemen, the doctrine of apparent
8 authority focuses on principal's manifestations to a
9 third party that the agent has certain authority.

10 Now, ladies and gentlemen, in a defamation action
11 brought by a public official, the *First Amendment*
12 requires the plaintiff must prove the defamatory
13 falsehood was made with actual malice. To meet this
14 standard, the plaintiff must show the defendant made the
15 statement, either with knowledge that it was false or
16 with reckless disregard for the truth.

17 Actual malice is a subjective standard which tests
18 the defendants' good faith belief in the truth of their
19 statements. To recover on a claim for defamation, the
20 constitutional actual malice standard requires a public
21 official to prove by clear and convincing evidence that
22 the defamatory statement relating to matters of public
23 interest or concern regarding the plaintiff's status or
24 conduct as a public official was made with knowledge of
25 its falsity or with reckless disregard of whether it was

1 true or false.

2 Ladies and gentlemen, clear and convincing evidence
3 is an elevated standard of proof, which lies between the
4 lesser standard of preponderance of the evidence used in
5 most civil cases, and the higher standard of beyond a
6 reasonable doubt, which is required in criminal cases.
7 Clear and convincing evidence is that degree of proof
8 which will produce in the mind of the jury a firm belief
9 as to the allegations sought to be established. Clear
10 and convincing evidence requires that the evidence must
11 be found to be credible. The facts to which the
12 witnesses testify must be distinctly remembered; the
13 testimony must be precise and explicit; and the witnesses
14 must be lacking in confusion as to the facts in issue.

15 The evidence must be of such weight that it
16 produces, in the mind of the jury, a firm belief or
17 conviction, without hesitancy as to the truth of the
18 allegations sought to be established.

19 Ladies and gentlemen, when the law places upon a
20 party a burden of proof by clear and convincing evidence,
21 the law means that the evidence is not ambiguous,
22 doubtful, equivocal or contradictory; but the evidence is
23 pointed to the issue and satisfactory in the sense that
24 the source from which it comes is one in which you jurors
25 can place credence.

1 Ladies and gentlemen, the constitutional actual
2 malice standard is not satisfied merely through a showing
3 of ill will or malice in the ordinary sense of the term.
4 It is insufficient to show defendant made an editorial
5 choice or simply failed to investigate or verify
6 information. There must be evidence at least that the
7 defendant purposefully avoided the truth.

8 Ladies and gentlemen, a reckless disregard for the
9 truth requires more than a departure from reasonably
10 prudent conduct. There must be sufficient evidence to
11 conclude either the defendant made the statements with a
12 high degree of awareness of probable falsity, or that the
13 defendant, in fact, entertained serious doubts as to the
14 truth of their publication.

15 Ladies and gentlemen, mere negligence is
16 insufficient to prove actual malice.

17 Now, the plaintiff will rarely find success in
18 proving awareness that a statement is false from the
19 mouth of a defendant himself. Any direct or indirect
20 evidence relevant to the defendant's state of mind may be
21 considered to prove actual malice. The plaintiff may
22 present competent circumstantial evidence of bad faith to
23 establish actual malice, despite a defendant's contention
24 that the publication was made with a belief the
25 statements were true. A jury may infer reckless conduct

1 sufficient to constitute actual malice by looking at the
2 totality of the evidence.

3 Ladies and gentlemen, failure to investigate before
4 publishing, even when a reasonably prudent person would
5 have done so, is not sufficient to establish reckless
6 disregard.

7 Ladies and gentlemen, when a libel action is brought
8 by a public official, the plaintiff must make an
9 affirmative showing that the defamatory statement was
10 false. A defamed public official must prove the falsity
11 of the allegedly defamatory publication. You must
12 determine from the evidence present what the truth was,
13 and compare that with the statements or publication you
14 find were made by a defendant, considering the statements
15 according to the ordinary meaning of the language used.

16 There can be no recovery in defamation for a
17 statement of fact that is true, although the statement
18 made for no good purpose, and is inspired by ill will
19 toward the person about whom it is published, and is made
20 solely for the purpose of harming them. If you find
21 there was no substantial difference between the
22 statements and the truth, or the statements did not
23 differ in substantial respects from the truth, then the
24 plaintiff has not met her burden of proving the truth of
25 the statements.

1 Now, ladies and gentlemen, the defendants in this
2 action claim that the words spoken or written were in the
3 form of legitimate criticism or fair comment upon the
4 public acts of an official. A fair and reasonable
5 criticism of that kind is allowed, provided it contains
6 no reference or reflections that defame the individual's
7 private affairs, character, or business.

8 Fair and honest criticism in matters of public
9 concern is privileged, but the privilege is limited
10 strictly to comments and criticisms, and does not intend
11 to protect false statements, unjust inferences,
12 imputations of evil motives, or criminal conduct, the
13 truth of what he alleges to be the facts.

14 Ladies and gentlemen, it is for you as a jury to
15 determine whether the criticisms or statements affecting
16 a public officer of official ceased to be fair and
17 honest.

18 Ladies and gentlemen, every person has a right to
19 comment on matters of public interest and general
20 concern, provided it is done fairly and with an honest
21 purpose. Such comments are not slanderous nor libelous,
22 however severe in their terms unless they are spoken or
23 written intemperately and maliciously. To support a plea
24 of fair comment, the statement has to be, in whole or in
25 part, a matter of comment or opinion, rather than an

1 assertion of a factual proposition. In this regard, an
2 expression of simple or pure opinion asserting personal
3 comment on certain stated facts constitutes the type of
4 expression of opinion to which the principle -- excuse me
5 -- to which the privilege of fair comment applies. In
6 contrast, a slander or libel based upon misstatement of
7 facts.

8 Ladies and gentlemen, the policy of the law is to
9 permit everyone freely to discuss and criticize matters
10 of public interest, provided the statements must be made,
11 and must be statements of opinion, rather than fact,
12 based on facts truly stated, fair and the honest
13 expression of the writer's real opinion.

14 Under the fair comment privilege, matters of public
15 interest and concern, which are legitimate subjects of
16 fair comment and criticism, are privileged. The doctrine
17 of fair comment has been said to be qualified, or a
18 conditional privilege. To constitute fair comment, the
19 publication must relate to a matter of public interest,
20 not impute dishonorable motives to its subject, generally
21 be based on facts truly stated, and be honest and fair
22 expression of opinions on the facts.

23 While the comment must be fair, this does not mean
24 that it must be reasonable or moderate, but that it must
25 be published, in part, at least, for a bonafide purpose

1 of giving the public the benefit of comment, which it's
2 entitled to have, rather than for an ulterior motive of
3 causing harm to the plaintiff. A slight exaggeration
4 does not render a comment unfair. Furthermore, to
5 qualify under the fair comment privilege, the comments
6 must be substantially accurate and complete or constitute
7 a fair abridgement. If a statement condenses a long
8 discussion, it must be a summary of substantial accuracy.

9 Now, a statement of opinion is fair if it is related
10 to the acts of the plaintiff being commented upon, and
11 it's one which a reasonable person might honestly
12 entertain, based on the facts truly stated. The fact
13 that you disagree with the comment, or that it appears
14 wrong to you, does not make it unfair, if the opinion it
15 expresses is one that a fair-minded person might
16 reasonably entertain, based on the facts truly stated.

17 The defense of their comment is not absolute, but
18 may be lost by abuse. Comments and criticisms within the
19 fair comment defense are not actionable unless made with
20 actual malice. Mere expressions of opinion concerning
21 matters of public interest or concerned are privileged as
22 being fair comment when made without actual malice.

23 In considering whether defendants' statements
24 constituted fair comment, you will first determine what
25 part of the statements constituted or consisted of

1 statements of fact, and whether the fact statements were
2 substantially true. The burden of proof on those
3 questions is on the defendant. If you conclude that all
4 the statements would be understood by a person of average
5 intelligence as statements of facts, your finding would
6 be that the statements were not privileged as fair
7 comment.

8 Additionally you will find the statements not
9 privileged if you conclude that part of the statements
10 would be understood as opinion or comment, but that the
11 fact statements upon which the opinion or comment was
12 based, were not substantially true.

13 Now, ladies and gentlemen, in a defamation action
14 the defendant may also assert the affirmative defenses of
15 absolute and qualified privilege. A privilege is an
16 immunity granted to some person or group of persons which
17 is not enjoyed by others. As the term is used in this
18 case, a privileged communication is one which is made on
19 such occasion that the publisher will not be held
20 responsible in an act for defamation. A privileged
21 communication under defamation law is a communication
22 which, except for the occasion on which or the
23 circumstances under which it is made, would be defamatory
24 and actionable.

25 Ladies and gentlemen, again, privileged

1 communications are either absolute or qualified. An
2 absolute privilege is a complete bar to liability for
3 making defamatory statements. When a communication is
4 absolutely privileged, no action lies for its
5 publication, no matter what the circumstances under which
6 it is published. In other words, a statement that is
7 absolutely privileged, even though it would otherwise
8 constitute libel or slander, is not actionable. There is
9 no liability, even though the defamatory words may have
10 been false and made with malice. In that situation, the
11 plaintiff is not entitled to recover damages because that
12 statement was made.

13 When a defamation is made in good faith and with
14 proper notice, a defendant may claim a qualified or
15 conditional privilege. This privilege exists if the
16 defendant correctly or reasonably believes that some
17 important interest of his own or a third party is
18 threatened. A qualified privilege may exist where the
19 parties have a common business interest. However, the
20 qualified privilege exists only when the publication has
21 occurred in a proper manner and to proper parties only.

22 Where the occasion gives rise to a qualified
23 privilege, there is a prima facie presumption to rebut
24 the inference of malice. Now, prima facie refers to a
25 fact presumed to be true, unless disproved by some other

1 evidence to the contrary. Now, even if a privilege
2 exists, a defendant may still be libel for defamation if
3 he abuses the privilege, (1) by exceeding the scope of
4 the privilege and publicizing the defamatory statements
5 to persons who do not need to have it in order to further
6 the interests protected by the privilege, or, (2) by
7 making the defamatory statement with constitutional
8 actual malice.

9 Once it has been proven by the defendant that the
10 communication was protected by a qualified privilege, the
11 burden of proof shifts back to the plaintiff to prove
12 either the scope of the privilege was exceeded and the
13 defamatory statement was made with constitutional actual
14 malice.

15 Now, ladies and gentlemen, in this case the
16 plaintiff must plead and prove constitutional actual
17 malice by clear and convincing proof, and special and
18 general damages by what we call a preponderance of the
19 evidence. A preponderance of the evidence as to the
20 damages of special and general simply means that a fact
21 is more likely true than not true.

22 In this case, the plaintiff must prove her special
23 and general damages, again, by a preponderance of the
24 evidence, which is a lesser standard than clear and
25 convincing, which was your burden of proof in deciding

1 whether a defendant made a defamatory statement with
2 knowledge of its falsity or reckless disregard of whether
3 it was true or false.

4 Ladies and gentlemen, a plaintiff who proves that
5 they are entitled to special damages may recover as
6 special damages any expenses or loss of value that can be
7 attributed to the slanderous and libelous statements.
8 Special damages consist of specific identifiable,
9 economic, or material losses to the plaintiff as a result
10 of the defamation. Special damages are tangible losses
11 or injury to the plaintiff's property, business,
12 occupation, or profession, which are capable of being
13 assessed monetarily, and which result from injury to the
14 plaintiff's reputation.

15 Ladies and gentlemen, special damage is the
16 manifestation of an injury to reputation, which is
17 computable -- which is computable in money or capable of
18 being assessed at a monetary value.

19 Ladies and gentlemen, once the plaintiff has proved
20 special damages, you may then consider general damages
21 for the plaintiff. General damages in this case would
22 include injury to reputation and standing in the
23 community, embarrassment, personal humiliation, mental
24 anguish and suffering, and wounded feelings caused by
25 injury to reputation.

1 Ladies and gentlemen, if you find that the plaintiff
2 is entitled to special damages, you may also consider
3 awarding the plaintiff punitive damages in this case.
4 Punitive damages, which are also known as exemplary
5 damages, are imposed as punishment. They are not
6 intended to compensate. Punitive damages are allowed in
7 the interest of society in the nature of punishment, and
8 as a warning, and an example to deter the wrongdoer and
9 others from committing like offenses in the future.

10 Ladies and gentlemen, punitive damages can only be
11 awarded where the plaintiff proves, by clear and
12 convincing evidence, a defendant acted with actual
13 malice; that the defendant's actions were willful,
14 wanton, malicious, or in reckless disregard of the truth.

15 Ladies and gentlemen, the tests for determining
16 whether or not the actions may be deemed reckless,
17 willful, or wanton, is whether it has been committed in
18 such a manner and under such circumstances that a person
19 of ordinary reason or prudence would have been conscious
20 of it as an invasion of the rights of the injured party.

21 Ladies and gentlemen, before you can award punitive
22 damages, you must first find that the plaintiff is
23 entitled to special damages, as I told you. There must
24 be an award of special damages for a verdict of punitive
25 damages to be supported. This rule is premised on the

1 fact that liability must be established before a
2 plaintiff can seek punitive damages. Therefore, if you
3 do not award special damages, then you cannot award
4 punitive damages.

5 Ladies and gentlemen of the jury, there is no
6 formula or standard that can be used as a measure for
7 assessing punitive damages. However, factors relevant to
8 your consideration of punitive damages are the character
9 of the defendant's acts; the nature and extent of the
10 harm to the plaintiff, which defendant caused or intended
11 to cause; the defendant's greed -- degree -- excuse me --
12 of culpability; the punishment that should be imposed;
13 the duration of the conduct; the defendant's awareness of
14 conceal -- or, excuse me -- or concealment; the existence
15 of similar past conduct; likelihood the award will deter
16 the defendant or others from like conduct; whether the
17 award is reasonably related to the harm likely to result
18 from such conduct; and the defendant's wealth or ability
19 to pay.

20 Ladies and gentlemen, the financial condition of a
21 defendant is a factor you should consider in awarding
22 punitive damages. However, there is no requirement that
23 the defendant be a person of means before you are
24 justified in awarding punitive damages. While the wealth
25 of the defendant is a relevant factor in assessing

1 punitive damages, it is not necessarily controlling. In
2 other words, the financial worth of the defendant is a
3 fact properly to be considered by you in determining the
4 amount to be awarded as punitive damages. But evidence
5 of net worth, again, is not a prerequisite to a punitive
6 damage award.

7 Ladies and gentlemen, I charge you that the law
8 relevant to this case includes that a plaintiff may
9 recover for pre-existing injuries only to the extent that
10 they were aggravated by the defendant's actions. Any
11 portion of the injuries which was not caused by the act
12 or omission on the part of the defendant is not
13 compensable.

14 You can award damages for any aggravation of a pre-
15 existing condition, but not for the original injury
16 itself. Likewise, a defendant is not libel for the
17 natural progression or worsening of a pre-existing
18 condition.

19 Ladies and gentlemen, under the *South Carolina Rules*
20 *of Civil Procedure*, I charge you that, pursuant to Rule
21 40(j), a party may strike its complaint, counter-claim,
22 cross-claim, or third-party claim from any document one
23 time as a matter of right, provided that all parties
24 adverse to that claim, counter-claim, cross-claim, or
25 third-party claim agree in writing that it may be

1 stricken; and all further agree that if the claim is
2 restored upon motion, made within one year of the date
3 stricken, the statute of limitations shall be tolled as
4 to all consenting parties during the time the case is
5 stricken; and any unexpired portion of the statute of
6 limitations on the date the case was stricken shall
7 remain and begin to run on the date that the claim is
8 restored.

9 A party moving to restore a case stricken from the
10 docket shall provide all parties notice of the motion to
11 restore at least ten days before it is heard. Upon being
12 restored, the case shall be placed on the general docket,
13 and proceed from that date as provided in this rule.

14 Ladies and gentlemen, it is also the law of this
15 state that a person who is registered or licensed under
16 this chapter, and who is hired or employed to provide
17 security services on specific property, is granted the
18 authority and arrest power given to sheriff's deputies.
19 The security officer may arrest a person violating or
20 charged with violating a criminal statute of this state,
21 but possesses the powers of arrest only on the property
22 on which they are employed.

23 Ladies and gentlemen, I also charge you that, as a
24 regulation of our state, that private security officers
25 are required to immediately secure the scene of a

1 discovered crime on protected property, to immediately
2 notify the law enforcement agency of jurisdiction, and to
3 report suspected criminal activity on the protected
4 property to the primary law enforcement agency of
5 jurisdiction as soon as reasonably possible.

6 Ladies and gentlemen, private security officers must
7 receive training by their employers sufficient to ensure
8 adequate knowledge to properly and competently secure and
9 preserve a crime scene.

10 Ladies and gentlemen, I charge you that, when a
11 party fails to preserve material evidence for trial, it
12 is for you to determine whether the party has offered a
13 satisfactory explanation for that failure. If you find
14 the explanation unsatisfactory, you are permitted, but
15 not required, to draw the inference that the evidence
16 would have been unfavorable to the party's claim.

17 Ladies and gentlemen, erasure of a tape recording
18 when done as part of a routine practice is not evidence
19 of actual malice. I charge you, under our Appellate
20 Court Rules, Rule 502(13) states:

21 *Communications to the Commission, Commission*
22 *counsel, disciplinary counsel, or their staffs relating*
23 *to misconduct, or in capacity in testimony given in the*
24 *proceedings shall be absolutely privileged, and no civil*
25 *lawsuit predicated thereon may be instituted against any*

1 complainant or witness.

2 *Members of the Commission, Commission counsel and*
3 *staff, and disciplinary counsel and staff shall also be*
4 *absolutely immune from civil suit for all conduct in the*
5 *course of their official duties.*

6 Now, Mr. Foreperson and members of the jury, as you
7 retire to begin your deliberations in this case, I want
8 to express the hope that each of you will be mindful of
9 the importance of your duty here today. You're not
10 called upon very often to serve as jurors, and the proper
11 performance of that duty requires that each of you reach
12 the height of freeing your mind of all improper
13 influences.

14 You and I are acting for the community, and that is
15 why we must see to it that this trial is fair and that
16 the verdict is just.

17 You've observed that the presiding officer of this
18 court is always addressed as your Honor. The reason is
19 that the Court is entrusted with the honor of this
20 community, the honor of this state, and the honor of this
21 country, in seeking that every case tried here receives
22 fair and impartial justice.

23 Now, you, the jury, take into your care and keeping
24 the preservation of the honor of this community, the
25 honor of this state, and the honor of this country.

1 Now, Mr. Foreperson and members of the jury, please
2 don't get the idea that I'm trying to intimate to you how
3 I think you should decide this case. As I've already
4 told you, under the laws of the state of South Carolina,
5 you, the jury, are the judge of all questions of fact,
6 and it would be highly improper for me to influence you
7 in your decision under that duty. So again, I'm not
8 trying to tell you what your verdict should be.

9 But ladies and gentlemen, as the presiding officer
10 of this court, I am vitally concerned that whatever
11 verdict you reach is the result of you going back into
12 your jury room and confine your consideration to the
13 evidence and the law that you've heard in this courtroom
14 over the last week and a half, weighing it fairly and
15 impartially, because I have every confidence that you
16 will.

17 Ladies and gentlemen, everyone is entitled to
18 justice in this case, both the plaintiff and the
19 defendants. You owe no support or sympathy to anyone.

20 Ladies and gentlemen, the Court is of the confirmed
21 opinion that whatever verdict you reach will represent
22 truth and justice for all parties concerned.

23 Mr. Foreperson, I remind you, your verdict must be
24 unanimous; it must be the verdict of all twelve jurors.
25 And to that end, we have prepared a verdict form.

1 It has the case caption. It says:

2 State of South Carolina, County of Beaufort, Maureen
3 T. Coffey, Plaintiff, versus Community Services
4 Associates, Incorporated, and George F. Breed, Jr,
5 Defendants.

6 And it begins:

7 We, the jury, find unanimously as follows:

8 Number 1(a) the plaintiff has proved by clear and
9 convincing evidence that the defendant, George F. Breed,
10 Jr, published a false statement of fact -- and fact of
11 and concerning the plaintiff. And it says yes or no.

12 1(b) The plaintiff has proved by clear and
13 convincing evidence that the defendant, Community Service
14 Associates -- Services Associates -- excuse me --
15 published a false statement of fact of and concerning the
16 plaintiff. Yes or no.

17 If you find no for both 1(a) and 1(b), please sign
18 and date the form, and advise the Court that a verdict
19 has been reached.

20 Ladies and gentlemen, if you answer yes to either
21 question, you're going to go to 2(a), which states:

22 The plaintiff has proved by clear and convincing
23 evidence that the defendant, George F. Breed, Jr,
24 published a statement concerning the plaintiff with
25 knowledge that it was false or with reckless disregard of

1 its falsity. And the answer is yes or no.

2 2(b) The plaintiff has proved by clear and
3 convincing evidence that the defendant, Community
4 Services Associates, Inc., published a statement
5 concerning the plaintiff with knowledge that it was false
6 or with reckless disregard of its falsity. Again, yes or
7 no.

8 Ladies and gentlemen, again, if you find no for both
9 2(a) and 2(b), sign the form, Mr. Foreperson, and advise
10 the Court that you have reached a verdict.

11 If you sign yes to either one of those, you may then
12 go to Question Number 3, which says:

13 The plaintiff has proved by a preponderance of the
14 evidence that she has sustained special damages. Yes or
15 no.

16 If yes, you are to write the amount of those special
17 damages and proceed on to Question Number 4. If no, you
18 are to sign the form and advise the Court that a verdict
19 has been reached.

20 It then goes on to Question 4 of:

21 The plaintiff has proved by a preponderance of the
22 evidence that she has sustained damage to her reputation,
23 what we call general damages, as a consequence of the
24 defendant's publication.

25 And again, it's yes or no. And then, if yes, write

1 the amount of reputation or general damages.

2 Ladies and gentlemen, if you have answered either
3 yes to either 3 or 4, you will then go on to Question
4 Number 5. Question Number 5 states that:

5 *The plaintiff has proved by clear and convincing*
6 *evidence the plaintiff is entitled to punitive damages.*

7 And the answer is either yes or no.

8 And then it goes on as against George F. Breed, Jr;
9 against Community Services Association, Inc.; against
10 Community Services Associates, Inc., and George F. Breed,
11 Jr. You checkmark whichever apply. All right.

12 After that, there is a line that says:

13 *If you have said yes and you find punitive damages*
14 *as to any of the defendants, you are to write that amount*
15 *of punitive damages on the line.*

16 At that point, ladies and gentlemen, you have
17 reached a verdict.

18 Mr. Foreperson, again, there is a line for you to
19 sign, as well as a date line.

20 Ladies and gentlemen, I will tell you that for the
21 very last time, I'm going to send you back to your jury
22 room, and I am going to tell you not to begin your
23 deliberations. I'm going to ask the attorneys if there's
24 anything further they need me to charge you on the law.

25 If there is, I'm going to bring you back into the

1 courtroom and charge you further.

2 If not, I am going to send you this verdict form,
3 along with the evidence that has been put into this case,
4 and that will be your signal to begin your deliberations.

5 Of course, when you have reached a verdict, Mr.
6 Foreperson, simply knock on your jury room door, and we
7 will accept you back into the courtroom to take your
8 verdict. All right?

9 Thank you, ladies and gentlemen, for your attention.
10 We will be with you shortly.

11 JURORS LEAVE COURTROOM 11:45 A.M.

12 BAILIFF: The jury is clear, your Honor.

13 THE COURT: Any objections or additions from the
14 plaintiff?

15 MR. MATHISON: I don't know that I'm going to
16 object, your Honor. I just wanted to point out that
17 there are a couple things that I saw that didn't track
18 the charge.

19 THE COURT: Yeah. And I made some --

20 MR. MATHISON: And you may have intended those, and
21 if so --

22 THE COURT: I did intend them, actually. And I have
23 made those changes, and my law clerk is going to make
24 them right now and send my changes that were -- as I
25 verbally stated them. I marked them as I went through

1 when I changed it.

2 MR. MATHISON: The first one that I saw was on the
3 bottom of Page 11, where it says, *of the privilege was*
4 *exceeded*. And you didn't, I think, change and to or
5 there, which is what I had expected.

6 THE COURT: Where is -- I'm sorry. Where on Page
7 11?

8 MR. MATHISON: The bottom of Page 11. Once it has
9 been proven by the defendant that the --

10 THE COURT: Hold on a second. On the very bottom of
11 Page 11?

12 MR. MATHISON: Yes, ma'am.

13 THE COURT: By exceeding the scope of the privilege
14 under Number 1?

15 MR. MATHISON: No, it's below Number 2. It's a
16 reflection of what's in 1 or 2 what you, as you can see,
17 stated in the disjunctive.

18 THE COURT: Give me which paragraph on Page 11.
19 First paragraph?

20 MR. MATHISON: The last. The last paragraph.

21 THE COURT: *Where the occasion gives rise to a*
22 *qualified privilege there is a prima facie presumption to*
23 *rebut the inference of malice.*

24 MS. JONES: That's not our last paragraph on 11.
25 Our last paragraph on 11 begins with *once it has been*

1 *proven.*

2 MR. MATHISON: That's what ours has.

3 THE COURT: Okay. I'm obviously, it's on a
4 different one. Okay.

5 MR. MATHISON: And if you notice the --

6 THE COURT: Hold on a second. Okay. *Once it has*
7 *been proven by the defendant the communication was*
8 *protected by a qualified privilege, the burden of proof*
9 *shifts back to the plaintiff to prove either the scope of*
10 *the privilege was exceeded --*

11 MR. MATHISON: And I think it should be or. And you
12 said *and* to the jury, and I think that's in error.

13 THE COURT: Well, actually, no, because it would, in
14 fact, turn back to they have to show actual malice.

15 MR. MATHISON: Well, they'd have to show actual
16 malice if they didn't show that it had been exceeded. I
17 mean, it's there in the disjunctive as set forth in the
18 paragraphs above.

19 THE COURT: Yes. I think you're correct.

20 MR. MATHISON: If that you read is consistent with
21 what I have, but I think it should have been --

22 THE COURT: Right. Yes, it should have been or.
23 You're right. Okay. Okay.

24 MR. MATHISON: On Page 13, in what is the third
25 paragraph on the document I have.

1 THE COURT: Okay. What does the paragraph start as?
2 MR. MATHISON: *Punitive damages can only be awarded.*
3 THE COURT: *Proves by.*
4 MR. MATHISON: *Where the plaintiff proves by clear*
5 *and convincing evidence that the defendant's actions, and*
6 *I believe you said --*
7 THE COURT: Hold on a second. I'm sorry. Okay. Go
8 ahead.
9 MR. MATHISON: I believe you said were committed
10 with actual malice, and then picked up with willful,
11 wanton, malicious, or in reckless disregard. And there
12 are two problems.
13 THE COURT: That the defendant's actions were
14 willful, wanton, malicious, or in reckless disregard.
15 Can you pull back up what I read? I'm talking, Wanda, to
16 you.
17 COURT REPORTER: Oh, I'm so sorry. You're talking
18 to me.
19 THE COURT: Yes. Okay. So what did you think you
20 heard?
21 MR. MATHISON: I think I heard that you added the
22 phrase committed with actual malice before the word
23 willful.
24 THE COURT: *Willful, wanton, and malicious.*
25 MR. MATHISON: *Committed with actual malice, then*

1 willful. I mean that's what I believe I heard.

2 THE COURT: Well, I think -- I mean, it's still --
3 we're saying the same thing. *Where the plaintiff proves*
4 *by clear and convincing evidence defendant acted with*
5 *actual malice is -- comma -- the defendant's actions were*
6 *willful, wanton, malicious, and in reckless disregard of*
7 *the truth.*

8 And I'm not sure I under -- I mean, I understand
9 that there was a difference, but I don't think it says
10 anything different than what it is.

11 MR. MATHISON: Okay. The next one that I saw was on
12 Page 15.

13 THE COURT: Give me a paragraph. All right.

14 MR. MATHISON: It's in the charge on Rule 40(j).

15 THE COURT: Gotcha.

16 MR. MATHISON: In the word *docket* on the second
17 line. You said document.

18 MR. HALIO: You said document. I don't think it
19 makes any difference.

20 THE COURT: Well, they're going to have the actual
21 charge, so. Sorry.

22 MR. MATHISON: I just want to make sure that it does
23 say *docket* in yours.

24 THE COURT: Yes, it says *docket* in mine. Sorry.

25 MR. MATHISON: And on Page 17.

1 THE COURT: Yes.

2 MR. MATHISON: The last paragraph. That is the one
3 on the bottom of the page, you did not charge the first
4 sentence.

5 THE COURT: Of what?

6 MR. MATHISON: *So I'm not trying to tell you what*
7 *verdict you should find.* That was not in your charge as
8 you delivered it.

9 THE COURT: Okay. Well, it doesn't matter, as long
10 as it's roughly the same, and as long as it isn't a
11 misstatement of the law, then we're fine. Okay. Okay.

12 MR. MATHISON: I've got -- excuse me -- one more,
13 and that's on Page 7.

14 THE COURT: Um-hmm.

15 MR. MATHISON: The last paragraph above the heading
16 *defamation.*

17 THE COURT: Got it.

18 MR. MATHISON: You said -- what's printed there is
19 *truth*, and that's what you said.

20 THE COURT: Uh-huh.

21 MR. MATHISON: *Burden of proving the truth of the*
22 *statements.* I think they actually have the burden of
23 proving the falsity of the statements.

24 THE COURT: Well, it says, *the plaintiff has not*
25 *met.*

1 MR. MATHISON: But the plaintiff is not --

2 THE COURT: Oh. False.

3 MR. MATHISON: -- making any burden with respect to
4 truth. That word should be falsity, not truth.

5 THE COURT: I don't know if it's -- I don't know if
6 it's a misstatement of the law, because, you, obviously,
7 you've got to show the defamatory statement was false.
8 Then I guess you do have to show that it was true. I
9 mean, that it is true. I mean, if it's not false, it's
10 true.

11 MS. JOLLEY: It says falsity throughout.

12 THE COURT: It does. *The plaintiff has not met her*
13 *burden of proving the truth...* I mean, I got it straight
14 out of *Anderson*, so.

15 MR. MATHISON: I don't think the plaintiff would
16 ever have the burden of proving the truth of the
17 statements.

18 THE COURT: But you have a burden of proving it was
19 false. So what's the opposite of false? I mean, this is
20 straight out of *Anderson's*. And maybe I don't like the
21 way it's written that they've not met their burden. I
22 mean, I think that's probably what you're parsing on.

23 I mean, really, it's just the opposite. And I mean,
24 I understand what you're saying, but it's -- if the
25 burden is on you, obviously, to show that the statements

1 were false. So in other words, --

2 MR. MATHISON: But the plaintiff is not meeting a

3 burden of proving truth, which is what that phrase says.

4 The plaintiff is meeting a burden of proving falsity,

5 that is, a sufficient dissidence from the truth to make

6 it certerat (phonetic spell)..

7 THE COURT: So burden of proving falsity of the

8 statements, is that what you --

9 MR. MATHISON: Yes.

10 THE COURT: Okay.

11 MR. MATHISON: I believe that's what it should be

12 because -- or in this context, what it means is that

13 we've got to show that there's a substantial difference

14 between what was said --

15 THE COURT: Right.

16 MR. MATHISON: -- and what was, in fact, --

17 THE COURT: Right.

18 MR. MATHISON: -- true. But what we're proving is,

19 we're proving falsity.

20 THE COURT: Okay. Okay.

21 MR. HALIO: Everyone agree with that?

22 THE COURT: Okay. Other than those, anything else,

23 you all?

24 MR. HALIO: You all, meaning?

25 THE COURT: Either one of you, yes. Now the

1 defense.

2 MR. HALIO: Your Honor, we would except to the
3 charge that you gave on Page 16, regarding spoilation of
4 evidence.

5 THE COURT: Obviously.

6 MR. HALIO: It was objected to at the trial, but the
7 one paragraph.

8 THE COURT: Right. Gotcha.

9 MR. HALIO: And I charge you that when a party fails
10 to preserve empirical evidence at trial, et cetera.

11 THE COURT: Yes. Um-hmm.

12 MR. HALIO: And on the verdict form, under Question
13 4.

14 THE COURT: Um-hmm.

15 MR. HALIO: Where it says, *If you answer Questions 3*
16 *and 4.*

17 THE COURT: It says 3 or 4.

18 MR. HALIO: Well, doesn't it have to be 3 and 4?

19 THE COURT: No, because we all had that discussion
20 that they could find she had special damages, but did not
21 affect her reputation.

22 MS. JONES: But it -- yeah.

23 THE COURT: We already had that discussion.

24 MS. JOLLEY: Yes, your Honor, but I thought she had
25 to find special damages before they went to 5. They

1 don't have to find 4 to go to 5, but they have to find 3.

2 THE COURT: Right. That's why it says, *If you*
3 *answer Questions...* I've got 3 or 4, yes. What does
4 yours say?

5 MR. HALIO: 3 and 4.

6 MS. JOLLEY: *And.*

7 THE COURT: Oh, okay. Mine's 3 or 4. Sorry. I
8 don't know if you got the last copy.

9 MR. MATHISON: I don't think either one of us has
10 the last copy, your Honor.

11 THE COURT: Let's have you guys look at this. I've
12 got 3 or 4, because we all -- you agreed that she -- they
13 could find special damages.

14 MS. JOLLEY: Right, but the --

15 THE COURT: And punitive damages, but not
16 necessarily general damages.

17 MS. JOLLEY: Right. They have to find 3. They
18 can't find 3 -- they can't find just 4 and not 3, and
19 reach 5.

20 THE COURT: *Questions that you may consider.* I see
21 what you're saying.

22 MS. JOLLEY: That's what I'm -- they must find 3 to
23 reach 5.

24 THE COURT: *Question.* That's Question 3. Yes.
25 *Then you may go -- you may to -- you may then consider*

1 *punitive damages.*

2 It's 3, it's not and/or, though. Then, if you
3 *answer --*

4 MS. JONES: It's just 3, I think.

5 THE COURT: It really is. And then you may
6 *consider --*

7 MR. HALIO: Can't you just leave it where it is?
8 Can't you just leave it where it is?

9 MS. JOLLEY: Yeah, I just want to take out and 4.

10 MR. HALIO: Right.

11 MS. JONES: That's all you need to do.

12 THE COURT: Yes, just 3. Okay. Okay. So you get
13 rid of that or 4. Got it. Okay. Thank you. Anything
14 else? Okay.

15 MR. MATHISON: The last sentence I'd like to see.
16 Is that on there, that version yet?

17 THE COURT: Which one?

18 MR. MATHISON: This one right here.

19 THE COURT: This one.

20 MR. MATHISON: Yes.

21 THE COURT: Okay. Well, my question to you is, on
22 the two you that you pointed out, I am sending the jury
23 charge back to them, so they are going to have the
24 corrected charge. I don't want to bring them back out
25 here and charge that entire section of both of those on

1 one word.

2 MR. MATHISON: I don't think --

3 THE COURT: I think it would be lost, unless you
4 want me to, Mr. Mathison.

5 MR. MATHISON: No, I'm not going to insist that they
6 be brought back.

7 THE COURT: Okay.

8 And you have all the evidence together, right?

9 BAILIFF: I got it right here.

10 COURT REPORTER: Well, we still have this issue
11 about --

12 MR. MATHISON: Yes.

13 THE COURT: It's 2011. Were you able to pull it up
14 and find where it was?

15 COURT REPORTER: Well, what I found was -- what I
16 found was, and what I read to them a while ago was, on
17 June the 5th, that was Tuesday, yesterday, right at the
18 beginning of the day, when we were talking about
19 Plaintiff's 38, he asked, Mr. Mathison, asked that it be
20 marked as Plaintiff's Exhibit 38. And you said, *Gotcha*.
21 And --

22 THE COURT: Lovely.

23 COURT REPORTER: And he said, again, just a few
24 minutes later, to me, *We'll mark this Plaintiff's Exhibit*
25 38.

1 THE COURT: Okay.

2 MR. MATHISON: Your Honor, may it please the Court.

3 MR. HALIO: This is 36 we're dealing with. It's not

4 38. It's 36.

5 THE COURT: Oh. Okay. So let's go to 36.

6 COURT REPORTER: Wait a minute. That was on the

7 registered agent info. I'm sorry.

8 THE COURT: Okay. So let's go back and see what you

9 can find as to that exhibit.

10 MR. MATHISON: To give you some context here, --

11 MR. HALIO: Your Honor, can we wait till she finds

12 the portion before we make a speech.

13 THE COURT: Okay. Let's just let her find it first.

14 COURT REPORTER: Where was -- Mr. Mathison, tell me

15 what day that you -- when do you think this was?

16 THE COURT: It was Tuesday morning.

17 MR. MATHISON: Yes.

18 THE COURT: It was Tuesday morning.

19 MR. MATHISON: It was yesterday.

20 THE COURT: It would be just after what you read.

21 MR. MATHISON: No, excuse me. It was Monday.

22 THE COURT: Was it Monday?

23 MR. MATHISON: It's when --

24 THE COURT: Okay.

25 MR. MATHISON: It's when I rested, your Honor.

1 THE COURT: When you rested. Okay. Okay. Well,
2 let me ask you, Mr. Halio, you stipulated to its
3 authenticity; you didn't stipulate it going into
4 evidence. Is that correct?

5 MR. HALIO: Correct. Correct.

6 MR. MATHISON: I think they stipulated to its
7 admissibility. This is what --

8 MR. HALIO: No, your Honor.

9 MR. MATHISON: If you'd just let me finish. I had a
10 subpoena on Ms. Jean Pearse, and I was asked to release
11 Ms. Pearse from the subpoena. She had brought the
12 originals of all of the minutes of the CSA meetings.

13 THE COURT: Are you getting this down, Wanda, or are
14 you looking?

15 MR. MATHISON: And

16 THE COURT: Hold on a second. Wanda?

17 COURT REPORTER: Yes.

18 THE COURT: Are you getting this down, or are you
19 looking?

20 COURT REPORTER: I couldn't hear what you were
21 saying. I was listening to this.

22 THE COURT: Exactly. So let's start over. I just
23 want to make sure it gets on the record. Mr. Mathison,
24 start over.

25 MR. MATHISON: May it please the Court. I had Jean

1 Pearse, a CSA employee, who, I think, is the custodian of
2 the minutes and the records of CSA, under subpoena.

3 THE COURT: Um-hmm.

4 MR. MATHISON: I was asked by Counsel to release
5 her, and they agreed that I could put the documents that
6 she brought in with her into evidence. I thereupon
7 released her, and in fact, used those exhibits that she
8 had delivered, at least four of them being minutes of the
9 meetings, in Mr. Birdwell's deposition. Because I mean,
10 -- in his trial testimony. Because Mr. Birdwell, in his
11 deposition, had testified from his own records, which
12 were the draft minutes, not the actual minutes.

13 THE COURT: So she brought to trial with her this
14 document and the -- what you call the official minutes.
15 Is that what you're saying?

16 MR. MATHISON: That's correct.

17 THE COURT: Was that at the deposition, or was that
18 for trial here this week?

19 MR. MATHISON: No, that was for trial. She had a
20 subpoena, and she was here. And my understanding is they
21 weren't going to object to what I asked her to produce.

22 THE COURT: Gotcha.

23 MR. MATHISON: That was one of the documents I asked
24 her to produce.

25 THE COURT: Mr. Halio.

1 MR. HALIO: We agreed that she didn't need to be
2 here as the records custodian to authenticate the
3 documents. And if you'll recall, with regard to the
4 other documents, we went through each one of them when
5 they were offered for admission.

6 THE COURT: Um-hmm.

7 MR. HALIO: And they were admitted. So all she was
8 here --

9 THE COURT: In the minutes. You're talking about
10 the minutes.

11 MR. HALIO: The minutes. The minutes. She was here
12 to authenticate the documents.

13 THE COURT: Um-hmm.

14 MR. HALIO: Not to -- had nothing to do with
15 admissibility. And if you will recall, that the other
16 documents that she brought were all admitted in specific
17 instances during the trial --

18 THE COURT: Um-hmm.

19 MR. HALIO: -- that went through a witness. And she
20 was not here -- she had nothing to do with admissibility.
21 I agree that she was here under subpoena to say these are
22 the records, and that's all she could say.

23 THE COURT: Um-hmm.

24 MR. HALIO: Because she's the records custodian.

25 MR. MATHISON: She could have authenticated that

1 financial statement, and it would be in the record if I
2 had actually put her up, which was the expectation I had
3 when I subpoenaed her.

4 MR. HALIO: We agreed they were -- it was authentic.
5 We just didn't agree it was admissible, and it was not
6 admitted.

7 THE COURT: Why wouldn't it be admissible?

8 MR. HALIO: Because you have to do something to
9 admit it, and he didn't do anything to admit it.

10 MR. MATHISON: May it please the Court. I believe
11 I --

12 THE COURT: Okay. Never mind. I am going to let it
13 in. Quite frankly, I understand where you guys are
14 parsing words and seeing, but you could have very easily
15 just asked. He released him. You can object, certainly,
16 for the record, but --

17 MR. HALIO: Well, your Honor --

18 THE COURT: -- I'm going to let it in.

19 MR. HALIO: I understand, and it needs to be
20 redacted.

21 THE COURT: Okay. What portions of it, and he needs
22 to take the tab off it, too. Let's get going, you all.
23 What needs to be redacted?

24 MR. HALIO: I think everything except the one page
25 that he wanted in. Just copy that one page.

1 MR. MATHISON: I'm fine with that, your Honor.
2 THE COURT: Okay. Let's go and get the copy right
3 now. Let's go.
4 MR. MATHISON: This page right here.
5 THE COURT: Okay.
6 MR. MATHISON: And I'd like to say that we found two
7 cases that support putting this --
8 MR. HALIO: You found one.
9 MR. MATHISON: One case, excuse me. After the close
10 of the evidence, specifically, *Daniel versus Tower*
11 *Trucking Company*.
12 THE COURT: Okay. I need you to go ahead. Okay.
13 Never mind. All right. Have you got the rest of it?
14 BAILIFF: Yes, ma'am.
15 THE COURT: I've got the corrected version. They're
16 getting a copy of that. Let's put an exhibit on it, and
17 put a proper exhibit sticker on it, and let's get it to
18 them.
19 LAW CLERK COPPAGE: Is it on the jury charge?
20 THE COURT: No. It's a court's exhibit, is what it
21 is. So let's go ahead and make it, yes, actually, let's
22 put a court's exhibit on the jury charge.
23 Thank you. Okay. Jamie, will you give it to her
24 and let her put the exhibit charge [sic] on it, Wanda.
25 JURY CHARGE MARKED COURT'S EXHIBIT

1 NUMBER 4.

2 MR. MATHISON: Now, we need to put --

3 THE COURT: Wanda's going to put it on. She's got
4 it. She knows what she's doing. Just give it to her.

5 COURT REPORTER: 36?

6 MR. MATHISON: Yes, ma'am.

7 COURT REPORTER: One page out of the 2011 CSA
8 financial statement is now marked Plaintiff's 36.

9 COPY OF DOCUMENT REFERRED TO AS
10 2011 FINANCIAL STATEMENT OF
11 CSA, AND SPECIFICALLY, THE
12 INFORMATION THAT CAN BE FOUND
13 ON PAGE 11 MARKED PLAINTIFF'S EXHIBIT
14 NUMBER 36, ADMITTED AS EVIDENCE.

15 THE COURT: Thank you. All right. Give it to
16 Norman. Actually, you can give that back.

17 BAILIFF: Don't put this with the plaintiff's
18 evidence.

19 THE COURT: Yeah, don't put it on the top; put it on
20 the bottom.

21 COURT REPORTER: Mr. Mathison, this 28 you said you
22 did not need.

23 MR. MATHISON: I'm not going to insist on that.

24 THE COURT: Okay.

25 MR. MATHISON: That's not something I think is going

1 to be significant.

2 THE COURT: Okay. All right. Anything else need to
3 be put on the record? You all are good?

4 MR. HALIO: No, we're good. Thank you, judge.

5 MS. JONES: Thank you.

6 THE COURT: Absolutely.

7 MS. JOLLEY: Thanks.

8 THE COURT: Absolutely.

9 MR. MATHISON: Thank you, Judge.

10 THE COURT: Absolutely. Good luck. All right.
11 Okay. You all, we're just going to be at ease until
12 we hear back. I will tell you, I think, as I told you
13 yesterday, my son has graduation, and I'm going to go
14 negotiate with my husband about what time I have to be
15 home. As a drop dead, I already promised, as a personal
16 favor, a certain time, and I'm going to, of course,
17 extend that. So.

18 MR. HALIO: Have they got lunch ordered in for them?

19 THE COURT: It's already in there. They've already
20 got lunch. They're good to go. So you all are free, if
21 you want to go grab some lunch. Just make sure you leave
22 with me a phone number or cell number of one of you all,
23 and we'll punch it in. Okay?

24 BAILIFF: Judge, what about the alternates?

25 THE COURT: Pardon?

1 BAILIFF: Alternates.

2 THE COURT: Yes, we're going to bring the alternates
3 out.

4 BAILIFF: Here they are, Judge.

5 THE COURT: Oh, thank you. Hello, ladies. Thank
6 you for being here throughout this case. And because I
7 didn't lose anyone, I can go ahead and release you right
8 now.

9 I will tell you, also, it is proper for you to
10 discuss this case if you want to, with other people.
11 Sometimes the attorneys or possibly a witness will want
12 to ask you what you thought about certain types of
13 testimony, and that's permitted, but you're not required
14 to.

15 So, if someone persists, won't leave you alone, I
16 want you to call the clerk's office and give us the name,
17 and I will take care of it. All right?

18 Additionally, if you have made friends within anyone
19 on the jury, I have no idea how long they're going to
20 deliberate. And if you have any friends, I don't want
21 you speaking to them until they have a verdict. So, if
22 for some reason we go overnight, I want you to have
23 discretion and just not speaking with them.

24 Additionally, if you want to sit here until they are
25 done, if you are interested in the verdict, maybe, before

1 it hits paper, I will certainly have my law clerk call
2 you. Or just email, yeah, and she'll tell you what the
3 verdict is. Okay?

4 Thank you for serving. I appreciate it. It was a
5 long trial, and it was a hard one. So we appreciate it.
6 It was a lot of work. So. Okay. Thank you, ladies.

7 OFF THE RECORD 12:07 P.M.

8 JURY BEGAN DELIBERATION

9 APPROXIMATELY 12:07 P.M.

10 BACK ON THE RECORD 1:48 P.M.

11 VERDICT:

12 THE COURT: Thank you all. Please be seated. All
13 right. I understand that there has been a verdict. Is
14 the plaintiffs ready for me to bring the jury in? Mr.
15 Mathison, you ready?

16 MR. MATHISON: Yes, ma'am.

17 THE COURT: Defense ready?

18 MR. HALIO: Yes.

19 THE COURT: All right. Go ahead and bring them in.

20 BAILIFF: The jurors are entering, your Honor.

21 JURORS ENTER COURTROOM 1:49 P.M.

22 BAILIFF: All right, your Honor.

23 THE COURT: Thank you. Mr. Foreperson, I understand
24 you've reached a verdict.

25 FOREPERSON: We have, your Honor.

1 THE COURT: Would you please hand it to the bailiff,
2 sir.

3 THE COURT: In the case entitled *Maureen Coffey*
4 *versus Community Services Associates, Inc., and George F.*
5 *Breed, Jr., we, the jury, unanimously find as follows:*

6 Number 1(a) The plaintiff has proved by clear and
7 convincing evidence that the defendant, *George F. Breed,*
8 *Jr., published a false statement of fact of and*
9 *concerning the plaintiff. Yes.*

10 The plaintiff has proved by clear and convincing
11 evidence that the defendant, *Community Services*
12 *Associates, published a false statement of fact of and*
13 *concerning the plaintiff. Yes.*

14 The plaintiff has proved by clear and convincing
15 evidence the defendant, *George F. Breed, Jr., published a*
16 *statement concerning the plaintiff with knowledge that it*
17 *was false or with reckless disregard of its falsity.*
18 *Yes.*

19 The plaintiff has proved by clear and convincing
20 evidence that the defendant, *Community Services*
21 *Associates, published a statement concerning the*
22 *plaintiff, with knowledge that it was false, or with*
23 *reckless disregard of its falsity. Yes.*

24 The plaintiff has proved by a preponderance of the
25 evidence that she has sustained special damages. *Yes.*

1 Special damages are awarded in the amount of
2 \$6,050.00.

3 Number 4: The plaintiff has proved by a
4 preponderance of the evidence that she has sustained
5 damage to her reputation/general damages as a consequence
6 of the defendant's publication. Yes. In the amount of
7 two million general damages dollars.

8 Number 5: The plaintiff has proved by clear and
9 convincing evidence the plaintiff is entitled to punitive
10 damages. Yes. Against Community Services Associates,
11 Inc., and George F. Breed, Jr. Punitive damages have
12 been awarded in the amount of four million dollars.

13 Mr. Foreperson and members of the jury, if this is
14 your verdict, will you please indicate by raising your
15 right hand?

16 All the jurors indicate that this is their verdict.
17 Does anyone need this jury individually polled?

18 MR. HALIO: No, your Honor.

19 THE COURT: All right. Anything further required
20 from this jury from the plaintiffs?

21 MR. MATHISON: No, your Honor.

22 THE COURT: From the defense?

23 MR. HALIO: No, your Honor.

24 THE COURT: Ladies and gentlemen, I am going to
25 finally send you all away, with my thanks. You all have

1 Beaufort, but please, if you run into me, say hello, and
2 I'm sure I'll ask you which jury you sat on. And again,
3 please don't be shy. All right.

4 Again, thank you all, and you are excused.

5 BAILIFF: Thank you, your Honor.

6 JURORS LEAVE COURTROOM 1:53 P.M.

7 BAILIFF: The jury is clear and the door is closed,
8 your Honor.

9 THE COURT: Okay.. I'm going to go ahead and give
10 you all ten days for post-trial motions. My office, once
11 -- we'll go ahead and schedule a hearing, and we'll go
12 from there. Okay?

13 MR. HALIO: Can we get a copy of the verdict?

14 THE COURT: Sure. We can make a copy for each side.
15 I'm sure they both want it. Anything further from the
16 plaintiffs?

17 MR. MATHISON: None for the plaintiffs, thank you.

18 THE COURT: And from the defendants?

19 MR. HALIO: No, your Honor.

20 THE COURT: All right, you all.

21 MR. MATHISON: Thank you.

22 THE COURT: Thank you. Mr. Barton, you want a copy
23 of it?

24 MR. BARTON: Yes, please.

25 THE COURT: All right. Come on up and talk to me,

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-00013

MAUREEN T. COFFEY

PLAINTIFF

VERSUS

JULY 2, 2012

TRANSCRIPT OF HEARING
BEAUFORT SOUTH CAROLINA

COMMUNITY SERVICES ASSOCIATES,
INCORPORATED; GEORGE F. BREED, ET AL

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE.

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

ON BEHALF OF PLAINTIFF:

HON. ROBERT V. MATHISON, JR.

ON BEHALF OF DEFENDANTS:

HON. ANDREW HALIO
HON. CELESTE T. JONES
HON. KELLY JOLLY

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were presented, either for marking for identification or entering as evidence.

1 BEGINNING 1:05 P.M.

2 BY THE COURT:

3 THE COURT: Thanks, you all. Please be seated. Good
4 afternoon. We are here on post-trial motions. I have
5 received a copy of your memorandum, Mr. Halio. Thank
6 you.

7 MR. HALIO: I'd like to file the original at this
8 time, your Honor.

9 MR. MATHISON: I have a memorandum, your Honor, on
10 the standards applicable to a motion for judgment
11 notwithstanding the verdict.

12 THE COURT: Do you have a copy for the opposing
13 counsel?

14 MR. HALIO: Yes, we do.

15 THE COURT: All right. Anything further, as far as
16 submissions? Okay. All right. Whenever you're ready.

17 MR. HALIO: May it please the Court. Your Honor, I'd
18 like to start at the issue that kind of jumps off the
19 sheet at us. And that would be the amount of the
20 verdict. This is still a tort case. It's a defamation
21 case, but it's still a tort case. And we handle tort
22 cases all the time. I've been doing it a little bit
23 longer than you have, but you've been doing it a good
24 while, too.

25 And in a defamation case, like any other tort case, I

1 think the specials matter. And the specials in this case
2 were \$6,000.00. And I've been doing this for 30 years; I
3 have never seen \$6,000.00 turned into a six-million-
4 dollar verdict. And I think it's grossly excessive, and
5 it's shocking. And I've been walking around in a state
6 of shock for the last six months. I've lost cases
7 before, but this verdict of six million has absolutely
8 floored me. And it's just totally disproportionate to
9 the evidence on damages that was presented at the trial.
10 Again, it's -- I don't want to repeat myself in what I
11 wrote, but it's four times what they asked for. So.

12 THE COURT: Mr. Halio, let me ask you. Did you find
13 any case law, because I haven't, where they talked about
14 the proportional amount of special and general damages to
15 punitive damages? Have you found any case law that says
16 that -- other than in general being proportional. I
17 mean, I think we all kind of know the rule of thumb of,
18 obviously, from general actual damages to punitive
19 damages, it doesn't need to exceed, it can't be, you
20 know, double digits, by our Supreme Court. Have you have
21 any case law in any jurisdiction whatsoever that says the
22 specials, and in relation to general damages, and then
23 also, of course, the specials, in relation to the
24 punitive damages amount?

25 MR. HALIO: Well, we do have one case in South

1 ratio was out of the question. That's the highest I've
2 found. And again, they sustained that, but there was all
3 this other evidence. I think Dr. Nivens came in and
4 testified about the permanency and all that sort of
5 stuff.

6 In contrast in this case, I tried to go through the
7 evidence in the record. And the jury ruled out any award
8 for monetary damage related to plaintiff's employment in
9 the special verdict award. They awarded the amount of
10 the psychologist's bill and the babysitting expenses.

11 And then I went back and went back through the
12 testimony of the people who testified from the Town, and
13 I didn't remember it, I didn't have any notes from
14 anybody except the plaintiff, who testified that there
15 was a problem with her reputation at the Town. And I
16 don't know from -- I don't believe the plaintiff would
17 qualify as somebody to testify that her reputation had
18 been damaged, without somebody else coming in and
19 corroborating it. There just was no corroboration that
20 she had sustained any damage at the Town, with regard to
21 her reputation. And in fact, she received a new contract
22 after the defamation for more money than she had been
23 paid before that.

24 Then she testified herself that, as far as her
25 friends and family were concerned, her reputation was

1 fine. So then I went to the second element, to look at a
2 second element, which is more like what we do on a day-
3 to-day basis, which are the elements of embarrassment,
4 mental anguish, wounded feelings, et cetera. And I think
5 on that issue, the specials are certainly relevant,
6 something that we deal with on a day-to-day basis.

7 MR. MATHISON: May it please the Court. I don't mean
8 to interrupt, but I'm trying to follow. Is he arguing
9 the motion for JNV, or is arguing a motion for a new
10 trial?

11 MR. HALIO: I'm arguing the amount right now. A new
12 trial.

13 MR. MATHISON: For what purpose? A new trial?

14 MR. HALIO: Yes.

15 MR. MATHISON: Thank you.

16 MR. HALIO: In support of the -- in support of the
17 evidence of embarrassment, mental anguish, wounded
18 feelings, et cetera, the plaintiff called Dr. Lynn
19 Geiger, who testified that her diagnosis was stress-
20 related, headaches and weight gain. It was \$5,250 in
21 bills. No evidence of permanency, no evidence of ongoing
22 treatment, no medications. The plaintiff continued to
23 work throughout the course of all this. The only
24 diagnosis that she made was stress.

25 And for this evidence, we contend that two million

1 dollars in actual damages is grossly excessive; and six
2 million dollars in total damages is certainly grossly
3 excessive. And it's unprecedented. We haven't been able
4 to find anything even close to this amount in the case
5 law. The closest I've been able to find was a two-
6 million-dollar verdict in defamation. It was overturned
7 on appeal in the case of *Sanders versus Prince*. That
8 case involved 1.25 in actuals, and 750 in punitive, and
9 they looked at the verdict as whole, not in part. So
10 they took the verdict as a whole and said that, where the
11 plaintiff had been re-elected to her job, to her position
12 with the school district, the facts certainly didn't
13 warrant a multi-million-dollar award.

14 Now, there were certain evidentiary issues that we
15 contend contributed to the size of the award in this
16 case. I've looked back at some of these issues, like the
17 not prosing of tickets, donations to the forest preserve,
18 things like that. And I still can't really figure out
19 how or why they came in, but it's pretty obvious that
20 they contributed to the jury not liking the defendants.
21 And unfortunately, not liking the defendants is not the
22 basis for an award.

23 So I'm a believer in the jury system. I know you
24 are, too. But sometimes the jury doesn't get it right.
25 In this case, they got it wrong, and we think it's the

1 duty of this Court to fix it. We think that the amount
2 of the award is grossly excessive in light of the
3 evidence, and we'd like to ask for a new trial absolute.

4 Alternatively, if the Court finds that the verdict is
5 merely excessive, then we would ask for a new trial, nisi
6 remittitur; and we would ask that the Court be fair and
7 reasonable on that issue.

8 With regard to the motion for judgment
9 notwithstanding the verdict, of course, I'm going to rely
10 on the written motion, the brief that we filed, and
11 incorporate all the arguments. You've already heard
12 these issues and ruled on them twice at the directed
13 verdict stage. We continue to believe that there was
14 insufficient evidence for this case to have gone to the
15 jury.

16 THE COURT: Mr. Halio, do you all have a copy of the
17 transcript yet on this case?

18 MR. HALIO: No, your Honor.

19 THE COURT: Has it been requested from anyone?

20 MR. HALIO: Not yet.

21 THE COURT: All right. No one's requested it?

22 MR. HALIO: Not yet.

23 THE COURT: Your side? No?

24 MR. MATHISON: No, ma'am.

25 THE COURT: Okay.

1 THE COURT: You all, do you all want to just take
2 these up as we go? I mean, it might be a little bit
3 easier. I'm not so sure. I mean, I think it's kind of
4 all-encompassing, quite frankly, but.

5 MR. MATHISON: I'd like to take them up serially, the
6 way he raised them, either in his motion or in his brief.
7 I'm prepared to argue the specifics of what he put in
8 both of those documents. I now have 38 pages of Mr.
9 Halio's understanding, and I'd like to argue, based on
10 what I've got, rather than an extemporaneous presentation
11 from all over, which is what's gone on so far.

12 THE COURT: Well, actually, everything he said has
13 already been included in his memorandum.

14 MR. MATHISON: I'm not saying it's not.

15 THE COURT: He's just being more succinct today than
16 he was in his memorandum.

17 MR. MATHISON: I'm not saying it's not included. I'm
18 just saying that we're jumping around.

19 MR. HALIO: I've argued the new trial motion first.

20 THE COURT: Right.

21 MR. HALIO: We've heard the judgment notwithstanding
22 the verdict twice.

23 THE COURT: Exactly.

24 MR. HALIO: And unless you want to keep beating that
25 horse to death.

1 THE COURT: No. The only thing I think we have left
2 was you didn't talk about numbers for your remittitur. I
3 read what you have put out there as far as your proposed,
4 what you think was shown as evidence.

5 MR. HALIO: Correct.

6 THE COURT: Anything else we need to put on the
7 record for that?

8 MR. HALIO: No.

9 THE COURT: Okay.

10 MR. HALIO: You know, that's -- we normally would
11 think that would be a pretty good number for a case like
12 this, with \$6,000.00 in special damages, ten times the
13 specials would be considered to be a pretty good hit.
14 And then if you went and doubled that for punitive.
15 That's where that came from, and it also came from Mr.
16 Mathison's previous verdict, where he was awarded
17 \$62,000.00 in actual damages in a defamation case.

18 THE COURT: The Klippel case?

19 MR. HALIO: No, the McAlhaney case.

20 MR. MATHISON: McAlhaney case.

21 MR. HALIO: Do you want to leave the punitives till
22 later, or do you want me to take that up now?

23 THE COURT: You're going. You've already done two,
24 so let's keep going. Let's go ahead and take care of the
25 punitives, and then Mr. Mathison can address them all.

1 MR. HALIO: All right, your Honor. As far as
2 punitive damages are concerned, we consider the four-
3 million-dollar award in this case to be unconstitutional,
4 in light of the evidence, which we have now reviewed.
5 We've gone over the factors in the brief, on the
6 reprehensibility issue. This is not a case involving any
7 physical injury, any health or safety issues, any
8 financial vulnerability, or any repeated occurrences.

9 The one factor that would weigh in favor of the
10 plaintiff against the defendant would be the fact that
11 the jury found actual malice. So we feel like four of
12 the factors weigh in our favor on that issue, one against
13 us.

14 The ratio is only two-to-one, but four million
15 dollars is an awfully high number in the context of this
16 case; and to some extent what would happen with punitive
17 damages would depend on whether or not you did anything
18 with the actual damages. And depending on what you do
19 with them, the Supreme Court suggested in the *Campbell*
20 case that one-to-one might be a fair ratio, if the
21 compensatory damages were at full. I think the Court
22 stated in that case that, in a lot of cases, the
23 compensatory award may include an element of punitive
24 damages. I think that's probably what happened in this
25 case. I think they probably got two punitive damages

1 million -- I'm sorry -- there was nine hours of testimony
2 from him that was encompassed in his deposition. It took
3 three or four hours to read, and it would've taken a lot
4 longer. We assumed it would take -- would've taken
5 probably another day of trial, and that they had heard
6 enough from him. There was also the issue of, you know,
7 if he got up on the stand, the doors had already been
8 open to other issues, other quote *bad act* issues through
9 other witnesses. And that was probably a consideration
10 in not putting him on the stand. But basically, they
11 heard his whole testimony. It was three hours, three or
12 four hours of being read to them. There was really no
13 reason to put him back on the stand, I didn't think.

14 THE COURT: Mr. Mathison.

15 MR. MATHISON: May it please the Court. Before I
16 start, I think the failure to put the principle culprit,
17 the principle defendant, on the stand, would, in fact, go
18 a long way toward explaining the verdict. I think the
19 jury was waiting for him to testify. The fact that he
20 didn't testify, I believe, indicated rather clearly that
21 he was thoroughly compromised. The reason we put up his
22 evidence as part of the plaintiff's case in chief, is we
23 didn't anticipated that he would testify, in view of the
24 deposition that he gave.

25 I'm going to deal in reverse order, if I may --

1 THE COURT: Okay.

2 MR. MATHISON: -- with the defendants' contention
3 that he can't find any case that's comparable. I'm
4 handing up *Limehouse versus Hulsey*; a Court of Appeals
5 case that was decided in 2011. And I represent to the
6 Court that that's a defamation action that originated in
7 Charleston, where a verdict was returned by a jury, for
8 2.39 million dollars of actual damages, and five million
9 dollars in punitive damages.

10 At the Court of Appeals level, there is a dissent in
11 that just up the road in Charleston; and (2), a ratio of
12 two-to-one, or actually slightly more than two-to-one,
13 was upheld as case, but it didn't have anything to do
14 with Issue Number 4. Judge Few dissented in terms of the
15 procedural posture of the case when it reached the jury's
16 trial stage. And consequently, as of right now, there is
17 a determination in South Carolina of two factors, (1)
18 2.39 million dollars was reasonable for damage to
19 reputation in the case being well within the
20 constitutional ambit.

21 Again, arguing in reverse order, my colleague has
22 cited *Mitchell versus Fortis Insurance Company*, for the
23 fact that the *Gore* guideposts have, in fact, replaced
24 what used to be the *Gamble* factors. And if you read
25 *Mitchell* with some closeness, as I have been required to

1 at least twice now, it's clear that there's a blended
2 analysis in what is being referred to by my colleague.
3 It's reprehensibility has subsumed four of the *Gore*
4 factors, which have to do with culpability, the duration
5 of the conduct, and things of that nature.

6 The fact of the matter is that, under the new test,
7 punitive damages may be found if there's at least one of
8 the *Gore* factors present; they can see reprehensibility
9 is present. In addition, under the old *Gamble* factors,
10 an exaggerating circumstance would be concealment; and
11 this case was largely about concealment. It was about
12 the defendants being devious in the preparation and the
13 publication of that letter. It was about the defendants
14 being devious and not forthcoming in discovery. It was
15 about the destruction of evidence, specifically including
16 tape recordings of telephone calls that would have
17 edified the jury, and also including email, which the
18 plaintiff had to obtain not from the defendants
19 themselves, but in fact, from the Beaufort County
20 Sheriff's Office, from the Town of Hilton Head, and other
21 witnesses who had them.

22 Applying the standards announced in the *Mitchell* case
23 to the case at bar would be highly instructive for this
24 reason: in the first place, the *Mitchell* decision did
25 not endorse a ratio of the actual damages to punitive

1 damages. Instead, it endorsed a ratio of potential harm
2 to punitive damages. The Court analyzed the harm that
3 could have befallen the plaintiff, which I'm sure
4 included his death, because he was left, essentially, to
5 twist in the wind for pretty close to two years, while an
6 insurance company, I think, prayed for his death.

7 And what they did was, in making their comparison,
8 they upheld a ratio of 9.2 in punitive damages, to one,
9 in not special damages, but general damages. The
10 specific amount of punitive damages awarded in *Mitchell*
11 was ten million dollars.

12 So, to listen in court to someone say we can't find a
13 comparable verdict that's awarded this kind of money, I
14 handed up the defamation case, which is *Limehouse versus*
15 *Hulsey*. And the case that's being cited by my opponent
16 is a case in which there was a comparison made; there was
17 a ratio developed; and the ratio was of punitive damages
18 to potential harm; and the ratio sustained was 9.2-to-
19 one.

20 Subsequently, there have been two other cases which
21 have sustained ratios as high as six-to-one. They are
22 based on actual damages, specifically, *Duncan versus Ford*
23 *Motor Company*. Actually, that's a previous case, and
24 it's a Court of Appeals case. *Mitchell*, as cited by my
25 colleague, is, in fact, a Supreme Court case, and

1 therefore, I think would be controlling.

2 In short, I think that there isn't any question that,
3 if the general damage award stands, the punitive damage
4 award is proportionate; it's reasonable; it's within a
5 ratio that's been established by the Court for actual
6 damages and punitive damages, or at least potential for
7 harm and punitive damages in *Mitchell*; and it's within a
8 ratio clearly established by the Court of Appeals as
9 recently as last year in *Limehouse*.

10 Consequently, in the absence of some further argument
11 by my colleagues, I don't plan on addressing the punitive
12 damages issue, because I think it speaks for itself.

13 With respect to actual damages, the statement was
14 made, and I believe incorrectly, that there was no
15 evidence from anyone, with the exception of the
16 plaintiff, with respect to the damage to reputation. And
17 I believe that that's inaccurate. Before I take that up,
18 however, I'd like to address what the Court inquired
19 about, which was the girth of authority in the law of the
20 state of South Carolina, or anybody's law, for that
21 matter, where there's a comparison of special damages to
22 what was the overall actual damage verdict.

23 There are several pages of my opponent's brief which
24 are devoted to what I would consider claims adjustor
25 vernacular, as to what multiples typically are paid by

1 insurance companies with respect to automobile accident
2 cases. I'm not disputing that those may be, in fact,
3 applied by insurance companies to accident cases. I am,
4 however, suggesting that nowhere in the law of South
5 Carolina have those multiples been adopted. And as you
6 pointed out, there isn't a single case that says anything
7 like what's been argued. I can't argue against ghost
8 authority; there just isn't any authority.

9 The actual damages in this case are the special
10 damages, plus, the general damages, which were awarded
11 for harm to reputation.

12 There is an inference, and I think it's an incorrect
13 inference, in the defendants' memoranda, which suggests
14 that there can be no award for reputation damages in the
15 absence of some harm to her that can be demonstrated to
16 her property or in her business or in her profession. I
17 think that that's inaccurate, because my understanding of
18 reputation damages is it can be any of those, and it can
19 also be injury to her psyche; it could be pain and
20 suffering; it could be mental anguish; all of those are
21 lumped together under general damages.

22 And as I alluded to before, my esteemed colleague
23 said that there was only testimony from the plaintiff
24 about injury to her reputation. I beg to differ. The
25 other people testified with some degree of conviction

1 with respect to the damage to her reputation. The
2 attorney for the Town, Mr. Hulbert, testified that, in
3 response to Mr. Breed's publication of the letter, she
4 was quote, *devastated*; that she lost her focus; that she
5 couldn't conduct business as usual; that she was
6 effectively damaged on a permanent basis, at least
7 through the date of the trial, because she had been --
8 and this is his testimony -- taken down a peg or two, and
9 didn't seem to be able to get over it.

10 Mr. Coltrane, another Town employee, indicated that,
11 in point of fact, the plaintiff was mortified at the fact
12 that this has been reported to her employer, and that she
13 insisted that he do something to allow Mr. DeLoach to
14 know that she was not responsible for what they had said
15 she'd done.

16 She also told Mr. Hulbert on repeated occasions that
17 she wanted him to carry water for her to Mr. DeLoach, so
18 that he was assured that she had not done whatever it was
19 that Mr. Breed had said about her. Mr. Hulbert didn't
20 know, and he wouldn't hear her tell him.

21 So effectively, out of the witnesses at the Town,
22 those witnesses, there is evidence, very, very convincing
23 evidence, that the plaintiff suffered damage to her
24 reputation.

25 How did that manifest itself in the Town? Well, one

1 of the things they've said in their brief is that
2 everybody from the Town testified in sympathy with the
3 plaintiff. I don't think that jury for one minute
4 thought that Greg DeLoach, when he was sitting on the
5 stand, was sympathetic to my client. I think that jury
6 got the whiff, got the reasonable inference, of what I
7 believe Mr. DeLoach's testimony was.

8 And what that was is, the person who had been
9 connected to the town council, who had been endorsed by
10 them, who had been promoted, and who had been paid on an
11 ever-increasing basis, was all of the sudden reduced to
12 not having any contact with them at all, or in Mr.
13 DeLoach's testimony; and was given, instead of the three-
14 year contract that she enjoyed coming into the affair
15 with Mr. Breed, a two-year contract, which happened to be
16 the statutory minimum. We made it --

17 THE COURT: The jury didn't buy that argument,
18 because that was not in the special damages.

19 MR. MATHISON: I think you could -- I think it would
20 be safe to infer that, but I don't believe that we can
21 comfortably say what the jury believed or what they
22 didn't believe, based on my understanding that you can't
23 look behind a verdict and, essentially, extrapolate what
24 you think they found. There was evidence from which they
25 could have found more special damages; they didn't.

1 Because the numbers add up, I think you can make the
2 argument that you know what they were. All right? But
3 the fact that there was more special damage does not, in
4 my opinion, reflect at all adversely on the general
5 damages.

6 The question of general damages is one for the jury.
7 There are specific arguments made on this issue in their
8 brief. For example, they said that I was allowed to
9 argue to the jury that \$500,000.00 would be a reasonable
10 amount for reputation damages; and that that was
11 objectionable. If the Court will recall, I attempted to
12 put that figure in through my client, and they objected.

13 THE COURT: I do recall that.

14 MR. MATHISON: Ms. Jones' specific objection was,
15 that invades the province of the jury. Actually, I think
16 she may have said providence. And you agreed, and you
17 sustained it, and you ruled from the Bench you can argue
18 that in your closing argument, but I'm not going to let
19 you put that in the record, unless you can give me some
20 authority.

21 And if you recall --

22 THE COURT: It was -- I remember it being just a
23 typical issue. Because, typically, someone can argue the
24 value of their damages. The problem is, is reputation is
25 something that's very difficult to put a monetary sum on,

1 just like pain and suffering or anything else. So, to
2 have, you know, someone get up here, quite frankly, it
3 would have probably inured to the defendants' benefit had
4 she had been able to say the number herself.

5 MR. MATHISON: That's the point.

6 THE COURT: I understand you argued it. But really,
7 it really doesn't matter till you argue your closing
8 statement; it's just arguing.

9 MR. MATHISON: That's the point. That's the point.
10 The point is, if I had put that number in, and the jury
11 had disregarded it, and come back with a number that was
12 higher, I think they could make an argument that,
13 effectively, the jury disregarded the evidence. But
14 since the number did not go in, and I simply argued it to
15 the jury, in the contest of saying that my client was
16 modest and restrained and believed in the system; and I
17 also said exactly the words that Ms. Jones put in my
18 mouth, which were the determination of reputation damage
19 is solely within your province. That's what I said.
20 Nobody objected to that. Well, that's what they did.

21 And how, what could they have done, what,
22 conceivably, could have caused them to bring back a
23 verdict, not for 500,000, but for two million? Well, let
24 me suggest to you the following: let me suggest that
25 taking a municipal court judge, who is dutiful and

1 certainly trustworthy in the discharge of her duties, and
2 exalting her to the status of public official for the
3 purpose of hanging around her neck what they thought was
4 an insurmountable evidentiary standard, which is clear
5 and convincing evidence of constitutional actual malice.
6 That's what they did. They said, we're taking this
7 woman, who is the municipal court judge, and we're going
8 to treat her like a public official.

9 THE COURT: Actually, I think that's what I did.

10 MR. MATHISON: Well, they argued for you to do that.
11 And they elevated her status to the point where, in order
12 to prove that she was somehow remiss in her duties, they
13 brought a former appellate judge down, and had him
14 testify that the two of them were subject to the very
15 same standards, and were, essentially, living out the
16 same requirements in terms of their duties to the
17 litigants and the judiciary.

18 What they did, essentially, is, they're the authors
19 of their own undoing. As a municipal court judge and a
20 private figure plaintiff, she may not have had a
21 reputation that was worth two million dollars. But if
22 someone criticized Judge Howard in such a manner that you
23 had a publication that amounted to defamation, calling
24 him biased, prejudiced, and impartial, would anybody balk
25 at the prospect that he would receive two million dollars

1 in general damages? I don't think so. That's the man
2 they put on the stand, and in the jury's mind, they could
3 have equivoca -- they could have considered her to be
4 equivalent to him, at least in terms of the duties that
5 they had to discharge.

6 In addition, they could have considered her
7 reputation to be, if not co-extensive, at least similar
8 to his. Consequently, the defendants, to some extent, in
9 the general damages, are the authors of their own
10 undoing.

11 Next, the argument has been made --

12 THE COURT: Let me interrupt you for a second, Mr.
13 Mathison.

14 MR. MATHISON: Sure.

15 THE COURT: You stated that you had testifying
16 Hulbert, Coltrane, and DeLoach that testified to the
17 damage to her reputation. Where was the testimony that
18 they believed what was said, or believed, because that's
19 part of it? It's not just her reaction to it, but it's
20 what they believed and what they saw.

21 MR. MATHISON: Well, my belief is that there is
22 evidence in Mr. DeLoach's refusal to continue her with a
23 three-year contract. I think that the inference is that,
24 by reducing her to the statutory minimum two years, the
25 plan was to leave her on the payroll with a de minimis

1 raise, so that, in court, he and his friend, Mr. Breed,
2 could argue that there was no damage. I think that that
3 was one of the -- that was part of the fallout from it.

4 I think that, as Mr. Birdwell testified, he believed
5 what was in Mr. Breed's letter. And because he believed
6 it, and because Mr. Breed and Mr. Kelley never got around
7 to sharing --

8 THE COURT: Okay. Just so we're clear, Mr. Birdwell,
9 Steve Birdwell, --

10 MR. MATHISON: Yes.

11 THE COURT: -- testified -- he was on the CSA board
12 -- that he believed what was in the letter.

13 MR. MATHISON: That's correct. And he also testified
14 that no one ever shared with him the fact that the matter
15 had been dismissed by the Commission on Judicial Conduct.

16 THE COURT: That, I recall.

17 MR. MATHISON: And he testified that he learned about
18 the dismissal when he got sued in November of 2008, by
19 the plaintiff. And if you remember, there was a -- what
20 Ms. Jones likes to refer to as a red herring issue in
21 this case at one juncture that, somehow, the plaintiff
22 had self-published by commencing her defamation action.
23 And Mr. Birdwell pretty much established that it wasn't
24 self-publication; that she wouldn't have known that she'd
25 been exonerated, but for the fact that he got sued;

1 because Mr. Breed and Mr. Kelley never got around to
2 telling him what they knew.

3 How is this important? Well, the letter was written,
4 at least based on the date on its face, on June 6, 2008.
5 Seven months later, on June 8th or 9th, 2009, Mr.
6 Birdwell and his colleagues proved they believed what was
7 in the letter by voting to indemnify Mr. Breed; by voting
8 to pay not only his litigation expenses, but whatever he
9 was called upon to pay by way of judgment or settlement
10 in this case. And if that's not an affirmation that they
11 believed what was in that letter, I don't know who was.

12 THE COURT: Okay. I'm going back, and I'm looking at
13 my personal notes. And it does say Birdwell said that
14 he, upon reading the letter, assumed that the content was
15 accurate, which sounds more like Mr. Birdwell than you
16 just said. Okay. And he was, obviously, not aware that
17 the complaint to the Commission on Judicial Standards had
18 been dismissed, until the lawsuit was filed.

19 MR. MATHISON: In addition, there has been argument
20 about the propriety of the admission at the indemnity.
21 We think it's admissible to show that they believed what
22 Mr. Breed had put in the letter. We think it's
23 admissible to show that there was a ratification. In
24 point of fact, in one portion of its brief, the
25 defendants have cited the complicity provision of the

1 re-statement, second of torts. If you applied that
2 specifically to this, it would make, certainly, Mr. Breed
3 and Mr. Kelley libel for that which they did. But you
4 could, I believe, argue, based on the testimony of both
5 Mr. Breed and Mr. Kelley, that the decision to write this
6 letter, the June 6 letter, was operational. They didn't
7 have to obtain anybody's consent or authority on the
8 board.

9 So they did it, essentially, unilaterally as a
10 function of operations. If the board didn't have to
11 approve it, and if they couldn't rescind it, there was no
12 reason to show it to them. It simply was gratuitous.
13 And it wasn't initially published to the board at their
14 meeting, on the 24th of June in 2008. It was actually
15 sent out by Mr. Breed, with his so-called bridge report
16 on June 11, 2008. And at the time it was sent out on
17 June 11th, he said, in so many words, this is the reason
18 I haven't been able to arrest the perpetrator of all
19 these crimes, Otis Coffey, because Judge Coffey has set
20 up hurdles -- which he spelled h-u-r-t-l-e-s -- in my
21 way. That's in the bridge report.

22 The dissemination of bridge report is not known. It
23 was given to Mr. Kelley. It was given to some, maybe
24 all, maybe more than all, of the board members. It was
25 not couched, except within the bridge report itself, a

1 little letter, that says *confidential*. Basically, this
2 spread all over Sea Pines. And it went on. It went on
3 for quite a period of time, because they still believed
4 that as of January of 2009, when the board voted to
5 indemnify Breed. And just about on the same day they did
6 that, according to the testimony of Mr. Sonberg, Mr.
7 Kelley showed up, not Mr. Breed, but another
8 representative of CSA showed up at a meeting that was
9 about dredging, at the Calibogue Cay Owner's Association,
10 and said in so many words that Otis Coffey's arrest was
11 imminent, which was false, and that the reason he hadn't
12 been arrested before is because the judge, Maureen
13 Coffey, had prevented it. That's the sum and substance
14 of his testimony.

15 Consequently, I believe that there is ample evidence
16 of publication throughout the community, and specifically
17 in the community where she had been raised up since the
18 time she was in college, where her mother lived, and
19 where, at various times, her two brothers lived, and
20 where she had lived until she was essentially freed to
21 marry and live outside the plantation. I believe that
22 there's ample evidence in the record from which you could
23 find that two million dollars is reasonable under the
24 circumstances.

25 And consequently, since you can't and shouldn't

1 compare general damages for reputation to specials,
2 especially in a case where constitutional actual malice
3 is the burden, I simply believe that there's ample
4 evidence to sustain that verdict.

5 Then we're going back and essentially taking up the
6 first argument, which is whether, you know, it's
7 excessive. I don't know of any case, a defamation case,
8 in which special damages have been identified where there
9 is a comparison that's been made of either general
10 damages to specials, or punitive damages to specials.

11 THE COURT: I can tell you I can't find one.

12 MR. MATHISON: And the brief is devoted to that,
13 without any law on the subject whatsoever. It's full of
14 ratios. And I know the ratios, because I know what
15 *Mitchell* says. I know what *TSO* says, which is what
16 *Mitchell* is based on. I don't think that there is any
17 law that would sustain a comparison of general damages to
18 special damages. And consequently, I don't see where you
19 can argue that the verdict is the result of either
20 caprice, passion, or prejudice, or where it's, really,
21 excessive.

22 What we've got here, in my opinion -- and I'm
23 straying from my notes, because I'm not able to keep
24 track of Andy's presentation. What we've got here,
25 essentially, is, we have a situation where, in order to

1 find any general damages, the jury was properly charged
2 that they had to find special damages. There was a
3 stair-step verdict form proposed, in large measure in the
4 defendants' own language, which required each step to be
5 achieved before the next step could be taken.

6 THE COURT: It doesn't matter. You both approved it,
7 so.

8 MR. MATHISON: And the jury did that. They found
9 specials. The specials that they found were within the
10 realm of the evidence. They could have found \$82,000.00
11 more, in my opinion, but they didn't.

12 They then found general damages, and they found a
13 number that's beyond what I argued. But I also argued
14 what I was instructed to by the instructions, which is
15 that, essentially, it was within their purview, within
16 their province, and they could determine it, based on the
17 evidence that they heard.

18 And last, I asked -- and I think this is supported by
19 the law; certainly the law argued by my opponents from
20 *Mitchell* and the *Gore* guideposts -- that is, that the
21 punitive damages, if the plaintiff had proven
22 constitutional actual malice, were, in fact, appropriate;
23 and nobody quibbles with that; and that they should be
24 proportional. And you know what? If I hadn't told the
25 jury that they should be proportional, and the jury had

1 come back with a twenty-to-one ratio of punitive damages,
2 these same people would be sitting here telling you, just
3 because I told -- didn't tell them -- that the jury
4 brought back something that was outsized. I mean, a two-
5 to-one ratio under any set of circumstances that attain
6 under South Carolina jurisprudence, right through that
7 case of *Limehouse*, is, to my way of thinking, well within
8 constitutional parameters.

9 And I've argued several of the details that were
10 raised in the brief. And if they want to be heard on all
11 of the specific evidentiary rulings, I'm prepared to
12 address them. That includes the hearsay rulings, things
13 of that nature. I'm ready to go forward with that.

14 MR. HALIO: Please the Court.

15 THE COURT: Yes, sir.

16 MR. HALIO: The *Hulsey* case, your Honor, if you'll
17 recall, that was a default case. There's no discussion
18 in there about what the damages were, what the basis was
19 for the award. There was not even any portion of the
20 opinion devoted to the actual damages. So we have no
21 idea what the basis for the award of 2.39 million
22 dollars, in that case, for slander was.

23 And I can tell you this. I agree there's no cases
24 that say, in a defamation case, that this ratio's okay
25 and this ratio's not. All I can tell you, Judge, is that

1 special damages are some indication of the injuries. And
2 in this case, the special damages are \$6,000.00.

3 As far as the reputation damages, the general
4 damages, are concerned, I think Mr. Mathison, to some
5 extent, has confused the reputation damages with the
6 other elements of damages that are found in a defamation
7 case. We got, you know, two categories: there's a
8 reputation damage, and then there's the humiliation,
9 mental anguish, that sort of stuff. And those are
10 particularly tied to the special damages award.

11 The people from the town that came in and said she
12 was shook up, those don't have anything to do with the
13 reputation, I don't believe. Those go to the other area
14 of the general damages, which related to the stress she
15 encountered as a result of this.

16 One thing I did forget to mention in my opening was
17 that we really feel like we got hurt by the admission of
18 the financial statement after the closing argument. I
19 think that was significant. You had a piece of paper
20 with billions of dollars in there, without much
21 explanation -- without any explanation from us, because
22 it hadn't gone in. And think that was really prejudicial
23 to us.

24 THE COURT: I can tell you, I went back and looked at
25 my notes on that, and I've got it as a stipulation, and

1 that it was in. I can tell you when I went back and
2 looked at it; you're talking about Plaintiff's Exhibit.
3 It's the 2011 financial statement for CSA, right?

4 MR. HALIO: Right. It's authenticity was stipulated
5 to; not the admissibility.

6 MR. MATHISON: I thought both had been stipulated to,
7 and when it became clear that I didn't put it in
8 evidence, because if you recall, you said it would come
9 in, but not until you ruled on whether there was
10 sufficient evidence of constitutional actual malice,
11 because you were limiting it to punitive damages. I
12 think that's a correct rule. It was my mistake in not
13 offering it after you ruled on their directed verdict
14 motions.

15 THE COURT: Okay. Well, I can tell you, I had it
16 down in my notes that it had been stipulated, and it was
17 coming in. And I believe I would have reserved it if it
18 had -- the question became is whether or not punitive
19 damages were appropriate in this case.

20 MR. MATHISON: My understanding is, I was going to
21 put it in through their witness, Ms. Pearse, who I had
22 under subpoena. They asked me to let her go, and I
23 thought that they were going to allow me not just to say
24 it's authentic, but to put it in evidence without her, or
25 I would not have agreed to let her go.

1 THE COURT: Right.

2 MR. MATHISON: And that's what I represented to the
3 Court, and I still believe that's the case. In addition,
4 we handed up a decision, which I think authorized you, in
5 your discretion, to allow it to come in. And the case, I
6 believe, is *Daniel versus Tower Trucking Company*. And I
7 believe this is still good law. It's within your
8 discretion. And I would point out that, if my colleagues
9 felt that they were disadvantaged by the fact that it was
10 presented without their having had an opportunity to
11 respond to it, they could have asked to have somebody
12 testify as to it's meaning, or put somebody up, and they
13 didn't. I mean, I certainly wasn't in a position to
14 object. You could have allowed them to talk --

15 THE COURT: It's their published financial statement,
16 correct?

17 MR. MATHISON: Yes, ma'am, it is. And you limited
18 just to the page on which the unallocated reserve fund
19 was set forth.

20 THE COURT: Which, of course, they're going to say
21 highlighted the amount in the account.

22 MR. MATHISON: I offered the entire document. You
23 asked --

24 MR. HALIO: There was this whole section in there
25 that had to do with ASPPPPO, and ASPPPPO had been let out

1 of the case. So we really needed to trim it down.

2 THE COURT: So you requested it be put out, so I just
3 let him specifically -- I think it's Page 11 that I've
4 got written down. Okay.

5 MR. MATHISON: It's my belief, your Honor, that it
6 would have been admitted, but for the fact that I forgot,
7 in my haste to prepare my closing argument. If you
8 recall, I did advert to that document in my closing
9 argument. I did so without objection from my colleagues.
10 I believe they thought it was in, until we sorted through
11 the exhibits, and realized -- I realized that it had
12 never been made part of the record, except for
13 identification.

14 So I believe that if there was prejudice to the
15 defendants, they had an opportunity to redress it, and
16 didn't request the Court's assistance to do so. I don't
17 believe there was prejudice, or they would have requested
18 it.

19 MR. HALIO: Just to wrap this up, your Honor.

20 THE COURT: Sure.

21 MR. HALIO: I think if you go back, and you look at
22 the evidence, if you look at the -- if you go back over
23 the testimony and who testified, even the defendants said
24 that they knew of no cases in which the plaintiff had not
25 been fair and impartial. If Mr. Birdwell said he

1 believed it, then that was the only testimony in the
2 record that had to do with the plaintiff's reputation.
3 Everybody else who testified, testified that her
4 reputation had not been damaged. And as far as the other
5 elements of defamation of general damages are concerned,
6 again, going back to the \$6,000.00 in special damages,
7 and saying the actual damages in this case are grossly
8 excessive, and if you bring those down, you'd have to
9 bring the punitive damages down, also, to something
10 reasonable.

11 And we believe we're entitled to a new trial
12 absolute. If not, we believe that we're entitled to
13 something more reasonable than six million dollars for
14 this case. Thank you, your Honor.

15 THE COURT: I'll tell you, the couple of -- that are
16 just issues that I've gone back and looked at, just
17 because I was concerned and questioned in reading your
18 memorandum, was the allowance of Dick Sonberg to testify.
19 I did not have him listed on the witness list. My
20 understanding, and I remember what we did, was, Judge
21 Coffey had testified about that communication or what he
22 had heard from Mr. Kelley in her deposition. And I
23 believe I made -- I've got a note that I told Mr. Sonberg
24 that he had to make himself available, or told the
25 plaintiff's counsel they had to make him available for

1 you to speak to him before he testified, which I believe
2 you did.

3 MR. HALIO: I did.

4 THE COURT: Mr. Halio, you had an opportunity to talk
5 to him, and I said bring any concerns back to me, or do
6 you need to do anything. So I think that was cleared up.

7 And then I think we go back to this whole
8 indemnification agreement. And that is a question in the
9 case. You know, we bantered around for a long time about
10 whether or not, you know, it was the same thing as
11 talking about insurance, which we all know is forbidden
12 to speak of. And again, it was asked for me to rule on
13 it as a motion in limine pretrial. And as I think I told
14 you all repeatedly, until you get going in a case, you
15 don't know how to rule on things, whether or not they're
16 going to become relevant. And I believe how I ruled is
17 we finally let it in towards the end of the case, was
18 that, if the indemnification by the CSA board in any way
19 furthered the continued defamation, I think I was
20 probably looking at it more towards the actual slander
21 portion of it, which I directed a verdict, obviously, as
22 to Breed; but I think it was looking at whether or not it
23 continued, the defamation continued. But I think we all
24 agree that this case pretty much focused, as far as the
25 defamation was concerned, on the left.

1 I can tell you that, still, in hindsight, I do think
2 it was relevant. Anything else you all need to through?

3 MR. MATHISON: I don't need to restate my position on
4 that. I've said it too many times, and I wouldn't tax
5 the Court with another restatement.

6 THE COURT: Mr. DeLoach was friends with Mr. Kelley,
7 was my recall. Is that correct?

8 MR. HALIO: That's correct, your Honor.

9 MR. MATHISON: He admitted -- excuse me. Mr. Breed
10 was friends with both of them, but his specific
11 friendship was with Mr. Breed. They exchanged, you know,
12 photos of their family vacations. He had a long and
13 abiding relationship with Mr. Breed. He knew Mr. Kelley
14 well enough that Mr. Kelley could send him a copy of the
15 defendants' answer three days before Christmas and ask
16 him what he thought, but not to the extent he knew Mr.
17 Breed.

18 THE COURT: Okay.

19 MR. MATHISON: And it was admitted by Mr. Breed --
20 one of the few things he admitted in his deposition, that
21 wasn't extracted like a tooth.

22 THE COURT: Anything else, you all? All right.
23 Well, what I will do is, I will let you know. Let me go
24 through it again. Anything else that you all want to
25 focus on specifically? I know we've been through -- you

1 talked, certainly, about the excessiveness, Mr. Halio, of
2 the verdict. Anything else specifically you want me to
3 focus on or need to focus on? I mean, certainly, it's
4 going to be subject to your prior objections during the
5 trial. But again, anything else specifically you want me
6 to look at?

7 MR. HALIO: I would simply say that you need to look
8 hard at the constitutional issues, because somebody in
9 Columbia is going to be taking a look at them de novo.
10 So you might want to look hard at those.

11 THE COURT: Anything further, Mr. Mathison?

12 MR. MATHISON: Just one thing, with respect to the --
13 two things, actually. *Miller versus the City of*
14 *Columbia*, in discussing general damages, the Supreme
15 Court says, and I'm quoting:

16 *Moreover, when considering whether or not the*
17 *verdict is excessive, if there is substantial*
18 *evidence to sustain a verdict, it will not be*
19 *disturbed. The appellate court will intervene only*
20 *where the verdict is so grossly excessive, and the*
21 *amount of award is so shockingly disproportionate to*
22 *the injuries to indicate that it was a result of*
23 *caprice, passion, prejudice, or other*
24 *considerations.*

25 I don't believe that that standard has been met. I

1 think that excess -- one person's excess is another
2 person's entitlement. In addition, we know from *Anderson*
3 *versus Augusta Chronicle* that indirect and direct
4 evidence may be considered in making the determination of
5 whether there has been constitutional actual malice.
6 Specifically, the quote is, and I'm quoting from *Anderson*
7 *versus Chronicle*:

8 *The plaintiff will rarely find success in*
9 *proving awareness that a statement is false from the*
10 *mouth of the defendant himself.*

11 THE COURT: Which I charged.

12 MR. MATHISON: And then it says:

13 *A plaintiff may present competent circumstantial*
14 *evidence of bad faith to establish actual malice,*
15 *despite a defendant's contention that the*
16 *publication was made with the belief the statements*
17 *were true.*

18 I would point out, your Honor, that the facts as
19 developed as being the true facts in the plaintiff's
20 brief, on the argument that wasn't made, with respect to
21 judgment NOV, are not the facts that we primarily proved
22 were false in that letter, with one exception. And that
23 was the fact that they said that she had been impartial
24 -- not been impartial in matters that had already been
25 adjudicated. We believe that that was a false fact, and

1 they said it was an opinion. Thank you.

2 THE COURT: I'm going to go back and look at it. I
3 think there's two things that make this case difficult.
4 Number one, having to prove actual malice, of course, is
5 a very high hurdle. You know, it's very difficult to
6 prove reckless disregard for its truth.

7 Mr. Breed didn't testify, but I think he did testify
8 in his deposition that, certainly, he believed it to be
9 true. But again, as you stated, rarely are we going to
10 hear from the defendant the actual malice standard being
11 met.

12 I think the second part that makes this case so
13 difficult is that damage to a reputation is just so
14 amorphous, you know. Again, how do you put a number on
15 it? It's why I didn't allow Judge Coffey to testify to
16 it. I just think it's a very difficult thing to do.
17 Again, we're asking the jury to do that very difficult
18 thing by putting a number on it, and in this case they
19 did.

20 MR. HALIO: And you have to go look at the evidence,
21 though, Judge.

22 THE COURT: Right.

23 MR. HALIO: The contents of what they awarded. And
24 that's what we would like you to do, is just go look at
25 the evidence.

1 THE COURT: Right. All right. Anything else, you
2 all? No? Okay. Well, thank you.

3 MR. HALIO: Thank you, Judge.

4 MR. MATHISON: Your Honor, may it please the Court.
5 If, in reviewing my opponent's brief, there's something
6 that you think deserves further development from the
7 plaintiff. Since we got it last Thursday, we've written
8 three legal pads full of notes on it, and we can develop
9 that into a brief if you'd like to hear on some point
10 that has not been discussed here today.

11 THE COURT: Okay. Well, it should have been done for
12 today.

13 MR. MATHISON: Well, we didn't get it until last
14 Thursday, so.

15 THE COURT: Okay. I'll let you know. Thank you.

MR. MATHISON: Thank you.

END HEARING 2:06 P.M.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) **CONTRACT OF EMPLOYMENT**

The Town of Hilton Head Island (hereinafter referred to as the "Town") and Maureen T. Coffey (hereinafter referred to as "Ms. Coffey") agree as follows:

1. SCOPE OF SERVICES

- A. Ms. Coffey will serve as Municipal Judge for the Town of Hilton Head Island, South Carolina. She will at all times and to the best of her ability perform the duties of this position as set forth by The Supreme Court of South Carolina, or in the South Carolina Code of Laws, the Town's Municipal Code, and as may from time to time be outlined in a written job description or outlined orally by Town Council, which duties and responsibilities shall include but not be limited to (a) act as presiding judge in all jury and non-jury cases brought in the Municipal Court for the Town of Hilton Head Island, South Carolina; (b) participate with the Assistant Town Manager in Municipal Court Staff annual performance reviews; (c) have regular and adequate communications with Town Council; and (d) perform such special duties consistent with the position, which may be assigned from time to time by Town Council. All actions undertaken by Ms. Coffey in the execution of her duties, including requests from Council, shall be consistent with the Code of Laws of South Carolina and the Municipal Code of the Town. Ms. Coffey shall not engage in any other professional or business activities which will, in the sole determination of Town Council, materially and adversely affect or materially and adversely interfere with employment by or performance of her services and duties to the Town; provided, however, that the foregoing shall not preclude Ms. Coffey from making business investments provided that such investments do not materially and adversely affect the performance of her duties and responsibilities hereunder.
- B. Ms. Coffey shall not be engaged in the private practice of law during the term of this contract. Ms. Coffey shall reside within the corporate boundaries of the Town of Hilton Head Island during the term of this contract.

2. CONSIDERATION

A. SALARY

The Town shall pay to Ms. Coffey an annual salary of Eighty-Seven Thousand Dollars (\$87,000.00), to be paid in equal bi-weekly installments. This salary may be increased by the Town at any time, with or without a performance review, but neither the initial salary level nor any increased salary level may be decreased unless and then only to the same percentage and extent that the compensation levels of a majority of the Town's employees are reduced.



B. BENEFITS

Except as otherwise stated herein, Ms. Coffey shall receive or have available to her the benefits provided or made available to the Town's other regular full-time employees. Such benefits will be increased, modified, or decreased as and when they are increased, modified or decreased for other regular full-time employees.

Ms. Coffey shall accrue vacation at the rate of 135 hours per contract year. No additional accrual shall take place during the course of the contract year. At the end of the contract year, no more than one week of vacation (37.5 hours) may be carried into the next contract year, but any such vacation carried over which is not used within 6 months shall be forfeited. Ms. Coffey may not take more than two consecutive weeks of vacation without prior approval of the Assistant Town Manager-Administration. Ms. Coffey shall be paid for any vacation she may have accrued at the time of the termination of her employment for any reason.

The parties recognize that Ms. Coffey's hours of work are irregular, that Town Council cannot directly or indirectly monitor her working hours, and that Ms. Coffey will miss time from work due to holidays, sickness, jury service and similar causes. It is the intent of the parties that Ms. Coffey be paid her salary for the job and not for specific hours or days worked. Ms. Coffey agrees to keep the Assistant Town Manager-Administration reasonably informed of her absences and agrees that if she becomes eligible for disability benefits under a plan funded by the Town, the Town may claim a credit for such benefits against any salary payments to which Ms. Coffey is entitled for the same period. Furthermore, since she will not accrue sick leave, Ms. Coffey will not be eligible to participate in the VantageCare Retirement Health Savings Program.

3. LIABILITY INSURANCE

Ms. Coffey will be covered by a comprehensive tort liability insurance policy issued by the South Carolina Insurance Reserve Fund to the extent provided thereby.

4. INCOME TAXES

Ms. Coffey shall be responsible for any income taxes which may be assessed on any compensation or benefits provided in this contract or otherwise provided by the Town.

5. TERM OF CONTRACT

This employment contract shall be effective beginning February 5, 2011 and shall terminate February 5, 2013.

6. **TERMINATION OF EMPLOYMENT**

- A. The Town shall have the right to terminate this contract without notice or further compensation in the event that Ms. Coffey personally and intentionally engages in the commission of a felony, fraud, misappropriation, embezzlement, or act constituting moral turpitude, or if Ms. Coffey engages in misfeasance or malfeasance in office.
- B. Each party shall give the other party at least ninety (90) calendar days' written notice of her or its intention not to continue the employment relationship at or after the termination of this contract, or in the case of the Town, ninety (90) calendar days' payment of salary and benefits in lieu of notice or combination of notice and payment in lieu of notice totaling ninety (90) calendar days.

7. **AMENDMENT**

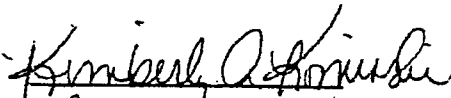
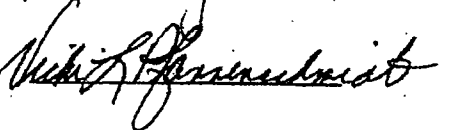
This contract may be amended by the parties at any time, but no amendment shall be effective unless in writing and executed with the same formality as this contract. The failure of either party to insist on compliance with the contract term in the future.

8. **ENTIRE AGREEMENT**

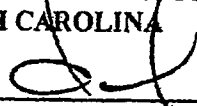
This contract represents the entire agreement between the Town and Ms. Coffey and incorporates all oral or written agreements relating to his employment.

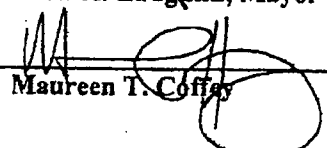
IN WITNESS WHEREOF, the parties have executed this contract this 2nd day of February, 2011.

WITNESSES:

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: 
Drew A. Laughlin, Mayor

By: 
Maureen T. Coffey

C53-2005

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

CONTRACT OF EMPLOYMENT

The Town of Hilton Head Island (hereinafter referred to as the "Town") and Maureen T. Coffey (hereinafter referred to as "Ms. Coffey") agree as follows:

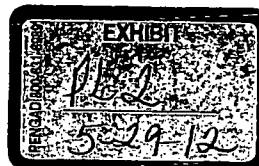
1. SCOPE OF SERVICES

- A. Ms. Coffey will serve as Municipal Judge for the Town of Hilton Head Island, South Carolina. She will at all times and to the best of her ability perform the duties of this position as set forth by The Supreme Court of South Carolina, or in the South Carolina Code of Laws, the Town's Municipal Code, and as may from time to time be outlined in a written job description or outlined orally by Town Council, which duties and responsibilities shall include but not be limited to (a) act as presiding judge in all jury and non-jury cases brought in the Municipal Court for the Town of Hilton Head Island, South Carolina; (b) participate with the Assistant Town Manager in Municipal Court Staff annual performance reviews; (c) have regular and adequate communications with Town Council; and (d) perform such special duties consistent with the position, which may be assigned from time to time by Town Council. All actions undertaken by Ms. Coffey in the execution of her duties, including requests from Council, shall be consistent with the Code of Laws of South Carolina and the Municipal Code of the Town. Ms. Coffey shall not engage in any other professional or business activities which will, in the sole determination of Town Council, materially and adversely affect or interfere with employment by or performance of her services and duties to the Town; provided, however, that the foregoing shall not preclude Ms. Coffey from making business investments provided that such investments do not materially and adversely affect the performance of her duties and responsibilities hereunder.
- B. Ms. Coffey shall not be engaged in the private practice of law during the term of this contract. Ms. Coffey shall reside within the corporate boundaries of the Town of Hilton Head Island during the term of this contract.

2. CONSIDERATION

A. SALARY

The Town shall pay to Ms. Coffey an annual salary of Seventy Thousand Dollars (\$75,000.00), to be paid in equal bi-weekly installments. This salary may be increased by the Town at any time, with or without a performance review, but neither the initial salary level nor any increased salary level may be decreased unless and then only to the same percentage and extent that the compensation levels of a majority of the Town's employees are reduced.



B. **BENEFITS**

Except as otherwise stated herein, Ms. Coffey shall receive or have available to her the benefits provided or made available to the Town's other regular full-time employees. Such benefits will be increased, modified, or decreased as and when they are increased, modified or decreased for other regular full-time employees.

3. **LIABILITY INSURANCE**

Ms. Coffey will be covered by a comprehensive tort liability insurance policy issued by the South Carolina Insurance Reserve Fund to the extent provided thereby.

4. **INCOME TAXES**

Ms. Coffey shall be responsible for any income taxes which may be assessed on any compensation or benefits provided in this contract or otherwise provided by the Town.

5. **TERM OF CONTRACT**

This employment contract shall be effective beginning October 4, 2005, and shall terminate January 25, 2008.

6. **TERMINATION OF EMPLOYMENT**

- A. The Town shall have the right to terminate this contract without notice or further compensation in the event that Ms. Coffey personally and intentionally engages in the commission of a felony, fraud, misappropriation, embezzlement, or act constituting moral turpitude, or if Ms. Coffey engages in misfeasance or malfeasance in office.
- B. Each party shall give the other party at least ninety (90) calendar days' notice of her or its intention not to continue the employment relationship at or after the termination of this contract, or in the case of the Town, ninety (90) calendar days' payment of salary and benefits in lieu of notice or combination of notice and payment in lieu of notice totaling ninety (90) calendar days.

7. **AMENDMENT**

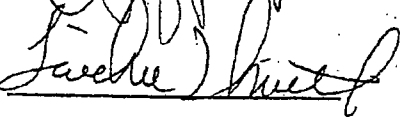
This contract may be amended by the parties at any time, but no amendment shall be effective unless in writing and executed with the same formality as this contract. The failure of either party to insist on compliance with the contract term in the future.

8. ENTIRE AGREEMENT

This contract represents the entire agreement between the Town and Ms. Coffey and incorporates all oral or written agreements relating to his employment.

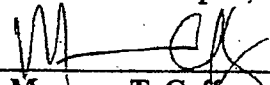
IN WITNESS WHEREOF, the parties have executed this contract this 10th day of October, 2005.

WITNESSES:

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: 
Thomas D. Peeples, Mayor

By: 
Maureen T. Coffey

C04-2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) CONTRACT OF EMPLOYMENT

The Town of Hilton Head Island (hereinafter referred to as the "Town") and Maureen T. Coffey (hereinafter referred to as "Ms. Coffey") agree as follows:

1. SCOPE OF SERVICES

- A. Ms. Coffey will serve as Municipal Judge for the Town of Hilton Head Island, South Carolina. She will at all times and to the best of her ability perform the duties of this position as set forth by The Supreme Court of South Carolina, or in the South Carolina Code of Laws, the Town's Municipal Code, and as may from time to time be outlined in a written job description or outlined orally by Town Council, which duties and responsibilities shall include but not be limited to (a) act as presiding judge in all jury and non-jury cases brought in the Municipal Court for the Town of Hilton Head Island, South Carolina; (b) participate with the Assistant Town Manager in Municipal Court Staff annual performance reviews; (c) have regular and adequate communications with Town Council; and (d) perform such special duties consistent with the position, which may be assigned from time to time by Town Council. All actions undertaken by Ms. Coffey in the execution of her duties, including requests from Council, shall be consistent with the Code of Laws of South Carolina and the Municipal Code of the Town. Ms. Coffey shall not engage in any other professional or business activities which will, in the sole determination of Town Council, materially and adversely affect or interfere with employment by or performance of her services and duties to the Town; provided, however, that the foregoing shall not preclude Ms. Coffey from making business investments provided that such investments do not materially and adversely affect the performance of her duties and responsibilities hereunder.
- B. Ms. Coffey shall not be engaged in the private practice of law during the term of this contract. Ms. Coffey shall reside within the corporate boundaries of the Town of Hilton Head Island during the term of this contract.

2. CONSIDERATION

A. SALARY

The Town shall pay to Ms. Coffey an annual salary of Eighty-Five Thousand Six Hundred Dollars (\$85,600.00), to be paid in equal bi-weekly installments. This salary may be increased by the Town at any time, with or without a performance review, but neither the initial salary level nor any increased salary level may be decreased unless and then only to the same percentage and extent that the compensation levels of a majority of the Town's employees are reduced.



B. BENEFITS

Except as otherwise stated herein, Ms. Coffey shall receive or have available to her the benefits provided or made available to the Town's other regular full-time employees. Such benefits will be increased, modified, or decreased as and when they are increased, modified or decreased for other regular full-time employees.

3. LIABILITY INSURANCE

Ms. Coffey will be covered by a comprehensive tort liability insurance policy issued by the South Carolina Insurance Reserve Fund to the extent provided thereby.

4. INCOME TAXES

Ms. Coffey shall be responsible for any income taxes which may be assessed on any compensation or benefits provided in this contract or otherwise provided by the Town.

5. TERM OF CONTRACT

This employment contract shall be effective beginning February 5, 2008 and shall terminate February 5, 2011.

6. TERMINATION OF EMPLOYMENT

- A. The Town shall have the right to terminate this contract without notice or further compensation in the event that Ms. Coffey personally and intentionally engages in the commission of a felony, fraud, misappropriation, embezzlement, or act constituting moral turpitude, or if Ms. Coffey engages in misfeasance or malfeasance in office.
- B. Each party shall give the other party at least ninety (90) calendar days' notice of her or its intention not to continue the employment relationship at or after the termination of this contract, or in the case of the Town, ninety (90) calendar days' payment of salary and benefits in lieu of notice or combination of notice and payment in lieu of notice totaling ninety (90) calendar days.

7. AMENDMENT

This contract may be amended by the parties at any time, but no amendment shall be effective unless in writing and executed with the same formality as this contract. The failure of either party to insist on compliance with the contract term in the future.

8. ENTIRE AGREEMENT

This contract represents the entire agreement between the Town and Ms. Coffey and incorporates all oral or written agreements relating to his employment.

IN WITNESS WHEREOF, the parties have executed this contract this 15th day of January, 2008.

WITNESSES:

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

Lauren Pratt

By: Thomas D. Peebles
Thomas D. Peebles, Mayor

Stan Blake

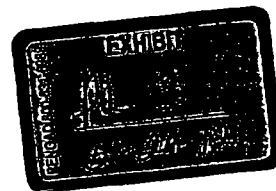
By: M. T. Coffey
Maureen T. Coffey

< April

May 2008

June >

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11 Mother's Day	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26 Memorial Day	27	28	29	30	31

Created at www.FreePrintableCalendar.net

< May

June 2008

July >

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14 Flag Day
15 Father's Day	16	17	18	19	20	21 Summer Solstice
22	23	24	25	26	27	28
29	30	1	2	3	4 Independence Day	5

Created at www.FreePrintableCalendar.net

17. Identify the person or persons in the Defendant's employ during 2008 who had interactive access to a security officer's investigative report once it had been entered in to the computer data base.

ANSWER: Only the officer who did the report.

18. Describe how meeting minutes, investigative reports and other electronic and/or paper materials generated by the Defendant in 2008 are archived, and identify the person or persons responsible for the storage and retrieval of them.

ANSWER: CSA and ASPPPO Board meeting minutes are scanned, and hard copies are also retained. Jeanne Pearse is in charge of storage and retrieval. Security Committee minutes are placed in notebooks. Storage and retrieval are handled by Teresa Young and Jeanne Pearse. Incident Reports are kept by the CSA security officers who wrote them, and copies are delivered to the BCSO.

19. Identify by case name, case number, court and jurisdiction each case in which the Defendant contents that the Plaintiff has acted with bias, partiality or prejudice.

ANSWER: None.

HALIO & HALIO
Attorneys for Defendant
Community Services Associates, Inc.

Andrew S. Halio

ANDREW S. HALIO
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200

and





The Supreme Court of South Carolina

COMMISSION ON JUDICIAL CONDUCT

Deborah S. McKeown
Commission Counsel

1015 Sumter Street, Suite 111
Columbia, South Carolina 29201
Telephone: (803) 734-1965

October 1, 2008

PERSONAL AND CONFIDENTIAL

George F. Breed, Jr.
175 Greenwood Drive
Hilton Head Island, SC 29928-4506

RE: Judge: Hilton Head Island Municipal Court Judge Maureen T. Coffey
Matter Number: 08-DE-J-0153
NOTICE OF FINAL DISPOSITION

Dear Mr. Breed:

You previously filed a complaint with the Commission on Judicial Conduct about Hilton Head Island Municipal Court Judge Maureen T. Coffey in connection with the above-referenced matter. The Commission instructed the Office of Disciplinary Counsel to conduct an investigation into your allegations.

On September 26, 2008, an investigative panel of the Commission convened to consider the recommendation of Disciplinary Counsel for disposition of this matter based on the information gathered in the preliminary investigation. As required by the Rules for Judicial Disciplinary Enforcement, Rule 502 SCACR, this panel was comprised of seven members, one of whom was the chair or vice-chair of the Commission and one of whom was a lay member.

In accordance with these rules, the panel's inquiries into this matter were limited to whether or not there was evidence of ethical misconduct on the part of Judge Coffey that would warrant further investigation or the filing of formal charges. After considering the report of Disciplinary Counsel setting forth the results of the investigation, the panel voted to dismiss your complaint.

PLAINTIFF'S
EXHIBIT

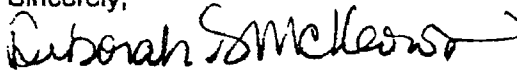
10
BREED



George F. Breed, Jr.
October 1, 2008
Page Two

At the direction of the Commission, I am notifying you of the action taken by the Commission, which constitutes a final disposition of the proceedings in this matter. As required by these rules, Judge Coffey is being notified of the action taken by the investigative panel by copy of this letter.

Sincerely,



Deborah S. McKeown

DSM/bwh

cc: Desa A. Ballard, Esquire
Counsel for Judge Coffey

Joseph P. Turner, Jr.
Assistant Disciplinary Counsel

South Carolina Appellate Court Rules

South Carolina Appellate Court Rules

Message to Users

SOUTH CAROLINA APPELLATE COURT RULES

V. RULES GOVERNING THE JUDICIARY, EMPLOYEES OF THE JUDICIAL DEPARTMENT, AND OTHERS ASSISTING THE JUDICIARY

RULE 502.1. JUDGE'S OATH

All members of the Unified Judicial System in this state shall take the following oath of office:

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I pledge to uphold the integrity and independence of the judiciary;

I pledge, in the discharge of my duties, to treat all persons who enter the courtroom with civility, fairness, and respect;

I pledge to listen courteously, sit impartially, act promptly, and rule after careful and considerate deliberation;

I pledge to seek justice, and justice alone;

[So help me God.]

[Adopted effective September 22, 2004.]

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Maureen's relevant Medicals

7/2/2008 – 7/2011	Dr. Geiger	Counseling	\$150 x 35 sessions	\$5250.00
2/4/2009	Dr. Maurer	Eye twitching/facial numbness/ headaches	consult	\$48.40
2/9/09	MRI at Belfair	Eye twitching/facial numbness/ headaches	mri	\$1000.00
12/30/2009	Cross Island Medical	Weight Gain/ Insomnia/headaches	Joey Debate, NPRN	\$56.00
11/23/2011	Cross Island Medical	Weight Gain/ facial numbness Insomnia/headaches	Dr. Dorsner	\$90.00
			TOTAL	\$6444.40



20080520U21



FBI LABORATORY
 EXHIBIT
 P2 110
 5-30-12

AGENCY I.D.
SCO 070000

SUPPLEMENTAL INCIDENT REPORT

CASE #
20080520021

INQ. BWTB.

☒ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 2 PAGES.

General Information:

On dates and time listed this reporting officer during an extra patrol of the South Beach Lane area (Due to Peeping Tom's, Prowler's, and Burglaries) I saw a black male on a bicycle coming towards me on South Beach Lane and as I approached the subject he saw me and quickly made a right turn on the beach access. I asked him to stop and the subject began to excel on his bicycle and I began a foot chase after the subject. Towards the end of the beach access he made a left turn into #14 Seaside Sparrow's backyard where I lost site of the subject. At this time I had Sea Pines Security Dispatcher contact the Beaufort County Sheriff's Office to assist in locating the subject. I also had Cpl. Fryman (also a Sea Pines Security Officer) set up a perimeter in the area of Gadwall. Cpl. Fryman stated that within about 15 minutes he observed a male subject in dark colored clothing speed walking and went into #4 Gadwall Rd.

When the Beaufort County Sheriff's Office arrived I explained the same to Deputy Sheriff Murphy who stated that we would make contact at #4 Gadwall and see if the possible subject would speak to us. Upon arrival meet with Ms. Coffey (mother of Otis Coffey) and Deputy Sheriff explained what had taken place and what was observed and her comment was that Otis was not home and that Sea Pines Security was also trying to blame him for stuff.

Other Information:

The area of South Beach Lane has been a target area with incidents including Peeping Toms, Prowlers, and Burglaries. Also the Sea Pines Security Officer has received several complaints about a suspicious black male being in the area of the incident locations.

Attachments:

1.) Statement Sheet of Cpl. Fryman. (Sea Pines Security Officer)

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY											
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER	
Jolin, J. A. Sgt.		05-20-08		J0886							
Sea Pines Security						FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER			

AGENCY I.D.
SC0 070000

SUPPLEMENTARY REPORT

NO.	EXTD.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE _____ of _____ PAGES
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGES	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

Paul Fryman assisted Sgt. Jolin in attempting to stop a subject fleeing on a bicycle. Sgt. Jolin instructed me to go to 4 Caldwell Rd. and watch for a black male subject entering that house. At approximately 8:20, I observed a black male walking down the road and entering the residence at 4 Caldwell. I notified Sgt. Jolin.

C.P. Fryman

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S) C.P. Fryman	DATE 05-19-08	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			OFFICER			

AGENCY I.D.
SCO 070000

INCIDENT REPORT

20080520021

INO. INVT.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Suspicious Activity		☒ YES ☐ NO	☐ YES ☒ NO	Roadway		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relg. Orgn. ☐ Acc./Public ☐ Other ☐ Unknown ☐ Police Off.
2. Fleeing to Evade Arrest or Detention		☒ YES ☐ NO	☐ YES ☒ NO	Roadway		
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) Sea Pines Plantation South Beach Lane / Seaside Sparrow Beach Access Hilton Head, SC				ZIP CODE 29928	WEAPON TYPE None	
INCIDENT DATE 05-20-08	DATE, CLOCK 0011	TO DATE	DATE, CLOCK 05-20-08	DISP. DATE 0012	DISPATCH DATE/TIME 24 HR. CLOCK 0012	DEPART. TIME 0130
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Sgt. Jolin		RELATIONSHIP TO SUBJECT Stranger		RESIDENT ☒ YES ☐ NO	RACE W	SEX M
ADDRESS 175 Greenwood Dr.		CITY Hilton Head		STATE SC	ZIP CODE 29928	LOCATION NO. 5K01
VICTIM'S NAME (LAST, FIRST, MIDDLE) State of South Carolina		RELATIONSHIP TO SUBJECT		RESIDENT ☒ YES ☐ NO	RACE	SEX
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO ☐ EXPLAIN -		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO				
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ DRUGS: ☐ YES ☒ NO ☐ UNK. ☐ TYPE						
TWO-MAN VEH. ☐ ONE-MAN VEH. ☒ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ * J-This Jurisdiction S-State O-Out of State U-Unknown						
☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) Coffey, Otis		RACE B	SEX M	AGE 40	ETH. N
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. None		DATE OF BIRTH 01-16-68	HEIGHT 5-6	WEIGHT 155	HAIR BLK
☐ WANTED	ADDRESS 4 Gadwall Rd.		CITY Hilton Head	STATE SC	ZIP CODE 29928	EYES UNK
☐ WARRANT	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. ☒ TYPE		ARRESTED NEAR SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE	
☐ ARREST	DRUGS: ☐ YES ☒ NO ☐ UNK. ☒ TYPE		TOTAL # ARRESTED		DATE/TIME OF ARREST	
☐ JAIL						
☐ FUGITIVE						
TYPE (OR)		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18
☐ UNFOUNDED				☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S) Jolin, J.A. Sgt.		DATE 05-20-08	UNIT NUMBER J0886	APPROVING OFFICER		DATE
Sea Pines Security				FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		UNIT NUMBER



AGENCY I.D.
SCO 070000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

20080520021

INQ. EPTD.

☒ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 2 PAGES.

General Information:

On 05-20-08 at 0011 hours, I was conducting an extra patrol of the South Beach Lane area due to recent peeping tom's, prowler's and burglaries. While walking on South Beach Lane in the area of Seaside Sparrow, I noted a black male on a bicycle coming towards me on South Beach Lane. As I approached the subject and told him to stop and speak with me, he quickly made a right turn on the beach access. I pursued the subject on foot and continued to call out to him telling him to stop, which he did not. Towards the end of the beach access he made a left turn into #14 Seaside Sparrow's backyard where I lost site of him. I identified the black male subject as Otis Coffey, due to having much contact with him while I was working the Front Gate of Sea Pines for two years. I had Cpl. Fryman (also a Sea Pines Security Officer) set up a perimeter in the area of Gadwall, where Otis Coffey resides. Cpl. Fryman stated that within about 15 minutes of my foot chase, he observed a male subject in dark colored clothing speed walking towards #4 Gadwall Road, which he then entered.

At this time I had Sea Pines Security Dispatcher contact the Beaufort County Sheriff's Office to assist in locating the subject.

When the Beaufort County Sheriff's Office arrived I advised Deputy Sheriff Murphy about the incident. He stated that we would make contact at #4 Gadwall and see if the possible subject would speak to us. Upon arrival meet with Ms. Coffey (mother of Otis Coffey). Ms. Coffey was advised of what had taken place and what was observed, which she advised us that Otis was not home and that Sea Pines Security was always trying to blame him for stuff.

Other Information:

The area of South Beach Lane has been a target area with incidents including Peeping Toms, Prowlers, and Burglaries. The Sea Pines Security Officer has received several complaints about a suspicious black male being in the area of the incident locations.

Attachments:

1.) Statement Sheet of Cpl. Fryman. (Sea Pines Security Officer)

SUBJECT IDENTIFIEDS ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY											
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER	
Jolin, J. A. Sgt.		05-20-08		J0886							
Sea Pines Security						FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER			

AGENCY I.D.
SCD 070000

SUPPLEMENTARY REPORT

NO. ENT.

☐ ORIGINAL
REPORT
☐ ADDRESS
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE _____ OF _____ PAGES

I, Corporal Fryman, assisted Sgt. Jolin, in attempting to stop a subject fleeing on a bicycle. Sgt. Jolin instructed me to go to 4 Cadwell Rd. and to watch for a black male subject entering that address. At approximately 0020, I observed a black male walking down the road and entering the residence at 4 Cadwell. I notified Sgt. Jolin.

Cpl. Fryman

NARRATIVE

ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER				
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE: NO CUSTODY												
	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER		
	Cpl. Fryman		05-19-08										
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO										OFFICER			

00343

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF SEA PINE VERSUS
FIRST NAME JEFFSON MIDDLE NAME S. LAST NAME HALL II
STREET AND NO. 176 DREW AVE CITY SEA PINE STATE SC ZIP CODE 29935
STATE LICENSED OH DRIVER'S LICENSE NO. I.D. 2561576 COL. NO DRI. LIC. CLASS T.D.
VEH. LIC. NO. OH STATE SC MAKE OF VEH. YEAR COM. YR. HAZ. MT. AUTO HAZ. MT. MOPED HAZ. MT. MTRCYCL HAZ. MT. OTHER HAZ. MT.

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER MUNICIPAL COURT THREE TOWN CENTER COURT STREET AND NO. 176 DREW AVE
DATE OF TRIAL 07/18/2008 TIME OF TRIAL 0900 CITY SEA PINE STATE SC ZIP CODE 29935
VIOLATION - COURT APPEARANCE REQUIRED YES NO NO
OWNER OF VEHICLE Jefferson Hall II DATE OF ARREST 06/04/2008
ADDRESS OF OWNER 176 DREW AVE DATE OF VIOLATION 06/04/2008

BAIL DEPOSITED None NAME OF ARRESTING OFFICER JOHN S. A RANK Sgt.
RACE W SEX M DESCRIPTION OF ACCUSED 176 DREW AVE COUNTY BEAUFORT NUMBER 09
DATE BAIL REC'D. BY 07/18/2008 DISTRICT 06
DATE BAIL REC'D. BY 07/18/2008

CASE BEFORE MAGISTRATE ☐ MUN. COURT ☒
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
NAME OF TRIAL OFFICER Jefferson Hall II TIME OF VIOLATION 17:19 WEATHER PM 2:16
IF DIFFERENT FROM ABOVE None DISTANCE IN FEET FROM INTERSECTION 15

DEFENDANT: DID NOT APPEAR ☒ APPEARED ☐
DISPOSITION None
NOLLE PROSSED ☐ GUILTY ☐
FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐
MILES 15 CITY SEA PINE

TRIAL BY: TRIAL OFFICER ☒ JURY ☐
VERDICT OF TRIAL IF ANY GUILTY ☒ NOT GUILTY ☐ DATE OF TRIAL IF ANY 08/18/2008
JAIL None SUSPEND None FINE 1087.50 AMT. COLLECTED None AMT. SUSPENDED None

COMMITTED TO: None Vehicle Searched None Arrest as Result of Collision None
OFFENSE CODE 94 B.A. LEVEL None

CERTIFIED CORRECT None DATE 09/19/2008 59318 EG

TRIAL OFFICER'S COPY

(513) 341-11670
Officer Hayes Testified



Meredith Hatch

From: Securegate@aol.com
Sent: Tuesday, May 20, 2008 5:21 AM
To: polygraph99@hotmail.com
Cc: Meredith Hatch
Subject: (no subject)

Last night at midnight one of my officers was on foot near South Beach Lane. He saw a B/M on a bike (Midnight!) and identified him as Otis Coffee and called out to him. He took off. He radioed another officer who set up out of sight at Gadwall (Coffees house) and a few minutes later observed him run into the house and then shut of all in interior lights.

Your guys had been called to assist and went to the house with my officers. Mrs. Coffee came to the door and said no one was home. Your officer told them that Sea Pines Officers saw Otis enter the house minutes prior. She said that Sea Pines security is always trying to pin things on him and then blew them off.

We almost got his little butt, I want his little butt and I don't want it to get back to you know who. He thinks he can get away with this crap because he has cover. Do you think we have enough to secure a search warrant? His house is smack in the center of the B&E's, he matches the description of our B&E suspect AND the peeper and he is on a bike at midnight right in the middle of our stakeout, takes off and runs into a house, cuts off lights and then has Mommy lie for him. And for heavens sake you know not where to go to get the SW.

I think over the past several months his looking into windows for targets may have been mistaken for a Peeper. Maybe able to close both groups.

Report to follow.

George F. Breed, Jr.
DABCHS, CHS-V, CFE, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC



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Wondering what's for Dinner Tonight? [Get new twists on family favorites at AOL Food.](#)

5/20/2008

FLORENCIO
SUBPOENA 001

1735



216-861-4409

Andy - *Thompson*
Del PetroForm 5-488
Rev. 12/08STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF <u>San Pedro</u>		VERSUS	
FIRST NAME <u>John</u>	MIDDLE NAME <u>Peck</u>	LAST NAME	
STREET AND NO. <u>526 N. Thompson St. Apt. 11</u>	CITY <u>San Pedro</u>	STATE <u>MD</u>	ZIP CODE <u>20928</u>
STATE LICENSED <u>MD</u>	DRIVER'S LICENSE NO. <u>020042972010</u>	COL. <u>YES</u>	DPL. LIC. CLASS <u>None</u>
VEH. LIC. NO. <u>21M2915</u>	STATE <u>OH</u>	MAKE OF VEH. <u>GMC</u>	YEAR <u>04</u>
MODEL <u>SAFARI</u>	COLO. <u>BLK</u>	HAZ. MAT. <u>NO</u>	MODIFIED <u>NO</u>
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER:			
NAME OF TRIAL OFFICER <u>MUNICIPAL COURT</u>		STREET AND NO. <u>3rd Central St</u>	
DATE <u>01/23/09</u>	TIME OF TRIAL <u>0900</u>	CITY <u>San Pedro</u>	STATE <u>SC</u>
COUNTY APPEARANCE REQUIRED <u>YES</u>		VIOLATION SECTION NO. <u>14-34 (H)</u>	
OWNER OF VEHICLE <u>Del Petro</u>		DATE OF ARREST <u>12/28/08</u>	
ADDRESS OF OWNER <u>512 Thompson St.</u>		DATE OF VIOLATION <u>12/28/08</u>	
BAIL DEPOSITED <u>NONE</u>	NAME OF ARRESTING OFFICER <u>CAMPBELL W.</u>		RANK <u>LT</u>
PRESENT THIS SUMMONS TO THE TRIAL OFFICER SHOWN ABOVE		COUNTY <u>Bentley</u>	NUMBER <u>03</u>
		BADGE <u>39</u>	DISTRICT <u>06</u>

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

VIOLATOR'S COPY

\$470.⁰⁰COURT DATE
1-23-09

SEA PINES MUSEUM AND FOREST PRESERVE FOUNDATION
ADMINISTRATIVE OFFICES • OFFICE (843) 671-1343 • FAX (843) 671-4027

February 25, 2009

Mr. Andy Wargo
55 Public Square
Cleveland, OH 44113-1901

Re: John Peck
SPMFPP Donation of \$200.00 dtd 2-7-09 ck # 141

Dear Mr. Wargo,

Enclosed is a refund check in the amount of \$200.00 for the donation Mr. Peck recently made to the Sea Pines Museum and Forest Preserve Foundation. This refund is being made to alleviate any perception of impropriety on behalf of the Foundation that may result from acceptance of any donation made other than in a purely voluntary fashion.

Sincerely,

Cary A. Kelley
Mr. Cary A. Kelley
Administrator SPMFPP



SEA PINES MUSEUM & FOREST PERSERVE
175 GREENWOOD DR. 843-671-1343
HILTON HEAD ISLAND, SC 29928

67-7409/532
5144000460

343

DATE 2/25/69

PAY TO
THE ORDER OF

JOHN R. PERK

\$ 200.00

100 Hundred - and - no/100 -

DOLLARS A



A Federal Savings Bank
70 LIGHTHOUSE ROAD
SEA PINES PLANTATION
HILTON HEAD ISLAND, SC 29928

MEMO

William Lee

MP

⑆053274090⑆ 5144000460⑆ 0343

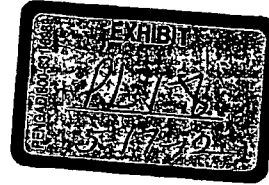
SPECIALTYRAY



ADMINISTRATIVE OFFICES
OFFICE (843-) 671-1343
FAX (843) 671-4027
www.csaseapines.com

June 6, 2008

Commission on Judicial Conduct
1055 Sumter Street
Room 111
Columbia, SC 29201



Re: Judge Maureen T. Coffey
Town of Hilton Head Island-Municipal Court

To the members of the Judicial Conduct Commission:

This is a letter of complaint regarding previous and ongoing conduct of Judge Maureen T. Coffey, Town of Hilton Head Island-Municipal Court. There is a pattern of reactive and overt actions that have/are undermining the criminal justice process. For the reasons that will be outlined below, it is apparent that Judge Coffey has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts & criminal justice procedure. This conduct was/is pervasive and invasive in nature, and directly results in Judge Coffey's inability to maintain the impartiality so necessary to the successful balance of our legal system.

Presently I have the responsibility of serving as the Director of Security & Community Affairs for Sea Pines, Hilton Head Island. In total, I have more than 30 years in a variety of capacities that include Law Enforcement & U.S. Government service in the Greater Washington, DC area. My present position oversees a staff of approximately 50 officers and support staff whose primary concern is the public safety, security and law enforcement for our community of 25,000 to 75,000 residents and visitors. This responsibility includes not only the public at large but extends to the certified officers charged with this enforcement.

1)

During the last several months of 2004 our community was the victim of a rash of burglaries, thefts and residential break-ins. After an exhaustive investigation by the Beaufort County Sheriffs Office, the primary suspect was identified as OTIS COFFEY (*sibling of Judge Coffey*). Prior to and since, this suspect had/has more than a passing familiarity with many law enforcement and parole & probation departments in several jurisdictions. During the course of these burglaries my department began a process of saturation patrols in the areas that the pattern dictated were of greatest exposure. On 12-10-04 at approx. 6 AM Otis Coffey's vehicle was reported to have backed into the driveway of a person unknown to him well off the main roadway and had exited his vehicle. Our officers & the BCSO responded. Otis Coffey eventually appeared in another vehicle in the company of his father (*Michael Coffey-deceased*). At that time Otis Coffey was lawfully arrested for trespassing. On the scene, Mr. Michael Coffey (*father of Judge & Otis Coffey*) attempted to insert himself into the arrest process and then proceeded to call Judge Coffey via cell phone and presented the phone to the on scene supervisor.

COMMUNITY SERVICES ASSOCIATES INC., 175 GREENWOOD DRIVE, HILTON HEAD ISLAND, SC 29928
CSA's mission is: "To protect, maintain, and enhance the resources of Sea Pines for the benefit of the Sea Pines Community".

Sometime after this arrest Capt Toby McSwain-BCSO had a meeting with Judge M. Coffey and advised her that Otis was the prime suspect in a rash burglaries occurring over the previous several months. Judge Coffey stated to Capt. McSwain that she was "going to get him out of town", or words to that effect. From the date of that arrest and after that statement, our burglaries ceased.

From the date of December 10, 2004 the burglaries plaguing the community of Sea Pines ceased.

2)

Several months ago (*Feb to May 2008*) our community again was the victim of a rash of burglary cases. The route of travel, target homes, times, dates and M.O. were very similar (*almost exact*) to the cases of approx 3 1/2 years ago where Otis Coffey was the primary suspect. It was at about that time that it was learned that Otis Coffey had returned to this community at approximately the same time frame as the first burglary. I instructed the late shift patrols to focus in the areas of pronounced exposure and that fit the on going and familiar pattern. On May 20 around midnight one of our officers observed the suspect dressed in black traveling on a bike (*our community does not offer any type of bike path or roadway lighting, nor is it permitted*). The suspect was confronted & identified by our officer, at which time he rode off before he could be detained. A radio call was made to another officer who pulled his vehicle to within eyesight of the suspects home. Approximately 15 min. later that officer observed a suspect matching the same description run into the home and the lights were cut off. Our officers along with BCSO responded to the home where the owner answered the door (*Ann Coffey-mother of Judge Coffey & Otis*). She stated that she was home alone, no one was there and that Sea Pines Security was always trying to pin something on her son.

We continued our 24-hour patrol saturation process in the general area of the break-ins. On May 23 at approximately 5:30 PM one of my patrol officers (*retired Indiana Police Officer-new hire*) observed a person unknown to him (*Judge Maureen Coffey*) walking outside on the street of the Coffey residence and offered a pleasantry. Judge Coffey replied, "We needed to quit harassing him". The officer stated that he did not know what she was referring to. She replied, "She was the Judge for the Town of Hilton Head Island". The officer said that he had never met her nor was he aware of who she was and that he was new to the area. Judge Coffey stated, "that she would go see Chief Breed but did not have the time. Further that she does not know if he is guilty or not and that she was going to have him moved out".

From the date of May 20, 2008 the community of Sea Pines has not had one burglary or report of break-in.

3) On May 21, 2008 one of our patrol officers found a vehicle parked in the roadway in front of 4 Gadwall Rd. (*Coffey residence*). The vehicle was found to be registered to a Michael Coffey (deceased). Several attempts were made via phone and in person at 4 Gadwall to have the vehicle moved from the road

with no response. After approx. 1 hour a tow vehicle responded at which time both Otis Coffey & Ann Coffey emerged from the home. The officer issued Mrs. Coffey a parking citation. During this process Mrs. Coffey asked the officer if he was new to the department. The officer stated that he had been employed here for many years. Mrs. Coffey then stated "You do know who the judge is don't you....my daughter".

CANON 1
A JUDGE SHALL UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY

CANON 2
A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN
ALL OF THE JUDGE'S ACTIVITIES

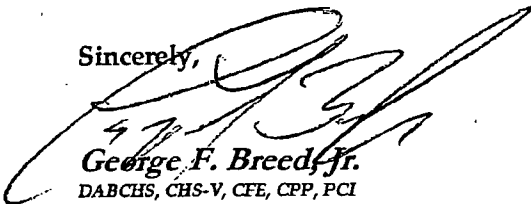
CANON 3
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND
DILIGENTLY

This complaint is the result of much serious, sober and deliberate examination and contemplation. In my many years of public service, this is the first time that I have generated correspondence such as this. It is also however, the first time that I have been faced with such concerns. I am most profoundly aware of the possible effect of this correspondence in as much as Judge Coffey is the only Municipal Court Judge for Hilton Head Island and as such is the only judicial conduit available to my officers for their numerous traffic and criminal cases. Nonetheless, my alarm for this community and the responsibility for its safety & security is much greater.

I believe that Judge Coffey's inability to remove and insulate herself from personal relationships and overt involvement both past and present have caused her to insert herself in these scenarios to the detriment of the community at large. Further, it has manifested itself and caused her to engage in conduct prejudicial to the effective and expeditious administration of the business of the courts and criminal justice process. In summary, as a result of Judge Coffey's actions, she has given the distinct and transparent appearance of bias and partiality, and is not able to be a neutral and detached arbiter of the many cases that have been and will be pending before her.

If I can provide any additional information that you require please do not hesitate to contact me.

Sincerely,



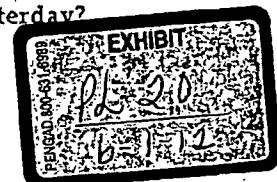
George F. Breed, Jr.
DABCHS, CHS-V, CFE, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-3000

From: Securegate@aol.com [mailto:Securegate@aol.com]
Sent: Wednesday, May 21, 2008 2:01 PM
To: Steve Birdwell
Subject: (no subject)

Were you busting my chops or "trying" to be supportive at the board meeting yesterday?

George F. Breed, Jr.
DABCHS, CHS-V, CFE, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-3000

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PLAINTIFF'S
EXHIBIT

10

SPines
001104

From: Steve Birdwell [mailto:steve.birdwell@seapines.com]
Sent: Wednesday, May 21, 2008 2:52 PM
To: Securegate@aol.com
Subject: RE: (no subject)

I was definitely being supportive....I hope Cary took it that way.

Steven P. Birdwell
President
The Sea Pines Resort
843-842-1419

www.seapines.com

From: Securegate@aol.com [mailto:Securegate@aol.com]
Sent: Wednesday, May 21, 2008 2:01 PM
To: steve.birdwell@seapines.com
Subject: (no subject)

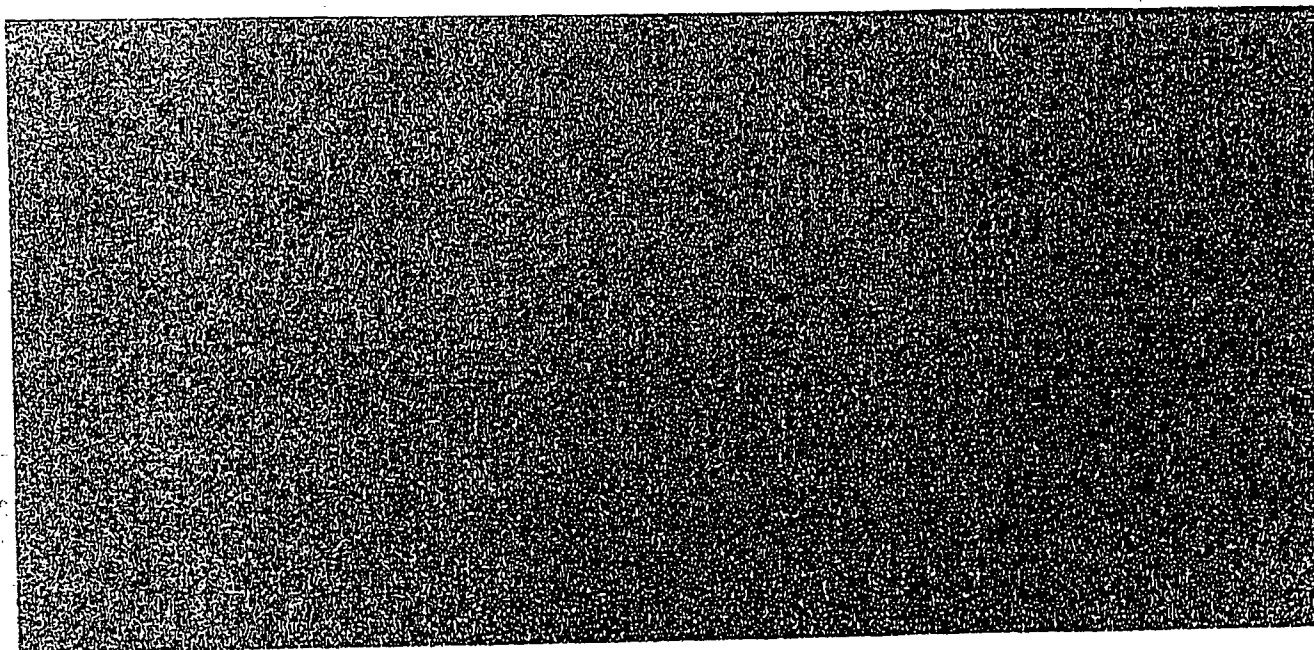
Were you busting my chops or "trying" to be supportive at the board meeting yesterday?

George F. Breed, Jr.
DABCRS, CHS-V, CFE, CPP, PCT
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-3000

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Get trade secrets for amazing burgers. Watch "Cooking with Tyler Florence" on AOL Food.

1



SPines
001105

From: Securegate@aol.com [mailto:Securegate@aol.com]

Sent: Wednesday, May 21, 2008 4:34 PM

To: Steve Birdwell

Subject: Re: (no subject)

Don't think so.....

By the way. I have my vendor doing a walk through to upgrade and expand our camera system (closed, law enforcement, proprietary) and I have tasked him with not only our gates, etc but with HT & beach club.

Once we identify locations I will get with you and go over. I have a secret one to watch Munro & Cary.

George F. Breed, Jr.

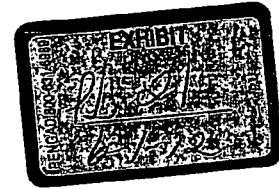
DA BCMS, CHS-V, CFE, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-3000

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SPines
001106



ADMINISTRATIVE OFFICES
OFFICE (843-) 671-1343
FAX (843) 671-4027
www.csaseapines.com



**Community Service Associates, Inc.
Minutes of May 20, 2008 Board Meeting**

President Jenkins called the May meeting of the CSA Board of Directors to order at 3:00 p.m., in the CSA Conference Room.

1. Roll Call

Present:	Audrey King George Minot Don Carlson Bob Sowers Paul Aikman	Bob Hattersley Kathy Carter Mike Lawrence Cary Corbitt	Pat Jenkins John McLaughlin Norman Harberger Steve Birdwell
Absent:	Mark King Mike Hellman	John Trunck	Bob Gossett
Staff:	Cary Kelley	William Leitner	Jeanne Pearse

2. Approval of the Meeting Minutes

Board members reviewed the April 22, 2008, meeting minutes. A motion was made by Mr. Minot and seconded by Mr. Hattersley to approve the minutes as amended. The motion was approved unanimously.

3. Report of the Executive Vice President - Cary Kelley

a. **Referendum Meetings and Status** – The informational meetings on the referendum had been held and were well attended. Property owners continue to phone in their questions. The main question is how much it's going to cost them.

b. **CSA Board Member Emergency Contact Information** – A copy of the Board members' emergency contact information was included in the board package. Mr. Kelley asked the members to review their information for accuracy and to submit their contact information if they have not already done so. Discussion was held on having a preset schedule for an emergency meeting (by conference call) during an evacuation to learn the extent of damage and firm up recovery plans. CSA staff is currently reviewing their emergency plan and the emergency Board meeting could be incorporated into that plan. Mr. Kelley will have more information at the next meeting.

c. **Combined ASPPPO Open Meeting and "Coffee With Cary" Meeting** – The ASPPPO Open Meeting previously scheduled for June 12th has been rescheduled and combined with Cary's June 4th meeting. Disaster Recovery is the main topic for both meetings, and the June 4th date at 9 a.m. is better for the guest speaker, Trudie Johnson.

Page 1

COMMUNITY SERVICES ASSOCIATES INC., 175 GREENWOOD DRIVE, HILTON HEAD ISLAND, SC 29928
CSA's mission is: "To protect, maintain, and enhance the resources of Sea Pines for the benefit of the Sea Pines Community".

Ms. Johnson is with the Building and Fire Code Department for the Town of Hilton Head Island.

4. Finances

a. April Financial Statements - The Board reviewed the current financial statements. The overall financial position remains favorable.

b. Approval to Renew the Wachovia Agreement for Services - The Finance Committee recommended that the Board approve renewal of the Service Agreement with Wachovia Bank. The agreement provides for guaranteed lines of credit and other bank services such as lockbox services. A summary of the agreement was included in the Board package. Mr. Minot made a motion to approve agreement with Wachovia Bank under the proposed terms. The motion was seconded by Mr. Harberger and was unanimously approved.

5. Standing Committees

Standing Committee reports were included in the Board package.

a. Finance Committee - Mr. Minot asked for a board resolution approving the adoption of IRS Revenue Ruling 70-604 to allow the amount of \$228,291 for incomplete projects in the year 2007 to be carried forward into the fiscal year for 2008. Mr. Minot made a motion to that effect. The motion was seconded by Mr. Harberger and was unanimously passed.

b. Nominating Committee - Mrs. King announced that the Nominating Committee would hold its initial meeting on Thursday, May 22nd. She asked Board members to pass along their suggestions of potential nominees for the CSA or ASPPPO Boards or the ARB.

6. Board Member Comments

a. Security Issues - Mr. Birdwell said he was concerned with the recent security issues that had arisen such as the missing couple and peeping tom. He had met with Mr. Breed, Director of Security, to discuss these and other issues. The Resort is considering the installation of additional security cameras in the golf cart storage areas and other high traffic areas such as Harbour Town. The cameras are portable and can be relocated to any problem areas as needed. The cameras will be monitored by current security personnel, so no additional staff will be needed.

b. Resort Activity - Mr. Birdwell said the Resort is completely booked over Memorial Day weekend. He also reported that the Sea Pines Beach Club is once again offering a dinner menu for the summer season.

c. CSA Executive VP's Evaluation - Mr. Harberger said 4 completed evaluation sheets had been returned to him for Mr. Kelley's evaluation and encouraged the other Board members to turn theirs in by the end of May. The Executive Committee will review the compiled results at their June 11th meeting. The results and the Executive Committee recommendations will then be presented to the CSA Board at the June 24th meeting.

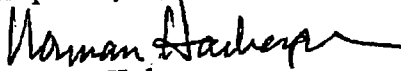
d. **Status of the Referendum Voting** – Mr. Minot asked how many votes had been returned and if the results were favorable. Mr. Kelley said he had checked with the auditor's office and not many had been returned at this point in time. He will have another e-mail message sent out reminding property owners to return their ballots.

e. **Red Cross Blood Drive** – Mrs. King reminded the Board members that the Red Cross Blood Drive is being held on May 29th from 1-6 p.m. She encouraged Board members to participate and to spread the word to their neighbors and friends.

8. **Adjournment**

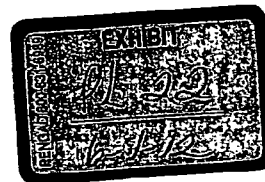
The meeting adjourned at 3:40 p.m. The next scheduled meeting date is Tuesday, June 24, 2008, at 3 p.m. in the CSA Board room.

Respectfully submitted,


Norman Harberger
Secretary



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Community Service Associates, Inc.
Minutes of June 24, 2008 Board Meeting

President Jenkins called the June meeting of the CSA Board of Directors to order at 3:00 p.m., in the CSA Conference Room. She welcomed Don Sigmon as a new CSA Board member. Mr. Sigmon will complete Mr. John Trunck's 3 year term (commercial representative) which ends December of 2009. Mr. Trunck had resigned for health reasons.

1. Roll Call

Present:	Pat Jenkins	Bob Hattersley	Mark King
	Don Sigmon	Kathy Carter	Mike Hellman
	Don Carlson	Mike Lawrence	Norman Harberger
	Bob Sowers	Cary Corbitt	Steve Birdwell
	George Minot	Audrey King	
Absent:	Paul Aikman	John McLaughlin	Bob Gossett
Staff:	Cary Kelley	William Leitner	Jeanne Pearse

2. Approval of the Meeting Minutes

Board members reviewed the May 20, 2008, meeting minutes. A motion was made by Mrs. Carter and seconded by Mrs. King to approve the minutes as amended. The motion was approved unanimously.

3. Report of the Executive Vice President - Cary Kelley

a. **Green Initiatives** - Mr. Kelley said CSA was continuing to improve on the efforts to go "green".

- Recycling bins are now in place in all areas maintained by CSA.
- A butterfly garden has been created in front of the CSA building.
- All light bulbs are being replaced with energy efficient bulbs.
- Maintenance crew routes have been revised and combined to save fuel by reducing vehicle mileage.
- Security patrols are spending 15 minutes out of every hour on foot patrol. In addition to saving fuel, the foot patrols have received a favorable public reaction.
- On July 1st, the Maintenance crew's schedule will be changed to 4, 10 hour days. This will help the employees and CSA save on fuel costs.
- The Administration office's goal is to go paperless in 2009.
- The printer we use is also going green by using recycled materials and eco-friendly ink.

Some property owners have asked about the possibility of creating a recycling center inside the Plantation. Staff has considered this, but has not identified a location that would not have a negative impact on nearby property owners. The Town is continuing its own analysis and may provide a recycling service in the future. Meanwhile, Waste Management, which provides trash services, offers recycling pickup as an optional service at additional cost.

b. **Security Issues** – A copy of a confidential letter from Mr. George Breed was distributed at the meeting. This correspondence is in connection with a recent case in Sea Pines. Discussion was held. An acknowledgement of receipt has been received, but not a formal response.

Mr. Kelley asked the commercial entities to advise him of any problems involving security personnel. Video and audio tapes of security encounters can be reviewed to determine if security personnel are at fault. If they are, corrective action is taken.

Board members inquired about recent violent incidents at bars outside the plantation's gates. Town Council has said they intend to remedy the situation, perhaps by tighter control of the liquor licenses and business hours of operation.

c. **Referendum Status** – Property owners have until June 30, 2008 to return their ballot. So far, 48% of the property owners have returned their ballot and the vote is 71% in favor of the referendum. Approximately 100 more affirmative votes are needed for the referendum to pass.

4. Finances

a. **May Financial Statements** - The Board reviewed the current financial statements. The overall financial position remains favorable. It was noted that twenty-one property owners have not paid their assessments despite repeated follow-ups. Those cases have been turned over to our attorneys and will have a lien filed against them.

b. **Approval for Expenditure for Maintenance Golf Car** – The old van used for irrigation repairs is beyond repair. The Finance Committee recommends purchasing a golf car for \$12,500 to replace this vehicle. The golf car is less expensive to purchase and operate. Although this expenditure was not anticipated when the 2008 budget was prepared, it can be handled within the overall 2008 Capital Budget. Mr. Minot made a motion to approve the expenditure of \$12,500 from the capital budget for a golf car. The motion was seconded by Mr. King and was unanimously approved.

5. Standing Committees

Standing Committee reports were included in the Board package.

a. **Maintenance Committee** – Chairman Hattersley requested approval to fill two vacant committee positions with Mr. Paul Crunkleton and Mr. Paul Eyerman. The Board approved the request.

b. **Finance Committee** – Chairman Minot requested approval to add Mr. Jim Fall as a new member of the Finance Committee. The Board approved the request.

6. Board Member Comments

a. **Use of Motorized Bikes/Golf Carts In the Plantation** – Mr. Hattersley said it is likely, with the sharp rise in gas prices, that more people will urge that golf carts, motorcycles and mopeds be permitted on Sea Pines' roads and bike paths. The Board agreed that the Security Committee should consider this issue and present its conclusions and policy recommendations. It was also agreed that the practices of other plantations should be looked into, although those practices may be impractical for Sea Pines because of our much higher traffic volume.

7. Discussion Topics

a. **Transfer of Wildlife Habitat Zone to Sea Pines Museum and Forest Preserve Foundation** – Mrs. Jenkins reported that The Sea Pines Resort has agreed to complete the transfer of the Wildlife Habitat Zone (WHZ) of the Forest Preserve to the Sea Pines Museum and Forest Preserve Foundation. The Executive Committee recommends that a special committee be created to work out the details of the transfer. The proposed membership of the Committee consists of: Mike Hellman (Chairman), Cary Kelley, George Minot, Karl Becker, Steve Birdwell and Cary Corbitt.

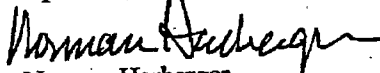
Following discussion, Mr. Carlson made a motion to approve the appointment of an Implementation Committee to develop and recommend the specific terms for the transfer of the Wildlife Habitat Zone of the Forest Preserve to the Sea Pines Museum and Forest Preserve Foundation. The Committee membership is to be as stated above. The motion was seconded by Mrs. King and was approved unanimously.

b. **Executive Session** – The regular portion of the meeting adjourned at 3:40 p.m. Staff was excused so the Board could discuss the results of the Board's evaluation of Mr. Kelley's performance and matters relating to the terms of his employment contract.

8. Adjournment

The next scheduled meeting date is Tuesday, July 22, 2008, at 3 p.m. in the CSA Board room.

Respectfully submitted,



Norman Harberger
Secretary

Community Service Associates, Inc.
 Minutes of January 8, 2009 Luncheon Meeting

On January 8, 2009, a luncheon meeting was held of the combined Boards of CSA and ASPPPO in the Stewart Room of the Harbour Town Conference Center. Those attending included incoming and outgoing Board members of both organizations and invited guests. Pat Jenkins presided.

Mrs. Jenkins took note of the changes in Board membership that took effect on January 1, 2009. She thanked CSA Board members Paul Aikman and Bob Hattersley who had completed their terms. She noted that Mike Lawrence, a Company-appointed Board member, had also completed his Board service. She expressed appreciation for Mr. Lawrence's contributions, mentioning the value of his long experience and knowledge of Sea Pines.

Mrs. Jenkins then welcomed the new members of the CSA and ASPPPO Boards. Fred Wynn who completed his term on the ASPPPO Board will now serve on the CSA Board. George Minot, a current CSA Board member was elected to serve also on the ASPPPO Board. Nikki McNamee and Blaine Lotz were newly elected to serve on both the CSA and ASPPPO Boards. All will serve as Class A members of the CSA Board.

Mrs. Jenkins then introduced members of the CSA staff and invited guests who were present: George Breed, Director of Security; Cindy Gray, Director of Human Resources; William Leitner, Controller; David Henderson, who is responsible for CSA Community Projects and ASPPPO Covenant Administration; and Jeanne Pearse, Executive Administrative Assistant. Walt Nester from the McNair law firm was also introduced. Mr. Nester serves as legal counsel for CSA and ASPPPO.

The retiring Board members and most of the invited guests left the room at this point and Mrs. Jenkins convened the formal CSA Board meeting at 1:25 p.m. Mr. Wynn attended by teleconference call.

1. Roll Call

Present:

Pat Jenkins
 Cary Corbitt
 Fred Wynn
 Kathy Carter
 George Minot

John McLauchlin
 Mike Hellman
 Bob Sowers
 Audrey King
 Mark King

Don Carlson
 Norman Harberger
 Blaine Lotz
 Steve Birdwell
 Nikki McNamee

Absent:

Bob Gossett

Don Sigmon

Staff:

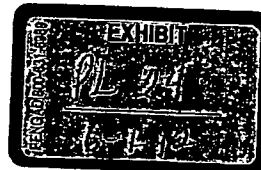
Cary Kelley

William Leitner

Jeanne Pearse

Guest:

Bob Hattersley



2. Approval of the Meeting Minutes

Board members reviewed the November 25, 2008 meeting minutes. A motion was made by Mrs. Carter to approve the minutes as submitted. Mr. Harberger seconded the motion and it was passed unanimously.

Board members reviewed the December 10, 2008 special meeting minutes. A motion was made by Mr. Hellman to approve the minutes as amended. Mr. Minot seconded the motion and it was passed unanimously.

3. Board Resolution for Legal Representation

Mr. Minot made a motion that The Board of Directors approve the payment by the Corporation of the costs and fees of legal counsel retained by Mr. Breed, Director of Security and Community Affairs, in connection with the litigation entitled "Maureen T. Coffee v. Community Services Associates, et al., Case Number 2008-CP-07-04540" including any amounts to be paid for a judgment or agreed settlement amount. The motion was seconded by Mr. Hellman and was unanimously passed.

Mr. Harberger reported that the Executive Committee had met on January 2, 2009 to discuss issues concerning the special arrangement approved by the Board in December to temporarily defer changes in the CSA officer team in view of current settlement discussions in the Sea Pines Country Club suit.

The Executive Committee concluded that:

- The interim arrangement should only continue as long as there is reasonable likelihood that the Country Club litigation will be settled promptly. It should not continue if a prolonged court fight is likely. With that in mind, the special arrangement should terminate by March 31, 2009 or sooner.
- To avoid confusion about presidential authority, the successor officer slate should not be formally elected until the termination date of the interim arrangement has been firmly established.
- In that same connection, it is understood that once the officer change takes place, the new President will have the full authority of CSA Presidents to appoint committee chairpersons. In view of that, Mrs. Jenkins plans to make no changes in committee chairmanships at this time. Mr. Hattersley, who has chaired the Maintenance committee, has agreed to continue in that post during the interim period, although - as of today - Mr. Hattersley is no longer a Board member.

The Executive Committee had also determined that no By-law amendments are necessary to accommodate these special arrangements, since the By-laws specify no rigid requirements concerning the timing of elections of officers.

Mr. Harberger then made a motion for Board approval of the following resolution to clarify the actions taken by the Board in December and to provide the necessary Board authority to move ahead with these special arrangements.

RESOLVED:

- That the Board extends the terms of the current CSA officers until March 31, 2009 or such earlier date as the Board may choose to terminate this special arrangement;
- That the Board waives Mrs. Jenkins' term limit as a Board member until March 31, 2009 or such earlier date as the Board may determine, with the proviso that Mrs. Jenkins will not be a voting member of the Board during this extension of her normal Board service; and
- That an election of officers to serve for the remainder of 2009 is to take place between fifteen (15) and thirty (30) days before the special arrangement ends.

The resolution was seconded by Mr. McLauchlin and was approved unanimously.

4. Executive Session/Review of Decisions Made Regarding Litigation

The Board went into Executive Session in regards to the Sea Pines Country Club litigation and an extended discussion was held on the settlement efforts in the suit. After reconvening Mr. Harberger made the following motion:

- That the Board authorizes CSA counsel to ask the court to vacate the existing restraining order pertaining to gate fees and to seek a summary judgment in this suit; and
- That CSA counsel be instructed to inform opposing counsel immediately that these Board-approved actions will be deferred only if opposing counsel believes a favorable response to CSA's December 18, 2008 settlement proposal is imminent.

The motion was seconded by Mr. Minot and was unanimously approved.

5. **Adjournment** - With no further business, the meeting adjourned at 1:55 p.m. The regular monthly meeting of the Board is scheduled for January 27, 2009, at 3:00 p.m. in the CSA Board Conference Room.

Respectfully submitted,


Norman Harberger
Secretary

From: Cary Kelley [mailto:csaexvp@csaadmin.com]
Sent: Wednesday, December 03, 2008 8:00 AM
To: 'Audrey King'; Bob Gossett; Bob Hattersley; Bob Sowers; Cary Corbitt; Don Carlson; 'don Sigmon'; 'George Minot';
'John McLauchlin'; 'Kathy Carter'; 'Mark King'; 'Mike Hellman'; Mike Lawrence; Norm Harberger; Patricia Jenkins; 'Paul
Aikman'; Steve Birdwell
Subject: COFFEY COMPLAINT

Ladies/Gentlemen,

Yesterday CSA was officially served the subject complaint via registered mail. Our counsel is proceeding with the strategy that the Board approved at last weeks meeting.

Sincerely,

Cary Kelley, CMCA

Executive Vice President

CSA, Sea Pines Plantation

175 Greenwood Drive

Hilton Head Island, SC 29928

(843) 671-1343

csaexvp@csaseapines.com



SPir
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**Community Service Associates, Inc.
Minutes of November 25, 2008 Board Meeting**

President Jenkins called the November meeting of the CSA Board of Directors to order at 3:00 p.m., in the CSA Conference Room. CSA attorney Walt Nester was present to discuss the suit filed by Judge Maureen Coffey. A motion was made, seconded and passed to go into Executive Session.

1. Roll Call

Present:	Pat Jenkins	Mark King	Steve Birdwell
	John McLauchlin	Kathy Carter	Paul Aikman
	Don Carlson	Norman Harberger	George Minot
	Bob Sowers	Cary Corbitt	Audrey King
	Bob Hattersley	Mike Hellman	
Absent:	Don Sigmon	Mike Lawrence	Bob Gossett
Guest:	Walt Nester, Esquire		
Staff:	Cary Kelley	Jeanne Pearse	



Mr. Nester left the meeting at 3:35 p.m. and the Executive Session ended.

Mr. Hellman made a motion to proceed as recommended by counsel in the Coffey litigation. Counsel is to contact Plaintiff's attorney and request dismissal of the lawsuit. If the request is not accepted, counsel is to file a countersuit charging frivolous litigation and violation of state statutes barring judges from filing lawsuits in response to citizen complaints of judicial misconduct. The motion was seconded by Mr. McLauchlin and was unanimously passed.

2. Approval of the Meeting Minutes

Board members reviewed the October 28, 2008 meeting minutes. A motion was made by Mrs. Carter and seconded by Mr. Hellman to approve the minutes as amended. The motion was unanimously approved.

3. Report of the Executive Vice President - Cary Kelley

a. Maintenance Committee Membership – The Maintenance Committee will lose several of its members at the end of 2008. Mr. Kelley asked Board members to solicit qualified and interested members to volunteer to serve.

b. **Proposed Acceptance of Road Maintenance** – Mr. Kelley submitted a proposed procedure describing the terms under which CSA could accept ownership and future maintenance responsibility for certain roads currently owned by individual POAs. Many residents of the affected POAs consider it unfair that they pay a full assessment to CSA, but do not qualify for community funds for road maintenance. Mr. Kelley's draft procedure was discussed. Mr. Minot then made a motion to approve the proposed policy with the deletion of Line 3. The motion was seconded by Mr. Hellman and was unanimously passed.

c. **Security Issues** – The Security report was reviewed and discussed.

d. **Engineer Road Study Update** – A brief preliminary report of the engineering firm's findings on roadway conditions was included in the Board package. Mr. Kelley hopes to have a full report by the first week of December. He also noted that it may be desirable to carry out some road re-paving projects earlier than the current schedule calls for, to take advantage of the substantial drop in asphalt and fuel prices.

e. **CSA Building Renovation Update** – Preliminary drawings for a proposed Community Center area in the CSA Building were included in the Board package. Mr. Kelley explained how the proposed improvements would affect meeting rooms, traffic flow, handicapped access and the Six Oak Cemetery section. He asked that comments and suggestions be forwarded to him.

Mr. Kelley had also provided an updated summary of the usage of the existing Community Center. It appears that all activities and events held at the Community Center could be accommodated in the proposed space in the CSA building, with the exception of some activities immediately before and during the Verizon Heritage golf tournament.

f. **Town Letter/Open Space Encroachment on Calibogue Cay Road** - Mr. Kelley referred to correspondence from the Town of Hilton Head regarding an encroachment into CSA open space by a property owner on South Calibogue Cay. Specifically, the owner has built a seawall on CSA open space, and has replaced the wetland buffer vegetation with sod – a violation of the Town's Land Management Ordinance. The Town has issued citations and these are pending in Municipal Court. Any action to remove the seawall must be initiated by CSA. Mr. Kelley reminded the Board that the neighbor adjoining this property had previously applied to CSA for a similar type of encroachment. That request was denied by the CSA Board.

Mr. Hellman made a motion to require the property owner responsible for the recent violations to remove the seawall within a time period acceptable to CSA. The motion was seconded by Mr. Carlson and was unanimously approved.

4. Finances

a. **October Financial Statements** - The Board reviewed the current financial statements. The overall financial position remains favorable. A copy of the quarterly investment summary was also included in the Board package for review.

It was noted that all the scheduled Special Projects have been completed except for the recently approved bridges. Materials for the bridge projects have been ordered.

It was reported that nine property owners have not paid their 2008 assessments. The delinquent accounts will be written off by year end.

b. Transfer of \$600,000 Into the Infrastructure Reserve Fund - The 2008 Budget called for a transfer of \$600,000 to the Infrastructure Reserve Fund at yearend if warranted by financial circumstances at the time. The Finance Committee now recommends execution of this transfer. Mr. Birdwell made a motion to transfer \$600,000 out of the Operating Account into the Infrastructure Reserve Fund. The motion was seconded by Mrs. Carter and was unanimously passed.

c. 2009 Budget Revisions - The Finance Committee recommends the following adjustments to the previously-approved 2009 budget:

- Assessment revenue adjusted to reflect actual 4.45% CPI increase.
- Cell tower revenue increased by \$2,000 based on amended agreement.
- Reserve interest income reduced by \$9,000 due to lower investment yields.
- Property replacement reserve fund increased by \$26,000 based on net changes to operating and capital budget.
- Capital purchases reduced by \$30,000 due to lower cost for GIS software.

The Board approved these changes. Discussion was held on the current status of the economy and how other businesses are reducing budgets and expenses. The Finance Committee will continue to monitor the effects of the economy on CSA's revenues and expenses, and will promptly notify Board if budgets or plans need to be changed

d. Recommendation for the CPI and Annual Assessment for 2009 - The Finance Committee recommends increasing residential property owner assessments by 4.45% for 2009, based on the CPI factor. The resulting assessment for undeveloped property will increase from \$525 to \$548, and from \$879 to \$918 for developed property. Mr. McLauchlin made a motion to approve a 4.45% increase in residential property owner assessments for 2009. The motion was seconded by Mr. Sowers and was unanimously approved.

5. Discussion Topics

a. Recommendation of the Nominating Committee for the Open Positions on the ARB - The Nominating Committee will defer its ARB nominations until the next meeting, which is likely to be a special CSA Board meeting in December.

b. Security and Maintenance Departments Standards and Goals - A draft copy of proposed goals and standards for each department were included in the Board package. Board members noted that the proposed Security goals had lots of information about expenses (new equipment, etc.) but little information about goals and standards, Board members made several suggestions which Mr. Kelley will incorporate in his revision of the goals and standards for the Security Department.

With respect to Maintenance, it was suggested that a goal be added relating to the trimming of trees along the roadways, including the removal of overhanging dead limbs. The contractors performing this work need clearer instructions and a closer oversight. It was suggested that photos be provided to the contractor with clear indications concerning what is to be done.

Anyone with further comments concerning goals should contact Mr. Kelley. These goal lists will be reviewed and updated on an annual basis.

c. **CSA Finance Committee Recommendations for 2009** – Mr. Minot, Finance Committee Chairman, referred to recent Finance Committee recommendations concerning assessment practices that are not specifically spelled out in the Covenants. These include cases where the use of a parcel, or the nature of ownership does not fit the “residential” or “commercial” categories where assessments are defined by the Covenants. The Committee seeks Board approval for the assessment practices applied in such cases – including any cases where a property is to be considered exempt from assessments. The Board determined that each recommendation must be acted on individually, and that today’s discussion should focus on those most likely to be resolved quickly. The ensuing discussion covered the following:

Recommendation 3.

This recommendation called for all property owned by the Sea Pines Museum and Forest Preserve Foundation and other tax-exempt organizations to pay an annual assessment. Several Board members spoke in opposition to the proposal. It was pointed out that the Sea Pines Museum and Forest Preserve Foundation seeks donations from property owners to make improvements and perform maintenance in the Preserve. Donors should not have their donations used to pay assessments into CSA’s general operating fund. Mr. Hellman made a motion to reject the recommendation. The motion was seconded by Mrs. Carter and a roll call vote was taken. The motion to reject the Finance Committee’s recommendation passed by a vote of 11-2. Mrs. Jenkins did not vote.

For

Mike Hellman
Kathy Carter
Norman Harberger
John McLauchlin
Bob Sowers
Bob Hattersley
Mark King
Cary Corbitt
Steve Birdwell
Paul Aikman
Audrey King

Against

George Minot
Don Carlson

Recommendation 4.

This recommendation focused on properties owned by the Marriott Ownership Resorts, Inc. The Finance Committee recommended that the annual assessments for these properties comply with the *Restatement and Modification of Non-Exclusive Easement*

and Conveyance of Rights, dated May 12, 1993. The Marriott Ownership Resort now pays the residential assessment for each unit rather than \$12.50 per week per owner as called for in the 1993 agreement. Following discussion, Mr. Minot made a motion that the CSA Board approve billing the Marriott Ownership Resort based on the \$12.50 per week per owner policy stated in the 1993 Agreement. The motion was seconded by Mr. Corbitt and was unanimously passed. Mr. Kelley will notify the Marriott Ownership Resort of the change.

Recommendation 5.

This recommendation asked that five listed properties which currently pay no assessments be required to pay an annual assessment unless they are otherwise exempt from assessments (e.g., exempt under a prior agreement). When it became clear that there was insufficient time for full discussion of this item, this and the remaining Finance Committee recommendations were tabled until another meeting. Mr. Minot, was asked to provide additional background information on the remaining recommendations prior to any further Board action.

d. **Update on the Property Inspector Position** – This item was postponed to a later meeting date.

e. **Proposed Changes to the CSA By-laws (Draft)** - A copy of proposed By-law changes was distributed to Board members. Mr. Hellman, noting the lack of time for discussion, asked that Board members direct comments or questions to him. Mr. Birdwell requested a copy of the proposals that shows both the existing and proposed language. It was agreed that all Board members should have the proposals in that form. Mr. Hellman will see that the requested document is prepared and distributed.

The Board discussed holding a special meeting in December to complete the unfinished business from today and to obtain an update on the legal issues before the holidays. Mrs. Jenkins will contact the Board members for possible dates in December.

6. Standing Committees

Standing Committee reports were included in the Board package. Mr. Carlson added that the Gate Pass Committee is still working on defining the types of events held in Sea Pines, and the criteria that might warrant waiver of gate fees.

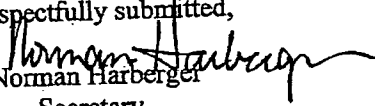
7. Executive Session

The Board went into Executive Session to discuss personnel and legal issues at 5:05 p.m.

8. Adjournment

After the Executive Session ended and with no further business, the meeting adjourned for the day. The next scheduled meeting date is Thursday, January 8, 2009, at 11:30 a.m. in the Stewart Room of the Harbour Town Conference Room.

Respectfully submitted,


Norman Harberger
Secretary

Cary Kelley

From: Securegate@aol.com
Sent: Saturday, January 24, 2009 7:32 AM
To: csaexvp@csaadmin.com
Subject: Re: COFFEY VS CSA AND GEORGE BREED: Insurers and Counsel

The only conversation that I had with anyone in the BCSO was with Toby when I showed him the letter to ensure his statement was accurate. The only conversation that I had with the Town was with Greg when I first asked him what I should do or how to proceed to stop the interference. No such statement about being "unfit" was ever made to either. As a matter of fact I said to Greg that my purpose was not to have her "disrobed" but to merely stop the inappropriate insertion into our on going crimes.

George F. Breed, Jr.

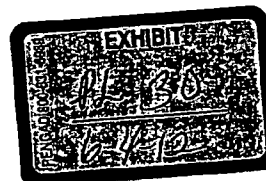
DABCHS, CHS-V, CFE, CPP, PCI
Executive Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-3000

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PLAINTIFF'S
EXHIBIT

16
BREED



9/20/2011

January 2008 Blotter/IR Reported Thefts:

<u>Date</u>	<u>Officer</u>	<u>Item(s)</u>	<u>Location</u>	<u>Disposition</u>
01/04	Haymans	Jewelery	52 Woodbine	#20080104377
01/05	Haymans	Jewelery	15 Baynard Pk	#20080105334
01/08	Jolin	Cash	18 Evergreen	Inhouse
01/23	Haynes	Nothing	47 Lawton	Request no report
01/26	Mcneill	Television	22 Black Skimmer	Report to follow
01/26	Haymans	Wallet	2258 Hert. Villas	#20080126351
01/26	Jolin	Camera/Ipod	2213 Hert. Villas	#20080126634
01/28	Armstead	Broken Window	10 Beach Lagoon	No report
01/28	Armstead	TV(x)2, Comp, Jewel	329 Grnwood Villa	#20080128591
01/29	Woods	TV(x) 4	13 Royal Tern	#20080129492

February 2008 Blotter/IR Reported Thefts:

02/01	Haymans	?	18 Bald Eagle	Report on file ?
02/13	Armstead	TV	13 Royal Tern	#20080213448
02/23	Ryan	? No IR report	45 N. Calibogue	#20080223523
02/26	Jolin	Stolen Vehicle	5 Bateau	#20080226196

March 2008 Blotter/IR Reported Thefts:

03/05	Mcneill	? No IR report	15 Wood Ibis	#20080305259
03/05	Armstead	? No IR report	2 Sandhill Cr.	#20080305542
03/06	Woods	B&E in Progress	7 Loblolly	#20080306512
03/07	Haynes	? No IR report	30 Harl. Green	#20080307820
03/08	Armstead	Wine	36 Willow Oak	#20080308411
03/10	Ryan	? No IR report	11 Willow Oak	#20080311019
03/17	Dunn	Cash	14 Grey Widgeon	#20080317166
03/18	Dunn	Burglary	13 S. Beach Ln.	#20080318302
03/19	Armstead	Cash	14 S. Beach Ln.	#20080319495
03/20	Haymans	Cash	1022 Caralel Ct.	#20080320268
03/27	Haymans	Golf Clubs	10 Oyster Ctr.	#20080327203
03/27	Mcneill	Golf Clubs	10 Laughing Gull	#20080327245
03/31	Jolin	? No IR report	40 S. Sea Pines	#20080401036
03/31	Ryan	Bicycle	1 Whistling Swan	#20080331402
03/31	Fryman	Intruder	40 S. Beach Ln.	No report



**PLAINTIFF'S
EXHIBIT**

22

April 2008 Blotter/IR Reported Thefts:

04/01 Jolin	Nothing	40 S. Sea Pines	#20080401036
04/12 Jolin	Cash,Jewelery	4 Bald Eagle	#20080412580
04/13 Ryan	Laptop	15 St Andrews	#20080413202
04/15 Hawn	? No IR report	46 Club Course	#20080415373
04/15 Jolin	Rolex	1023 Caravel Ct	#20080415670
04/16 Ryan	Radio, Phone	16 Grnwing Teal	#20080416515
04/16 Jolin	Medication	3 Fawn Ln.	#20080417030
04/18 Hawn	Bike	?	#20080418508
04/19 Hawn	Cash	2288 Heritage	No Report
04/19 Campbell	TV (x) 2	23 Wood Ibis	#20080428439
04/19 Haymans	Cash	15 Battery	#20080426387
04/20 Haynes	Laptop	1039 Caravel Ct	#20080420349
04/28 Coleman	Cash	10 Royal Tern	No Report

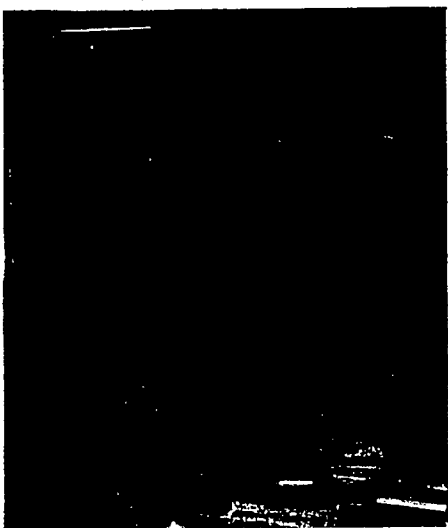
May 01-17 Blotter/IR Reported Thefts:

05/01 Ryan	? No IR report	47 Wood Bine	#20080501550
05/01 Haynes	? No IR report	74 Heritage Rd.	#20080501674
05/08 Haynes	? No IR report	31 Battery Rd.	#20080508603
05/10 Mcneill	? GPS	557 OCV	#20080510177
05/11 Dunn	Cash	27 Lands End	#20080511270
05/13 Haymans	Nothing	Beach Club	No Report
05/13 Armstead	Cash	Truffles	#20080513509
05/16 Haymans	Cash	57 Deer Run	#20080516415
05/16 Mcneill	Cash	10 Piping Plvr	#20080516462
05/16 Woods	? No IR report	1 Piping Plvr	#20080516518
5/17 Armstead	? No IR report	4 Pintail Ct.	#20080517480

January 01, 2008 – May 17, 2008 Blotter Suspicious Person(s)/Activity:

<u>Date</u>	<u>Time</u>	<u>Officer</u>	<u>Incident</u>	<u>Location</u>	<u>Disposition</u>
01/25	1824	Woods	Susp. Person hooded swet shirt seen in area. Neg. Contact	S. Sea Pines	B/M in
02/03	1108	Dunn	Susp. Person seen hiding around cars. Negative contact	Carolina Place	(x) 2 W/M
03/02	0904	Dunn	Susp. Vehicle Coffey 4 Gadwall	7 Gadwall	Belongs to
03/07	2356	Haynes	Susp. Person Gadwall reports suspicious B/M at * Gadwall peeping thru lattice work flipping lights on and off. Negative contact.	8 Gadwall	Laura Cole I
03/11	0318	Haynes	Susp. Activity reports window being opened. No one in area.	28 Lands End	Resident
04/14	1237	Haymans	Susp. Person contact.	Wildwood Rd.	Negative
04/16	2349	Haynes	Susp. Noise reports camera flash in window.	15 Battery	Victim
04/21	2230	Fryman	Prowler gave chase. Lost same.	46 Canvasback	Fryman
04/29	2136	Dunn	Prowler Report of Peeping Tom	12 Royal Tern	BCSO did
05/04	2145	Jolin	Susp. Noise Exterior and Interior. Site of Reported intruder that was in IP	74 Heritage Rd.	Checked
05/06	1414		Susp. Findings found on rear sliding door	41 S. Sea Pines.	Finger print
05/06	1526	Dunn	Susp. Activity reports finding bath room window open	6 Deer Run	Resident

SEA PINES SECURITY UPDATE



George Breed, Director of Sea Pines Security, recently announced that year to date total crime reports in Sea Pines for 2008 reflect a 33% reduction from reported incidents in 2007. He feels this is the result of the department's recent proactive enforcement programs along with coordinated efforts with the BCSO on several investigations. He cautions that these reductions are often cyclical and one or two individuals can dramatically cause an impact on Sea Pines' usually low crime rate.

It is the Security department's practice to discern when its crime reports reflect a pattern of similar geographic location and crime methodology that initiates a focused enforcement program. This process consists of gathering all pertinent data, analyzing the results and focusing the department's resources where they would most likely result in a successful closure. "A large part of this program involves community or organization involvement." The positive results are three-fold to residents:

- Knowledge alleviates fear.
- Provides the community a conduit through which they may participate.
- Assists Sea Pines Security with innumerable eyes and ears in the identification and arrest of the suspect.

"It is always important to remain alert throughout the year." With few exceptions, property thefts in Sea Pines are crimes of opportunity and access. These types of crimes include; an unlocked door, a key or access provided to a vendor when no one is at home, an open garage or items of value visible to the outside. Regardless of where you park your locked vehicle, never leave packages, golf clubs, cell phones, i-pod, purses or any valuable items in plain sight where a passing thief may be tempted.

Mr. Breed said funds have been budgeted for 2009 to supplement the existing audio/video camera systems at the gates. This security program will be expanded to include various locations throughout the community and has proven to be an invaluable tool in maintaining the "security" in Sea Pines.

"One of the many services that the Security department offers and some Sea Pines owners may not be aware of is a house check for absentee owners or owners who are on vacation." If you would like to have your home placed on the checklist, simply stop by or call 671-7170 and provide the dispatcher with the necessary information. The data is stored in our computer and checks are made on an irregular basis during the course of your absence.

He asked all owners to take pleasure in the safety and security of Sea Pines, but always remain vigilant to those who may wish to exploit careless opportunities. He also wanted to remind property owners that solicitation of any kind is not permitted in Sea Pines. If anyone should come to your door in an attempt to elicit contributions or work, try to note the person's description or type of vehicle and call Sea Pines Security immediately. He also requested property owners to keep parked vehicles in their driveway. This minor action could save a life in the event of a fire or medical emergency.

"Look out for your neighbor and always report **ANY** suspicious activity to the Security department immediately." The Security Dispatch office is always open and can be reached by calling 671-7170. ●

May 21, 2008
Cameras

Summer preparations are in place. The trolley is up and running and have the trolley hosts/hostesses prepared. We are full staffed for all summer beach positions. Pat Jenkins asked who pays for Beach Club security access control. The question/statement was offered that the cost for the Beach Club should be a shared expense with SP Resort. Mr. Breed advised that CSA absorbs all costs. Mr. Joe Fletcher stated that it should be 50/50 which would total approx. \$6,000.00 for each entity.

4th of July- all operational requirements have been met and are ready. Mr. Breed stated that we can anticipate a greater number of attendees this year given that the holiday is on Friday.

The Sea Pines Security camera system has shown itself to be an invaluable crime prevention/detection tool. This system was critical in gathering information in the recent Calvert case as well as others. Over the last decade Mr. Breed has enhanced its abilities as technology & budget allows. Mr. Breed feels very strongly that now it the time to expand our camera system to include areas of focused activity, e.g.: traffic exiting plantation, Harbour Town and Beach Club. Mr. Breed has the same contractor who installed the last upgrades working on proposal. This proposal will include future expandability and using a common platform with room to grow. Mr. Blake inquired as to whether this system is modular on nature and is it expandable? Mr. Breed stated affirmative to both questions.

Motion made for expanding & tentatively (30 days presentation) funding the camera system by Deke Deloach, seconded Bob Gossett. The committee voted unanimously to support this proposal. Mr. Breed will present the exact cost and schedule in 30 days.

Gas prices - Mr. Breed shared that although his fuel budget for YTD is relatively close to target, he has initiated the following program:

Officers are not at any time to allow their vehicles to idle unnecessarily, particularly when unoccupied.

For every one-hour of vehicular patrol, 15 minutes of foot patrol will be initiated. The officers are to park, cut off and lock the vehicle, call out to dispatch and be seen. Radios will be kept on at all times and focus on areas of current concern; South Beach T-roads & bike paths near Gadwall, Harbour Town, Beach Club, Heritage Woods, etc.

Frank Babel (bike advocacy group)- Mr. Breed shared with the committee an overview of a meeting Mr. Breed had with a Mr. Babel within the last year. In that meeting Mr. Babel described that he represented a group of bikers whose focus was to provide easy access to our bike paths for all, including persons not residing in Sea Pines. Mr. Breed further shared that Babel had recently generated an unsolicited "Report of Observations & Recommendations" that had been recently presented to the maintenance committee. Mr. Breed advised the security committee to remember that as with all such "advocacy" groups, this organization has an agenda that although initially subtle, would expose this community to any number of liabilities, loss of path enjoyment for residents as well as increased security risks.

Bike Paths Expansion in Club Course area was presented in the form of a rendering/drawing for the committee's opinion relative to safety, etc. Mr. Breed offered that given the cost versus benefit of the project, the liability & exposure relating to a bike path shrinking from 8 ft to 3 ft, the current civil suits we are currently involved in



PLAINTIFF
EXHIBIT

25

7/10
JCS
Breed

RECORDED
2008 Jul -03 09:06 AM

Sharon O. Burns
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 02741 PGS 0248-0251
FILE NUM 2008042038
07/02/2008 11:01:48 AM
REC'D BY J COORE RCPT# 550780
RECORDING FEES 10.00

Prepared By:
Jones, Patterson, Simpson & Newton, P.A.
PO Box 1938
Bluffton, SC 29910
Phone: 843.706.6111
Fax: 843.706-5667



PLAINTIFF'S
EXHIBIT

BREED

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

QUIT CLAIM DEED

NOW KNOW ALL MEN BY THESE PRESENTS, That George F. Breed, Jr. (Grantor), for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and no other valuable consideration, in hand paid at and before the sealing and delivery of these presents by Jo A. Breed (Grantee) whose address is 8 Sweet Gum Court, Hilton Head Island, SC 29928, (the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim, subject to the easements, restrictions, reservations and conditions ("Exceptions") set forth below, unto the said Grantee, her heirs and assigns forever, all my interest in and to the following described property, to wit:

SEE EXHIBIT "A" ATTACHED HERETO

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, her heirs and assigns, forever, so that neither the Grantor, nor the Grantor's heirs and/or assigns, nor any other person, claiming under the Grantor, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

ADD DMP Record 7/2/2008 03:07:31 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R550	017	00A	1139	0000	00

996
Breed / WWJN

Witness my hand and seal this 1st day of July, 2008.

Signed, Sealed and Delivered
in the presence of:

Walter L. Smith

George F. Breed, Jr.
George F. Breed, Jr.

Angel M. Fickett

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina do hereby certify that the within Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 1st day of July, 2008.

3) Angel M. Fickett
Notary Public for: SC
My Commission Expires: 7/29/09

EXHIBIT "A"

ALL that certain piece, parcel or tract of land lying and being in Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, being known as Lot Number Fifty-Four (54) on a plat of Greenwood Forest Subdivision of Sea Pines Plantation. Said property having dimensions, metes and bounds as shown on the plat thereof recorded in Plat Book 19 at Page 87, in the Office of the Register of Deeds for Beaufort County, South Carolina, and is conveyed subject all easements as shown thereon.

This being the identical real property conveyed to the within Grantor and Grantee by Deed of Harry R. Billica and Ruth G. Billica dated December 6, 1991 and recorded December 31, 1991 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 589 at Page 2197.

Tax ID # R550-017-00A-1139-0000

2011 CSA Financial Statements

Community Services Associates, Inc. Balance Sheet

For the Years Ended December 31,

Assets

Undesignated Current Assets

Cash and Cash Equivalents – Undesignated	\$4,360,981	\$4,049,706
Investments – Marketable Securities Undesignated	492,982	638,329
Due from Property Owners Less Allowance for Doubtful Accounts of \$103,142 in 2011 and \$83,329 in 2010	12,366	18,797
Due from Town of Hilton Head Island	21,357	1,850
Due from Related Parties	29,996	88,491
Guest Pass Fees Receivable	9,635	11,000
Prepaid Expenses	73,726	26,600
Total Undesignated Current Assets	<u>\$5,001,043</u>	<u>\$4,834,773</u>

Designated Current Assets

Cash and Cash Equivalents – Designated for Capital Infrastructure Replacement Fund	\$229,996	\$400,432
Investments – Marketable Securities Designated for Capital Infrastructure Replacement Fund	<u>5,639,027</u>	<u>5,061,938</u>
Total Designated Current Assets	<u>\$5,869,023</u>	<u>\$5,462,370</u>

Total Current Assets

\$10,870,066 \$10,297,143

Net Property and Equipment

Land, Buildings, Furniture, Fixtures, and Equipment
(at Cost, Less Accumulated Depreciation of \$3,547,182 in 2011
and \$3,320,162 in 2010)

\$4,574,152 \$4,473,512

Total Assets

\$15,444,218 \$14,770,655

Liabilities and Fund Balances

Current Liabilities

Accounts Payable	\$290,536	\$268,583
Accrued Property Taxes	62,057	61,026
Other Accrued Expenses	416,255	402,754
Deferred Revenue	<u>2,199,115</u>	<u>2,299,040</u>
Total Current Liabilities	<u>2,967,963</u>	<u>3,031,403</u>

Fund Balances

Undesignated	\$6,771,091	\$6,338,902
Designated for Capital Infrastructure Replacement Fund	5,869,023	5,462,370
Accumulated Other Comprehensive Loss	<u>(163,859)</u>	<u>(62,020)</u>

Total Fund Balances

\$12,476,255 \$11,739,252

Total Liabilities and Fund Balances

\$15,444,218 \$14,770,655



MEMORANDUM

TO: Cary Kelley Exec V.P.
FROM: GF Breed - Director of Security/Community Affairs
REF: Security Bridge Report
DATE: July 17, 2008

CONFIDENTIAL

The below is a bullet synopsis of occurrences of interest:

6-19 & 23-08: At approximately 2 PM, Dispatch received a report of person(s) unknown vandalizing the Greenwood Villa complex pool area (*destroying & throwing potted plants into pool, etc*). Our officers responded and located the 2 juveniles involved. After transport to the security office it was also discovered that the same juveniles had burglarized & stolen items from a Sea Pines bike rental shop. For a protracted period of time, both juveniles refused to identify themselves and wanted to be taken to juvenile hall. When the BCSO arrived for transport they did share their names and addresses (*LTR brothers 10 & 12 yrs old, living with their parents in Sea Pines*). Charging documents were issued and released to their parents for a future court date. NOTE: these incorrigible juveniles are currently suspects in other theft/vandalism cases that have occurred since. *I made contact with the PO who is renting to this family. After our discussion and in addition to other issues that he had, he has begun eviction process to have them removed.*

6-20-08: At approximately 9:00 AM 2 buses from Charleston attempted to access the gate with a resident guest pass and were correctly advised they must purchase a daily pass. These buses were from a large for-profit national chain providing summer trips/activities for kids. Later that week the buses returned for access with the appropriate check, advising they were going to the stables only. Several hours later we received a call that the buses were parked in a no parking location in Harbortown. When an officer advised the representative of the need to have the buses moved he became very argumentative, refused but then left. *The person who called in the guest pass for this kids trip is a long-term renter, using a code that was not associated with his address and has the same name & Sea Pines address as a SC registered sex offender. We have contacted the appropriate oversight agency for follow up.* For obvious reasons, it was necessary that I spoke as generically as possible when the Packet called relative to this.

4th of July: Went very smoothly. Only 2 parking citations were issued and 1 for intoxication. Due to the necessity of utilizing Lots 3 & 4 in lieu of the Stables, Sea Pines Resort increased the buses from 10-12. This increase coupled with segregating the routine daily Trolley passengers in Lots 1 & 2, kept confusion to a minimum and exiting pedestrian traffic from HT in good spirits. Approximately 600 vehicles were parked. The daily passes sold in comparison for the same 3 day holiday period of 2007 v 2008 reflected an approx. 1% difference.

7-6-08: At approximately 8:30 AM dispatch received a call of 4 vehicle break-ins in the Club Course area. All were unlocked and had small items taken (*electronics, watch and credit cards*). After we processed the scene we contacted the BCSO. A check was made on the cards and was found to have been used at Wal-Mart the same evening. There should be an arrest forthcoming after the videos are pulled.

PLAINTIFF'S
EXHIBIT

5



SPines-Birdwell CSA
Notebook 3-5-12
000602

Rental Refuse:

An on going issue within the plantation are trashcans being set out by the curb for refuse pickup. This problem is most pronounced during the high summer season with the increase in short term renters. In addition to the meeting that you & I had with a repeat offending waste company, I have sent correspondence to all rental companies and refuse collectors reiterating that we will be proactive in enforcement and will be documenting/tracking offending companies.

HURRICANE PREPARATIONS: Are well under way. Beaufort County Emergency Management is preparing Sea Pines Security primary access cards and the maintenance secondary access cards. As well, arrangements have been made for both levels of evacuation for the Security/CSA Core Group.

STORM DAMAGE: Resulting from a very localized weather front on June 23rd left portions of the Club Course area blocked to traffic as well as structural damage to several residences.

Security & Maintenance units responded to effect access to those locations cut off to emergency response units. This storm was unusually localized in the Otter Road area. Beyond these few roads there was little to no debris, vegetation or property loss elsewhere in Sea Pines.



(You didn't think I was going to close without a few illustrations, did you?)



CR 00081ED7A4 from NLETS

BEUSO480

.CR.00081ED7A4.NLETS.20080718 15:27:01

TO: BEUSO480-1239 20080718 15:27:01 00081ED7A4

FROM: NLETS-2021284 20080718 15:27:01

CR.GAIII0000

12:18 07/18/2008 27527

12:18 07/18/2008 07741 SC0070000

*OB5E0001EE

TXT

HDR/2L010B5E0001EE2QR

ATN/INVESTIGATOR FLORENCIO

HDR/2L010B5E0001EE2QR

ATN/INVESTIGATOR FLORENCIO

***** CRIMINAL HISTORY RECORD *****

Data As Of 2008-07-18

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number 645424HA6

State Id Number GA1827327A (GA)

Request Id OB5E0001EE

Purpose Code C

Attention INVESTIGATOR FLORENCIO

The information in this rap sheet is subject to the following caveats:

**THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2008-07-18

(GA; 2007-08-11)

Important! Criminal history record information is obtained one of two ways: 1) by conducting an inquiry using personal identifiers such as name and date of birth (name search), or 2) by submitting fingerprint cards to the Georgia Crime Information Center (GCIC). When conducting a name search for criminal history record information, there is a possibility that the information returned belongs to a different person with the same, or similar, identifiers. In this case, a positive match of the person whose criminal history record is sought requires submission of fingerprint cards to GCIC. When conducting a fingerprint search for criminal history record information, the information returned does, in fact, belong to the individual. In this case, conducting a name search using the individual's personal identifiers would be the same information. (GA; 2007-08-11)

When the information contained in a criminal history report causes an adverse employment or licensing decision the individual, business or agency making the decision must inform the applicant of all information pertinent to the decision. The disclosure must include information that a criminal history record check was conducted, the specific contents of the record and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision is a misdemeanor offense under Georgia law. Additionally, any unauthorized dissemination of this record or information herein also violates Georgia law. (GA; 2007-08-11)

In the event that identifiers are not clearly associated to a specific cycle, the information is most likely non-fingerprint based information received from the Department of Corrections at the time of release from incarceration. (GA; 2007-08-11)

***** IDENTIFICATION *****

Subject Name(s)
 COFFEY, OTIS MICHAEL
 COFFEY, OTIS M (AKA)
 COFFEY, OTIS (AKA)
 Subject Description
 FBI Number State Id Number
 645424HA6 GA1827327A (GA)
 Social Security Number
 356606200
 Sex Race
 Male Black
 Height Weight Date of Birth
 5'09" (2006-10-07) 150 (2006-10-07) 1968-01-16
 Hair Color Eye Color
 Black (2006-10-07) Brown (2006-10-07)
 Scars, Marks, and Tattoos
 Code Description, Comments, and Images
 TAT L LEG TATTOO, TATTOO - LEG, LEFT,
 TAT NECK TATTOO, TATTOO - NECK,
 DISC BACK MARK, DISCOLORATION - BACK,
 TAT R LEG TATTOO, TATTOO - LEG, RIGHT,
 TAT BACK TATTOO, TATTOO - BACK,
 Place of Birth
 ILLINOIS
 Caution Information
 Notice CONVICTED FELON (GA)
 ***** CRIMINAL HISTORY *****
 ===== Cycle 001 =====
 Tracking Number 00036424415
 Earliest Event Date 1991-11-21 Incident Date 1991-11-21

 Arrest Date 1991-11-21
 Arrest Case Number 139329
 Arresting Agency GA0601300 FULTON COUNTY POLICE DEPARTMENT
 Subject's Name COFFEY, OTIS MICHAEL
 Arrest Type Adult
 Charge 1
 Charge Number 00036424415001
 Charge Tracking Number 00036424415
 Charge Literal DUI - DRIVING UNDER THE INFLUENCE OF ALCOHOL
 Statute DUI - DRIVING UNDER THE INFLUENCE OF ALCOHOL
 (40-6-391(A)(1); GA)
 State Offense Code 5404
 Severity Misdemeanor

 Court Disposition (Cycle 001)
 Court Case Number 110628A
 Court Agency GA060013J FULTON COUNTY STATE COURT
 Subject's Name COFFEY, OTIS MICHAEL
 Charge 1
 Charge Number 00036424415001
 Charge Tracking Number 00036424415
 Charge Literal DUI - DRIVING UNDER THE INFLUENCE OF ALCOHOL
 Statute DUI - DRIVING UNDER THE INFLUENCE OF ALCOHOL
 (40-6-391(A)(1); GA)
 State Offense Code 5404
 Severity Misdemeanor
 Disposition (Convicted 1992-12-07; GUILTY (CONVICTED /
 ADJUDICATED))

Sentencing (Cycle 001)
Sentence Date 1992-12-07
Sentencing Agency GA060013J FULTON COUNTY STATE COURT
Charge 1
Charge Number 00036424415001
Charge Tracking Number 00036424415
Charge Literal
Sentence OTHER SENTENCE TYPE
Sentence --CREDIT WITH TIME SERVED
Sentence OTHER SENTENCE TYPE
Sentence --OTHER SENTENCE CONDITION 48HRS
Sentence FINE \$600
Sentence PROBATION 12 MONTHS
===== Cycle 002 =====
Tracking Number 00048731163
Earliest Event Date 1993-02-10 Incident Date 1993-02-10

Arrest Date 1993-02-10
Arrest Case Number 139329
Arresting Agency GA0601300 FULTON COUNTY POLICE DEPARTMENT
Subject's Name COFFEY, OTIS MICHAEL
Arrest Type Adult
Charge 1
Charge Number 00048731163001
Charge Tracking Number 00048731163
Charge Literal DANGEROUS DRUGS (FREE TEXT)
Statute DANGEROUS DRUGS (FREE TEXT) (NOT FOUND; GA)
State Offense Code 3599
Severity Unknown

Court Disposition (Cycle 002)
Court Case Number 129862A
Court Agency GA060013J FULTON COUNTY STATE COURT
Subject's Name COFFEY, OTIS MICHAEL
Charge 2
Charge Number 00048731163002
Charge Tracking Number 00048731163
Charge Literal VIOLATION GA CONTROLLED SUBSTANCE ACT
Statute VIOLATION GA CONTROLLED SUBSTANCE ACT
(16-13-30; GA)
State Offense Code 3593
Severity Unknown
Disposition (Convicted 1993-06-01; GUILTY (CONVICTED /
ADJUDICATED))

Sentencing (Cycle 002)
Sentence Date 1993-06-01
Sentencing Agency GA060013J FULTON COUNTY STATE COURT
Charge 2
Charge Number 00048731163002
Charge Tracking Number 00048731163
Charge Literal
Sentence OTHER SENTENCE TYPE
Sentence --PAYMENT OF FINE
Sentence FINE \$300
Sentence SUSPENDED SENTENCE 12 MONTHS
===== Cycle 003 =====
Tracking Number 00058273154
Earliest Event Date 1994-11-14 Incident Date 1994-11-14

Arrest Date 1994-11-14
Arrest Case Number 139329
Arresting Agency GA0601300 FULTON COUNTY POLICE DEPARTMENT
Subject's Name COFFEY, OTIS MICHAEL
Arrest Type Adult
Charge 1
Charge Number 00058273154001
Charge Tracking Number 00058273154
Charge Literal VIOLATION GA CONTROLLED SUBSTANCE ACT
Statute VIOLATION GA CONTROLLED SUBSTANCE ACT
(16-13-30; GA)
State Offense Code 3593
Severity Unknown

Court Disposition (Cycle 003)
Court Case Number 166194A
Court Agency GA060013J FULTON COUNTY STATE COURT
Subject's Name COFFEY, OTIS MICHAEL
Charge 2
Charge Number 00058273154002
Charge Tracking Number 00058273154
Charge Literal MARIJUANA-POSSESS LESS THAN 1 OZ.
Charge Description C/F VGCSA
Statute MARIJUANA-POSSESS LESS THAN 1 OZ. (16-13-2(B);
GA)
State Offense Code 3514
Severity Misdemeanor
Disposition (Convicted 1996-05-16; GUILTY (CONVICTED /
ADJUDICATED))

Sentencing (Cycle 003)
Sentence Date 1996-05-16
Sentencing Agency GA060013J FULTON COUNTY STATE COURT
Charge 2
Charge Number 00058273154002
Charge Tracking Number 00058273154
Charge Literal
Sentence FINE \$100
Sentence SUSPENDED SENTENCE 12 MONTHS
===== Cycle 004 =====
Tracking Number 00078802636
Earliest Event Date 2000-02-01 Incident Date 2000-02-01

Arrest Date 2000-02-01
Arresting Agency GA0600500 ROSWELL POLICE DEPARTMENT
Subject's Name COFFEY, OTIS MICHAEL
Arrest Type Adult
Charge 1
Charge Number 00078802636001
Charge Tracking Number 00078802636
Charge Literal PURCHASE, POSSESSION, MANUFACTURE, DISTRIBUTION, OR SAL
E OF MARIJUANA
Statute PURCHASE, POSSESSION, MANUFACTURE,
DISTRIBUTION, OR SALE OF MARIJUANA
(16-13-30(J); GA)
State Offense Code 3517
Severity Felony

Court Disposition (Cycle 004)
Court Case Number 260778

Court Agency GA060013J FULTON COUNTY STATE COURT
 Subject's Name COFFEY, OTIS MICHAEL
 Charge 2
 Charge Number 00078802636002
 Charge Tracking Number 00078802636
 Charge Literal MARIJUANA-POSSESS LESS THAN 1 OZ.
 Statute MARIJUANA-POSSESS LESS THAN 1 OZ. (16-13-2(B);
 GA)
 State Offense Code 3514
 Severity Misdemeanor
 Disposition (Convicted 2003-08-18; GUILTY (CONVICTED /
 ADJUDICATED))

 Sentencing (Cycle 004)
 Sentence Date 2003-08-18
 Sentencing Agency GA060013J FULTON COUNTY STATE COURT
 Charge 2
 Charge Number 00078802636002
 Charge Tracking Number 00078802636
 Charge Literal
 Sentence FEES
 Sentence OTHER SENTENCE TYPE
 Sentence --OTHER SENTENCE CONDITION ALCO/DRUG EVAL AND
 TRTMENT: FEES WAIVED FOR 3 MOS
 Sentence FINE \$600
 Sentence PROBATION 12 MONTHS

===== Cycle 005 =====
 Tracking Number 00100341183
 Earliest Event Date 2001-03-15 Incident Date 2001-03-15

 Arrest Date 2001-03-15
 Arrest Case Number 100001339
 Arresting Agency GA0280500 WOODSTOCK POLICE DEPARTMENT
 Subject's Name COFFEY, OTIS MICHAEL
 Arrest Type Adult
 Charge 1
 Charge Number 00100341183001
 Charge Tracking Number 00100341183
 Charge Literal MARIJUANA-POSSESS LESS THAN 1 OZ.
 Statute MARIJUANA-POSSESS LESS THAN 1 OZ. (16-13-2(B);
 GA)
 State Offense Code 3514
 Severity Misdemeanor

 Court Disposition (Cycle 005)
 Court Agency GA028033J CHEROKEE COUNTY STATE COURT
 Subject's Name COFFEY, OTI
 ** MESSAGE EXCEEDED 14400 CHARACTERS-HAS BEEN SEGMENTED BY NLETS **
 ** PART 1 OF 3 **



ICHR 003F5ABE46 from SCCH

BEUS0480

.ICHR.003F5ABE46.SCCH.20080718 15:26:53

TO: BEUS0480-1233 20080718 15:26:53 003F5ABE46
FROM: SCCH-5946950 20080718 15:26:53

ICHR REQUEST FOR RAP SHEET
ORI-SC0070000 FBI-645424HA6 PUR-C
ATN-INVESTIGATOR FLORENCIO

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY: CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-07/18/2008 TIME-15:34:09
REQ ORI-SC0070000 BEAUFORT CNTY SO
SID-SC00611326 FBI-645424HA6
NAME-COFFEY, OTIS MICHAEL SEX-M RACE-B
HEIGHT-509 WEIGHT-130 EYES-BRO HAIR-BLK SKIN-DRK BORN-IL
FPC-PI16100612PI07101012 HENRY-16 I 5 U OII 12
I 17 U III

PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--11/13/1987 DATE OF LAST UPDATE--03/27/2007

ADDITIONAL IDENTIFIERS	BIRTH		
NAME	DATES	MARKS	SOC SEC MISC NUM
COFFEY, OTTIS MICHAEL	01161968		235606200
COFFEY, OTIA MICHAEL			356506200
		TAT CALF	
		TAT BACK	

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
COFFEY, OTIS MICHAEL	11/01/1987
SC0070000 BEAUFORT CNTY SO	
CASE-22602	
WARR-00560KL	

ARREST CHARGE 01-MALICIOUS
INJURY TO PERSONAL PROPERTY
Y
PHOTOGRAPH AVAILABLE

WARR-B824663

ARREST CHARGE 02-BUGLARY 2ND

WARR-28147

ARREST CHARGE 03-SIMPLE POSSE
SSION OF MARIJUANA
ARREST INFO-RELEASED ON BOND
OR RECOG

COFFEY, OTIS MICHAEL 11/07/1987
SC0070000 BEAUFORT CNTY SO
CASE-22602

WARR-B943926

ARREST CHARGE 01-ASSAULT &
BATTERY, HIGH & AGGRAVATED
NATURE
PHOTOGRAPH AVAILABLE
ARREST INFO-RELEASED ON BOND
OR RECOG
COURT CHARGE 01-ASSAULT &
BATTERY, HIGH & AGGRAVATED
NATURE
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-02/12/1988

WARR-B943926

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-B944334

11/11/1987

ARREST CHARGE 01-MALICIOUS
INJURY TO PERSONAL PROPERT
Y
PHOTOGRAPH AVAILABLE
ARREST INFO-RELEASED ON BOND
OR RECOG

CIT-16-11-510(B)(3)-MISDEMEANOR
DOC-R84 WARR-B944334

COURT CHARGE 01-MALICIOUS
INJURY TO PERSONAL PROPERT
Y
COURT DISP-NON-CONVICTION;
nolle prossed
COURT DATE-07/19/1988

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-C216121

09/16/1988

ARREST CHARGE 01-CONSPIRACY
TO DISTRIBUTE MARIJUANA
PHOTOGRAPH AVAILABLE

WARR-C117527

ARREST CHARGE 02-DISTRIBUTION
OF MARIJUANA
COURT CHARGE 01-CONSPIRACY
TO DISTRIBUTE MARIJUANA
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-12/05/1988
COURT CHARGE 02-ACCOMMODATION
SALE
COURT DISP-CONVICTED;1Y SUSP;
1Y PROB
COURT DATE-12/05/1988

WARR-C216121

WARR-C117527

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-95160E

02/17/1990

ARREST CHARGE 01-DRIVING
UNDER INFLUENCE
PHOTOGRAPH AVAILABLE

WARR-00340

SC040015G CENTRAL PPP
WARR-C630071

CIT-56-5-2940(1)-MISDEMEANOR
DOC-R84 WARR-95160E

ARREST CHARGE 02-SIMPLE POSSE
SSION OF MARIJUANA
COURT CHARGE 01-POSSESSION
OF MARIJUANA
COURT DISP-CONVICTED;1Y AND
\$300 SS;300 HRS PSE AND
3Y PROBATION
COURT DATE-04/23/1990

COURT CHARGE 02-DRIVING UNDER
THE INFLUENCE 1ST OFFENSE
COURT DISP-CONVICTED;\$287 OR
30 DAYS
COURT DATE-02/28/1990

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-04748JN

06/30/1990

WARR-04748JN

ARREST CHARGE 01-DISORDERLY
CONDUCT
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-DISORDERLY
CONDUCT
COURT DISP-CONVICTED;30D
CONFINEMENT; \$137 FINE;CONFINEMENT OR FINE
COURT DATE-07/18/1990

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-08413MO

12/21/1990

WARR-08414MO

ARREST CHARGE 01-DISORDERLY
CONDUCT
PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-SIMPLE POSSE
SSION OF MARIJUANA

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-C888447

03/25/1991

CIT-44-53-370
WARR-C888447

ARREST CHARGE 01-SIMPLE POSSE
SSION MARIJUANA 2ND
PHOTOGRAPH AVAILABLE

COURT CHARGE 01-SIMPLE POSSES
SION OF MARIJUANA 2ND
COURT DISP-CONVICTED;1Y SUSPE
NDED
COURT DATE-06/18/1991

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-05605QO

07/13/1991

ARREST CHARGE 01-DISORDERLY

WARR-05605QO

CONDUCT
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-DISORDERLY
CONDUCT
COURT DISP-CONVICTED;FORFEITE
D \$137
COURT DATE-07/24/1991

COFFEY, OTIA MICHAEL
SC0400000 RICHLAND CNTY SO
WARR-D157723 @

07/26/1991

ARREST CHARGE 01-PEEPING TOM

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
WARR-D195354

01/27/1992

WARR-D195353

ARREST CHARGE 01-BURGLARY 1ST

WARR-D195352

ARREST CHARGE 02-BURGLARY 1ST

WARR-D195351

ARREST CHARGE 03-BURGLARY 1ST

WARR-D195354

ARREST CHARGE 04-BURGLARY 1ST

WARR-D195353

ARREST CHARGE 05-GRAND LARCEN
Y

WARR-D195352

ARREST CHARGE 06-GRAND LARCEN
Y

WARR-D195351

ARREST CHARGE 07-GRAND LARCEN
Y

DOC-92GS0700488 WARR-D195353

ARREST CHARGE 08-GRAND LARCEN
Y

DOC-92GS0700482 WARR-D195354

COURT CHARGE 01-BURGLARY
FIRST
COURT DISP-NON-CONVICTION;
DISMISSED

DOC-92GS0700484 WARR-D195352

COURT DATE-04/20/1992
COURT CHARGE 02-GRAND LARCENY
COURT DISP-NON-CONVICTION;
DISMISSED

DOC-92GS0700486 WARR-D195351

COURT DATE-04/20/1992
COURT CHARGE 03-BURGLARY 1ST
COURT DISP-NON-CONVICTION;
DISMISSED

COURT DATE-04/20/1992
COURT CHARGE 04-GRAND LARCENY
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-04/20/1992

COFFEY, OTIS MICHAEL
SC0070000 BEAUFORT CNTY SO
CASE-22602
ATN-070500027581
WARR-46811CM
CIT-16-11-610-UNCLASSIFIED

12/10/2004

ARREST CHARGE 01-TRESPASSING
OFFENSE DATE-12/10/2004

END OF PAGE

01 - PAGE 02 TO FOLLOW



3 YEAR DRIVER RECORD



Customer No: 22754725

Driver License No: 8676540

Name: COFFEY, OTIS

Address: 4 GADWALL RD

City: HILTON HEAD

County: BEAUFORT

DOB: 01/16/1968

State: SC

Zip: 299280000

Sex: M

Driver Training: Y

Status - DL: NO SUSPENSION

CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
DL	D	Duplicate	12/20/2007	01/16/2016	11/22/1995	N	N
Prior							
DL	D	Renewal	01/31/2006	01/16/2016	11/22/1995	N	N
DL	D	Renewal	01/04/2001	01/16/2006	11/22/1995	N	N
DL	D	Duplicate	05/17/2004	01/16/2006	11/22/1995	N	N

Point Summary

Total Current Points: 0

Driver Credit: -0

Adjusted Current Points: 0

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 06/19/2006

Ticket#: 46542DN

Suspension End: 12/20/2007

Causal: 03/11/2006

Post: 05/30/2006

Ticket Paid: 12/20/2007

Compliance Received: 12/20/2007

ACD: D56 Court Name: HARDEEVILLE MUNICIPAL COURT

Court Address: PO BX 582

City: HARDEEVILLE

State: SC

Zip: 29927

Phone No: 843-784-3366

3 YEAR DRIVER RECORD

Customer No: 22754725
Name: COFFEY, OTIS

Driver License No: 8676540

VIOL: 441 - Speeding more than 10 mph but LT 25 mph
Violation: 03/11/2006 **Conviction:** 04/17/2006
ACD: S92 **Conviction Loc Ref:**
Conviction State: SC
Actual Speed: 57 **Posted Speed:** 45
Recd: 05/08/2006 **Post:** 05/26/2006
Conviction Reference:
Court Type: MUN
Violation Points: 4 **Current Points:** 0

VIOL: 441 - Speeding more than 10 mph but LT 25 mph
Violation: 05/26/2005 **Conviction:** 12/19/2005
ACD: S92 **Conviction Loc Ref:**
Conviction State: GA
Actual Speed: 66 **Posted Speed:** 45
Recd: 02/17/2006 **Post:** 03/16/2006
Conviction Reference:
Court Type: MAG
Violation Points: 4 **Current Points:** 0

VIOL: 441 - Speeding more than 10 mph but LT 25 mph
Violation: 06/16/2004 **Conviction:** 12/13/2004
ACD: S92 **Conviction Loc Ref:**
Conviction State: GA
Actual Speed: 92 **Posted Speed:** 70
Recd: 11/14/2005 **Post:** 11/22/2005
Conviction Reference:
Court Type: MAG
Violation Points: 4 **Current Points:** 0

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 09/26/2005
Causal: 05/29/2005
Ticket Paid: 12/19/2005
ACD: D56 **Court Name:** RECORDER'S COURT
Court Address: 133 MONTGOMERY ST
City: SAVANNAH **State:** GA **Zip:** 31499
Phone No: 912-652-7425
Ticket#: 2195819
Suspension End: 12/19/2005
Post: 09/06/2005
Compliance Received: 12/19/2005

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 09/26/2005
Causal: 05/29/2005
Ticket Paid: 12/19/2005
ACD: D56 **Court Name:** RECORDER'S COURT
Court Address: 133 MONTGOMERY ST
City: SAVANNAH **State:** GA **Zip:** 31499
Phone No: 912-652-7425
Ticket#: 2195820
Suspension End: 12/19/2005
Post: 09/06/2005
Compliance Received: 12/19/2005

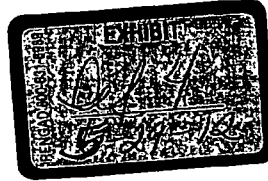
End of Report



ADMINISTRATIVE OFFICE
OFFICE (843-) 671-1343
FAX (843) 671-4027
www.csaseapines.com

June 6, 2008

Commission on Judicial Conduct
1055 Sumter Street
Room 111
Columbia, SC 29201



Re: Judge Maureen T. Coffey
Town of Hilton Head Island-Municipal Court

To the members of the Judicial Conduct Commission:

This is a letter of complaint regarding previous and ongoing conduct of Judge Maureen T. Coffey, Town of Hilton Head Island-Municipal Court. There is a pattern of reactive and overt actions that have/are undermining the criminal justice process. For the reasons that will be outlined below, it is apparent that Judge Coffey has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts & criminal justice procedure. This conduct was/is pervasive and invasive in nature, and directly results in Judge Coffey's inability to maintain the impartiality so necessary to the successful balance of our legal system.

Presently I have the responsibility of serving as the Director of Security & Community Affairs for Sea Pines, Hilton Head Island. In total, I have more than 30 years in a variety of capacities that include Law Enforcement & U.S. Government service in the Greater Washington, DC area. My present position oversees a staff of approximately 50 officers and support staff whose primary concern is the public safety, security and law enforcement for our community of 25,000 to 75,000 residents and visitors. This responsibility includes not only the public at large but extends to the certified officers charged with this enforcement.

1)

During the last several months of 2004 our community was the victim of a rash of burglaries, thefts and residential break-ins. After an exhaustive investigation by the Beaufort County Sheriffs Office, the primary suspect was identified as OTIS COFFEY (*sibling of Judge Coffey*). Prior to and since, this suspect had/has more than a passing familiarity with many law enforcement and parole & probation departments in several jurisdictions. During the course of these burglaries my department began a process of saturation patrols in the areas that the pattern dictated were of greatest exposure. On 12-10-04 at approx. 6 AM Otis Coffey's vehicle was reported to have backed into the driveway of a person unknown to him well off the main roadway and had exited his vehicle. Our officers & the BCSO responded. Otis Coffey eventually appeared in another vehicle in the company of his father (*Michael Coffey-deceased*). At that time Otis Coffey was lawfully arrested for trespassing. On the scene, Mr. Michael Coffey (*father of Judge & Otis Coffey*) attempted to insert himself into the arrest process and then proceeded to call Judge Coffey via cell phone and presented the phone to the on scene supervisor.

Sometime after this arrest Capt Toby McSwain-BCSO had a meeting with Judge M. Coffey and advised her that Otis was the prime suspect in a rash burglaries occurring over the previous several months. Judge Coffey stated to Capt. McSwain that she was "going to get him out of town", or words to that effect. From the date of that arrest and after that statement, our burglaries ceased.

From the date of December 10, 2004 the burglaries plaguing the community of Sea Pines ceased.

2)

Several months ago (Feb to May 2008) our community again was the victim of a rash of burglary cases. The route of travel, target homes, times, dates and M.O. were very similar (almost exact) to the cases of approx 3 1/2 years ago where Otis Coffey was the primary suspect. It was at about that time that it was learned that Otis Coffey had returned to this community at approximately the same time frame as the first burglary. I instructed the late shift patrols to focus in the areas of pronounced exposure and that fit the on going and familiar pattern. On May 20 around midnight one of our officers observed the suspect dressed in black traveling on a bike (our community does not offer any type of bike path or roadway lighting, nor is it permitted). The suspect was confronted & identified by our officer, at which time he rode off before he could be detained. A radio call was made to another officer who pulled his vehicle to within eyesight of the suspects home. Approximately 15 min. later that officer observed a suspect matching the same description run into the home and the lights were cut off. Our officers along with BCSO responded to the home where the owner answered the door (Ann Coffey-mother of Judge Coffey & Otis). She stated that she was home alone, no one was there and that Sea Pines Security was always trying to pin something on her son.

We continued our 24-hour patrol saturation process in the general area of the break-ins. On May 23 at approximately 5:30 PM one of my patrol officers (retired Indiana Police Officer-new hire) observed a person unknown to him (Judge Maureen Coffey) walking outside on the street of the Coffey residence and offered a pleasantries. Judge Coffey replied, "We needed to quit harassing him". The officer stated that he did not know what she was referring to. She replied, "She was the Judge for the Town of Hilton Head Island". The officer said that he had never met her nor was he aware of who she was and that he was new to the area. Judge Coffey stated, "that she would go see Chief Breed but did not have the time. Further that she does not know if he is guilty or not and that she was going to have him moved out".

From the date of May 20, 2008 the community of Sea Pines has not had one burglary or report of break-in.

3) On May 21, 2008 one of our patrol officers found a vehicle parked in the roadway in front of 4 Gadwall Rd. (Coffey residence). The vehicle was found to be registered to a Michael Coffey (deceased). Several attempts were made via phone and in person at 4 Gadwall to have the vehicle moved from the road

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Coffey
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with no response. After approx. 1 hour a tow vehicle responded at which time both Otis Coffey & Ann Coffey emerged from the home. The officer issued Mrs. Coffey a parking citation. During this process Mrs. Coffey asked the officer if he was new to the department. The officer stated that he had been employed here for many years. Mrs. Coffey then stated "You do know who the judge is don't you....my daughter".

CANON 1
A JUDGE SHALL UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY

CANON 2
A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN
ALL OF THE JUDGE'S ACTIVITIES

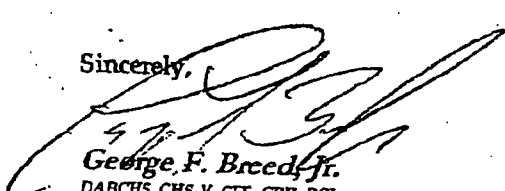
CANON 3
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND
DILIGENTLY

This complaint is the result of much serious, sober and deliberate examination and contemplation. In my many years of public service, this is the first time that I have generated correspondence such as this. It is also however, the first time that I have been faced with such concerns. I am most profoundly aware of the possible effect of this correspondence in as much as Judge Coffey is the only Municipal Court Judge for Hilton Head Island and as such is the only judicial conduit available to my officers for their numerous traffic and criminal cases. Nonetheless, my alarm for this community and the responsibility for its safety & security is much greater.

I believe that Judge Coffey's inability to remove and insulate herself from personal relationships and overt involvement both past and present have caused her to insert herself in these scenarios to the detriment of the community at large. Further, it has manifested itself and caused her to engage in conduct prejudicial to the effective and expeditious administration of the business of the courts and criminal justice process. In summary, as a result of Judge Coffey's actions, she has given the distinct and transparent appearance of bias and partiality, and is not able to be a neutral and detached arbiter of the many cases that have been and will be pending before her.

If I can provide any additional information that you require please do not hesitate to contact me.

Sincerely,


George F. Breed, Jr.
DABCHS, CHS-V, CFE, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-3000

Coffey
000184

C. RUSSELL KEEP, III

ATTORNEY

SUITE 303, WATERSEDGE

SHELTER COVE HARBOUR

POST OFFICE DRAWER 5877

HILTON HEAD ISLAND, SC 29938

(843) 842-6268

FAX (843) 785-8458

RECEIVED

DEC 18 2008

COMMISSION ON
LAWYER CONDUCT

December 15, 2008

Office of Disciplinary Counsel
Post Office Box 12159
Columbia, SC 29211

RE: Maureen Coffey, Esq.

Dear Sir or Madam:

Could you please tell me why Municipal Court Judge Maureen Coffey's lawsuit against a Complainant does not violate Judicial Disciplinary Enforcement Rule 13, Immunity from Civil Suits?

With warmest, personal regards, I remain

Very truly yours,

C. Russell Keep, III

CRK/sp
Enclosures

RECEIVED

DEC 18 2008

COMMISSION ON
JUDICIAL CONDUCT

RECEIVED

DEC 18 2008

OFFICE OF
DISCIPLINARY COUNSEL



C 06-2002
exp.
12-10-03

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
)
CONTRACT OF EMPLOYMENT

The Town of Hilton Head Island (hereinafter referred to as the "Town") and Maureen T. Coffey (hereinafter referred to as "Ms. Coffey") agree as follows:

1. SCOPE OF SERVICES

A. Ms. Coffey will serve as Assistant Municipal Court Judge for the Town of Hilton Head Island, South Carolina. She will at all times and to the best of her ability perform the duties of this position as set forth by the Supreme Court of South Carolina, or in the South Carolina Code of Laws, the Town's Municipal Code, and as may from time to time be outlined in a written job description or outlined orally by Town Council, which duties and responsibilities shall include but not limited to (a) act as presiding judge in jury and non-jury cases brought in the Municipal Court for the Town of Hilton Head Island, South Carolina; (b) supervise certain aspects of the operations of the Municipal Court for the Town of Hilton Head Island, South Carolina; (c) have regular and adequate communications with Town Council; (d) perform such special duties consistent with the position, which may be assigned from time to time by Town Council; (e) perform work under the supervision and direction of the Chief Municipal Court Judge; and (f) maintain effective working relationships with the Chief Municipal Court Judge, the Town prosecutor, other Town management and personnel, elected officials, jurors, plaintiffs, defendants, a variety of law enforcement personnel, attorneys, other legal professionals and the general public. All actions undertaken by Ms. Coffey in the execution of her duties, including requests from Council or the Chief Municipal Court Judge shall be consistent with the Code of Laws of South Carolina and the Municipal Code of the Town. Ms. Coffey shall not engage in any other professional or business activities which will, in the sole determination of Town Council, materially and adversely affect or interfere with employment by or performance of her services and duties to the Town, provided, however, that the foregoing shall not preclude Ms. Coffey from making business investments provided that such investments do not materially and adversely affect the performance of her duties and responsibilities hereunder.

B. Ms. Coffey shall not be engaged in the private practice of law during the term of this contract. Ms. Coffey shall be permitted to complete any outstanding cases i.e. immigration or family court cases for which she was retained prior to the commencement of this contract.



2. **CONSIDERATION**

A. **SALARY**

The Town shall pay an annual salary of Thirty-Five Thousand Dollars (\$35,000.00) in equal bi-weekly installments for part-time employment (25-30 working hours per week). This salary may be increased by the Town at any time, with or without a performance review, but neither the initial salary level nor any increased salary level may be decreased unless and then only to the same percentage extent that the compensation levels of a majority of the Town's employees are reduced.

B. **BENEFITS**

The Town shall reimburse Ms. Coffey for private health and dental insurance premiums up to an amount consistent with what the Town pays for regular full-time "Employee and Children" Health and Dental coverage.

Ms. Coffey shall receive or have available to her not less than the benefits provided or made available to the Town's other regular part-time employees.

3. **LIABILITY INSURANCE**

Ms. Coffey will be covered by a comprehensive tort liability insurance policy issued by the South Carolina Insurance Reserve Fund to the extent provided thereby.

4. **INCOME TAXES**

Ms. Coffey shall be responsible for any income taxes which may be assessed on any compensation or benefits provided in this contract or otherwise provided by the Town.

5. **TERM OF CONTRACT**

This employment contract shall be effective beginning December 11, 2001, and shall terminate December 10, 2003.

6. **TERMINATION OF EMPLOYMENT**

A. The Town shall have the right to terminate this contract without notice of further compensation in the event that Ms. Coffey personally and intentionally engages in the commission of a felony, fraud, misappropriation, embezzlement, or act constituting moral turpitude, or if Ms. Coffey engages in misfeasance or malfeasance in office.

- B. Each party shall give the other party at least ninety (90) calendar days' notice of her or its intention not to continue the employment relationship at or after the termination of this contract, or in the case of the Town, ninety (90) calendar days' payment of salary and benefits in lieu of notice or a combination of notice and payment in lieu of notice totaling ninety (90) calendar days.

7. AMENDMENT

This contract may be amended by the parties at any time, but no amendment shall be effective unless in writing and executed with the same formality as this contract. The failure of either party to insist on compliance with the contract term in the future.

8. ENTIRE AGREEMENT

This contract represents the entire agreement between the Town and Ms. Coffey and incorporates all oral or written agreements relating to her employment.

IN WITNESS WHEREOF, the parties have executed this contract this 11th day of December, 2001.

WITNESSES:

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

Chris of. Stephen

By: Thomas D. Peeples
Thomas D. Peeples, Mayor

Sherry E. Hamilton

By: Maureen T. Coffey
Maureen T. Coffey

C40-2004

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CONTRACT OF EMPLOYMENT

The Town of Hilton Head Island (hereinafter referred to as the "Town") and Maureen T. Coffey (hereinafter referred to as "Ms. Coffey") agree as follows:

1. SCOPE OF SERVICES

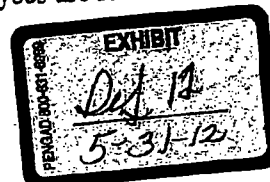
A. Ms. Coffey will serve as Assistant Municipal Court Judge for the Town of Hilton Head Island, South Carolina. She will at all times and to the best of her ability perform the duties of this position as set forth by the Supreme Court of South Carolina, or in the South Carolina Code of Laws, the Town's Municipal Code, and as may from time to time be outlined in a written job description or outlined orally by Town Council. These duties and responsibilities, performed under the supervision and direction of the Chief Municipal Court Judge, shall include but not be limited to: (a) act as presiding judge in jury and non-jury cases brought in the Municipal Court for the Town of Hilton Head Island, South Carolina; (b) supervise certain aspects of the operations of the Municipal Court; (c) have regular and adequate communications with Town Council; and (d) perform such special duties consistent with the position, which may be assigned from time to time by Town Council. All actions undertaken by Ms. Coffey in the execution of her duties, including requests from Council or the Chief Municipal Court Judge shall be consistent with the Code of Laws of South Carolina and the Municipal Code of the Town. Ms. Coffey shall not engage in any other professional or business activities which will, in the sole determination of Town Council, materially and adversely affect or interfere with employment by or performance of her services and duties to the Town, provided, however, that the foregoing shall not preclude Ms. Coffey from making business investments provided that such investments do not materially and adversely affect the performance of her duties and responsibilities hereunder.

B. Ms. Coffey shall not be engaged in the private practice of law during the term of this contract.

2. CONSIDERATION

A. SALARY

The Town shall pay to Ms. Coffey an annual salary of Forty Thousand Dollars (\$40,000.00) in equal bi-weekly installments for part-time employment (25-30 working hours per week). This salary may be increased by the Town at any time, with or without a performance review, but neither the initial salary level nor any increased salary level may be decreased unless and then only to the same percentage and extent that the compensation levels of a majority of the Town's employees are reduced.



B. BENEFITS

Ms. Coffey shall receive or have available to her not less than the benefits provided or made available to the Town's other regular part-time employees.

3. LIABILITY INSURANCE

Ms. Coffey will be covered by a comprehensive tort liability insurance policy issued by the South Carolina Insurance Reserve Fund to the extent provided thereby.

4. INCOME TAXES

Ms. Coffey shall be responsible for any income taxes which may be assessed on any compensation or benefits provided in this contract or otherwise provided by the Town.

5. TERM OF CONTRACT

This employment contract shall be effective beginning December 11, 2003, and shall terminate December 10, 2005.

6. TERMINATION OF EMPLOYMENT

A. The Town shall have the right to terminate this contract without notice of further compensation in the event that Ms. Coffey personally and intentionally engages in the commission of a felony, fraud, misappropriation, embezzlement, or act constituting moral turpitude, or if Ms. Coffey engages in misfeasance or malfeasance in office.

B. Each party shall give the other party at least ninety (90) calendar days' notice of her or its intention not to continue the employment relationship at or after the termination of this contract, or in the case of the Town, ninety (90) calendar days' payment of salary and benefits in lieu of notice or a combination of notice and payment in lieu of notice totaling ninety (90) calendar days.

7. AMENDMENT

This contract may be amended by the parties at any time, but no amendment shall be effective unless in writing and executed with the same formality as this contract. The failure of either party to insist on compliance with the contract term in the future.

8. ENTIRE AGREEMENT

This contract represents the entire agreement between the Town and Ms. Coffey and incorporates all oral or written agreements relating to her employment.

IN WITNESS WHEREOF, the parties have executed this contract this 24th day of June 2004.

WITNESSES:

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

M. Susan Blah

By: Thomas D. Peebles
Thomas D. Peebles, Mayor

Maureen T. Coffey

By: Maureen T. Coffey
Maureen T. Coffey

C59-2000

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CONTRACT OF EMPLOYMENT

The Town of Hilton Head Island, South Carolina (hereinafter referred to as the "Town") and Maureen T. Coffey (hereinafter referred to as "Ms. Coffey") agree as follows:

1. SCOPE OF SERVICES

A. Ms. Coffey will serve as Assistant Municipal Court Judge for the Town of Hilton Head Island, South Carolina. She will at all times and to the best of her ability perform the duties of this position as set forth by the Supreme Court of South Carolina, or in the South Carolina Code of Laws, the Town's Municipal Code, and as may from time to time be outlined in a written job description or outlined orally by Town Council, which duties and responsibilities shall include but not be limited to (a) act as presiding judge in jury and non-jury cases brought in the Municipal Court for the Town of Hilton Head Island, South Carolina; (b) supervise certain aspects of the operations of the Municipal Court for the Town of Hilton Head Island, South Carolina; (c) have regular and adequate communications with Town Council; (d) perform such special duties consistent with the position, which may be assigned from time to time by Town Council; (e) perform work under the supervision and direction of the Chief Municipal Court Judge; and (f) maintain effective working relationships with the Chief Municipal Court Judge, other Town management and personnel; elected officials, jurors, plaintiffs, defendants, a variety of law enforcement personnel, attorneys, other legal professionals, and the general public. All actions undertaken by Ms. Coffey in the execution of her duties, including requests from Council or the Chief Municipal Court Judge shall be consistent with the Code of Laws of South Carolina and the Municipal Code of the Town. Ms. Coffey shall not engage in any other professional or business activities which will, in the sole determination of Town Council, materially and adversely affect or interfere with employment by or performance of her services and duties to the Town; provided, however, that the foregoing shall not preclude Ms. Coffey from making business investments provided that such investments do not materially and adversely affect the performance of her duties and responsibilities hereunder.

B. Ms. Coffey shall not be engaged in the private practice of law during the term of this contract. Ms. Coffey shall be permitted to complete any outstanding cases i.e. immigration or family court cases for which she was retained prior to the commencement of this contract.

2. CONSIDERATION

A. SALARY

The Town shall pay an annual salary of Twenty-Five Thousand (\$25,000.00) Dollars in equal bi-weekly installments for part-time employment (20-25 working hours per week). This salary may be increased by the Town at any time, with or without a performance



review, but neither the initial salary level nor any increased salary level may be decreased unless and then only to the same percentage and extent that the compensation levels of a majority of the Town's employees are reduced.

B. BENEFITS

The Town shall pay private health insurance premiums for Ms. Coffey up to a maximum of Two Thousand Four Hundred (\$2400.00) Dollars per year. In no event shall Ms. Coffey receive this amount in cash if benefits are not received.

3. LIABILITY INSURANCE

Ms. Coffey will be covered by a comprehensive tort liability insurance policy issued by the South Carolina Insurance Reserve Fund to the extent provided thereby.

4. INCOME TAXES

Ms. Coffey shall be responsible for any income taxes which may be assessed on any compensation or benefits provided in this contract or otherwise provided by the Town.

5. TERM OF CONTRACT

This employment contract shall be effective beginning December 11, 2000, and shall terminate December 10, 2001.

6. TERMINATION OF EMPLOYMENT

A. The Town shall have the right to terminate this contract without notice of further compensation in the event that Ms. Coffey personally and intentionally engages in the commission of a felony, fraud, misappropriation, embezzlement, or act constituting moral turpitude, or if Ms. Coffey engages in misfeasance or malfeasance in office.

B. Each party shall give the other party at least ninety (90) calendar days' notice of her or its intention not to continue the employment relationship at or after the termination of this contract, or in the case of the Town, ninety (90) calendar days' payment of salary and benefits in lieu of notice or a combination of notice and payment in lieu of notice totaling ninety (90) calendar days.

7. AMENDMENT

This contract may be amended by the parties at any time, but no amendment shall be effective unless in writing and executed with the same formality as this contract. The failure of either party to insist on compliance with the contract term in the future.

8. ENTIRE AGREEMENT

This contract represents the entire agreement between the Town and Ms. Coffey and incorporates all oral or written agreements relating to her employment.

IN WITNESS WHEREOF, the parties have executed this contract this 11th day of December, 2000.

WITNESSES:

Lauren A. Carlin

Lauren J. Smith

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

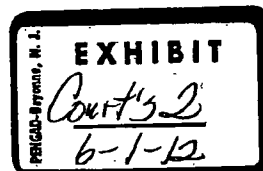
By: Thomas D. Peeples
Thomas D. Peeples, Mayor

By: Maureen T. Coffey
Maureen T. Coffey

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MAUREEN T. COFFEY,)
Plaintiff,)
v.)
COMMUNITY SERVICES ASSO-)
CIATES, INC., GEORGE F.)
BREED, JR., SEA PINES)
RESORT, LLC, and ASSOCIA-)
TION OF SEA PINES PLANT-)
ATION PROPERTY OWNERS,)
INC., AND THE ADVISORY)
BOARD,)
Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

PLAINTIFF'S ANSWERS TO FIRST
SET OF INTERROGATORIES OF
DEFENDANTS COMMUNITY SERVICE
ASSOCIATES, INC., and ASSOCIA-
TION OF SEA PINES PLANTATION
PROPERTY OWNERS, INC.



TO: The Defendants, COMMUNITY SERVICES ASSOCIATES, INC.,
and ASSOCIATION OF SEA PINES PLANTATION PROPERTY
OWNERS, INC., by and through their attorney, CELESTE T.
JONES, Esquire.

The Plaintiff, Maureen T. Coffey (herein "the Plaintiff" or "Ms. Coffey"),
submits the following Answers to the First Set of Interrogatories to Plaintiff of
Community Service Associates, Inc., and Association of Sea Pines Plantation
Property Owners, Inc. (herein "the Interrogatories"):

GENERAL OBJECTIONS

The Plaintiff objects to any and all language in the Interrogatories,
including, without limitation, the so-called "Directions and Instructions," to the
extent that such language purports to enlarge upon the rights of a party
requesting discovery or upon the obligations of a party responding to discovery,
all as set forth in Rules 26 and 33, SCRCP. Without limiting the foregoing, the

Plaintiff does not propose to provide (a) any communications between the Plaintiff and her attorneys; (b) any communications between two or more attorneys presently or formerly employed by the Plaintiff; (c) any work product of or by the Plaintiff's attorneys; or (d) any list of the items withheld as a consequence of this objection.

In addition, the Plaintiff objects to each interrogatory to the extent that it requests information in the possession of persons or entities that are not under the supervision or control of the Plaintiff, such as the Town of Hilton Head Island.

Finally, the Plaintiff objects to the extent that the Interrogatories violate Rule 33(b)(8), SCRCP, by propounding more than 50 questions, including subparts.

By answering as follows the Plaintiff intends expressly to reserve and not to waive or otherwise relinquish each of the foregoing objections.

Subject to the General Objections, the Plaintiff answers as follows:

1. Identify by full name, address, and phone number, of each person known by the Plaintiff or her counsel to have knowledge of facts which relate to this case, and indicate whether written or recorded statements have been taken from these persons.

ANSWER: Persons known or believed to have knowledge of the facts of this case follow. Recorded statements have been taken from those identified in subparagraphs (b) and (c).

(a) Maureen T. Coffey
59 Ashton Cove Drive
Hilton Head Island, SC 29928

The Plaintiff, Ms. Coffey, has knowledge of and will testify about all facts known to be at issue in this case.

(b) John A. Jolin, Jr.
The Oaks, Apartment 39
400 William Hilton Parkway
Hilton Head Island, SC 29926

Mr. Jolin, a former Sea Pines Security Officer, has knowledge about an incident where he saw an unidentified black male riding a bicycle. Mr. Jolin thereafter prepared an incident report in which he did not make a positive identification of the person on the bicycle. Telephone calls were made by George F. Breed, Jr. (herein after "George Breed" or "Mr. Breed") to Mr. Jolin—both during and after Mr. Jolin's shift—in which Mr. Breed demanded that Mr. Jolin positively identify Otis Coffey in his incident report as the bicycle-riding suspect. Mr. Jolin has knowledge of the content of those calls, as well as of the content of a second and false incident report that was prepared either by or under the direction of George Breed, in which a number of material facts in Mr. Jolin's original report were altered, including the insertion of a statement that Mr. Jolin had positively identified Otis Coffey. In addition, because Mr. Jolin could not describe Otis Coffey's appearance, Lt. Todd McNeill of Sea Pines Security gave him an old photograph of Mr. Coffey to study in case Mr. Jolin was asked for a description of the suspect while obtaining a warrant. Lt. Bill Campbell is the person who last instructed Mr. Jolin to go get a warrant, and Mr. Jolin refused. After Lt. Campbell consulted with George Breed, Mr. Jolin was sent home from work.

Mr. Jolin also has knowledge of another incident involving a stray dog which proved to be owned by the Plaintiff's son. Mr. Jolin called the telephone number on the dog's collar, which turned out to be the number of the Plaintiff.

In addition, Mr. Jolin has knowledge of persons employed by Community Services Associates, Inc. (herein "CSA"), accusing him of having a sexual relationship with the Plaintiff. The relationship was concocted in order to discredit Mr. Jolin and the Plaintiff and was utterly false.

Mr. Jolin has knowledge of the techniques employed by CSA, the recording of telephone calls, the manner in which the computer could be accessed and the persons authorized to do so, the methods of making both internal reports and those assigned a case number, as well as the details of an unlawful investigation conducted against members of the Plaintiff's family.

A recorded statement has been taken from Mr. Jolin.

(c) R. Hawn or Hahn
Present Address Unknown

Mr. Hawn, a former Sea Pines Security Officer, has knowledge of many of the same events as Mr. Jolin. He also has knowledge of the techniques and methods employed by CSA, the chain of command and the personal relationships that exist, as well as the corporate culture of Defendant, CSA.

A recorded statement has been taken from Mr. Hawn.

(d) Gregory D. DeLoach, Esquire
One Town Center Court
Hilton Head Island, SC 29928

Mr. DeLoach is an Assistant Town Manager for the Town of Hilton Head Island. He has knowledge about his receipt of the Letter dated June 6, 2011,

conversations that occurred at that time and afterwards about the contents of the letter, the dissemination of the letter and/or its contents, the Plaintiff's job status, the Plaintiff's contracts—past and present—and the Plaintiff's specific tasks as Municipal Court Judge—past, present and future. Mr. DeLoach also has or had a long relationship with George Breed, sustained by their eating lunch together about once a month.

(e) Curtis L. Coltrane, Esquire
Alford, Wilkins & Coltrane, PC
Post Office Drawer 8008
Hilton Head Island, SC 29938

Mr. Coltrane, former Assistant Town Manager for the Town of Hilton Head Island, has knowledge of Mr. DeLoach's receipt of the Letter dated June 6, 2008, as well as of the conversations that attended and followed its delivery. The latter included his conversations with Mr. DeLoach and with the Plaintiff, who sought Mr. Coltrane's assistance once she learned of the existence of the letter.

(f) Brian E. Hulbert, Esquire
One Town Center Court
Hilton Head Island, SC 29928

Mr. Hulbert, who is an attorney for the Town of Hilton Head Island, has knowledge of Mr. DeLoach's receipt of the Letter dated June 6, 2008. Although he appeared to know some of the contents of the letter, Mr. Hulbert told the Plaintiff that he had not read the letter and that Mr. DeLoach had instructed him not to help the Plaintiff in any manner because the contents of the letter were personal and not Town-related.

(g) Sherry Hamilton
3 Town Center Court
Hilton Head Island, SC 29928

Ms. Hamilton, who serves as an administrative assistant in the Town's municipal court, on June 26, 2008, opened the letter from the Commission on Judicial Conduct which forwarded to the Plaintiff the Letter of June 6, 2008, from George Breed. She discussed the letter briefly with the Plaintiff at that time. Ms. Hamilton also engaged in the conversation with John Jolin more fully described in subparagraph 1(b) above.

(h) Steve Riley (and others)
One Town Center Court
Hilton Head Island, SC 29928

Mr. Riley, as the Town Manager for the Town of Hilton Head Island, is believed to have seen the Letter of June 6, 2008, and to have knowledge of its contents. So also are one or more Town Councilmen, the then-Mayor and a number of Town employees.

(i) George F. Breed, Jr.
Community Services Associates, Inc.
175 Greenwood Drive
Hilton Head Island, SC 29928

Mr. Breed has knowledge of the preparation and dissemination of his defamatory letter dated June 6, 2008. Criticized for not solving reported crimes in Sea Pines Plantation, Mr. Breed seized upon a potential culprit to use as a scapegoat, Otis Coffey. When his own security's unlawful investigation of Mr. Coffey, as well as the lawful investigation by the Beaufort County Sheriff's Office, failed to yield any evidence of probable cause, Mr. Breed decided to fix the blame for his company's failure on the Plaintiff. He and others thereupon concocted accusations that the Plaintiff was biased and that she had interfered in

the investigation of her brother. Not a single objective fact in George Breed's Letter of June 6, 2008, supports either of those conclusions.

However, the letter led directly to another outcome desired by Mr. Breed and the Defendants: The Plaintiff was required to recuse herself from hearing cases brought by Sea Pines Security.

In addition to assuring that copies of his letter were passed out and discussed at meetings of the CSA Board of Directors, Mr. Breed is believed to have engaged in verbal and written defamation before, during and after CSA meetings, as well as meetings of the so-called "Security Committee."

Besides discussing the contents of his letter as described above, Mr. Breed was responsible for it making its way into the hands of the Plaintiff's employer. He also accused Mr. Jolin and the Plaintiff of having a sexual relationship.

Mr. Breed has knowledge of the facts and events described in subparagraphs 1(b), 1(j), 1(k) and 1(l).

(j) Cary Kelley
Community Services Associates, Inc.
175 Greenwood Drive
Hilton Head Island, SC 29928

Mr. Kelley has knowledge of the dissemination and contents of Mr. Breed's defamatory letter, as well as written and oral defamation that occurred before, during and after meetings of the CSA Board and meetings of the board of the Association of Sea Pines Plantation Property Owners, Inc. (herein "ASPPPO"), both of which were attended religiously by Mr. Kelley. Mr. Kelley

also is believed to have made defamatory statements about the Plaintiff at his "Coffee with Cary" meetings with residents of Sea Pines Plantation.

(k) CSA Employees
Community Services Associates, Inc.
175 Greenwood Drive
Hilton Head Island, SC 29928

CSA Employees with knowledge are: Tracy McNeill, Todd McNeill, Bill Campbell, Corporal F. Fryman, Stephen Wright, Bobbie Martin and Randy Woods.

(l) CSA Board Members
175 Greenwood Drive
Hilton Head Island, SC 29928

The CSA Board of Directors, is composed of (a) persons who must be selected from among directors or employees of an autonomous, for-profit corporation, Sea Pines Resort, LLC; and (b) persons who must be appointed from directors or employees of an autonomous, not-for-profit corporation, ASPPPO; as well as (c) directors who are not affiliated with any entity except CSA.

Because of this unique composition, the defamation occurring at the CSA meetings was published to third parties, whose agents and servants then repeated variations of the same defamation to other third parties.

The CSA Board met on the following dates, all of which are believed to have been occasions for the spreading of defamatory remarks about the Plaintiff:

May 20, 2008	October 8, 2008
June 24, 2008	October 14, 2008
July 22, 2008	November 25, 2008

August 26, 2008

December 10, 2008

September 23, 2008

January 8, 2009

(m) ASPPPO Board of Directors
175 Greenwood Drive
Hilton Head Island, SC 29928

The ASPPPO Board of Directors met on the following dates, all of which are believed to be occasions for the spreading of defamatory remarks about the Plaintiff:

May 8, 2008

October 9, 2008

June 12, 2008

November 13, 2008

July 12, 2008

December 11, 2008

August 14, 2008

January 8, 2009

September 11, 2008

Additionally, ASPPPO sponsored a series of open forum meetings for Sea Pines property owners known as "Coffee with Cary," which are also believed to have been occasions for the spreading of defamatory remarks about the Plaintiff.

(n) Steve Birdwell
Cary Corbitt
Sea Pines Resort, LLC
32 Greenwood Drive
Hilton Head Island, SC 29928

Employees of Sea Pines Resort, LLC, these individuals were exposed to defamatory remarks about the Plaintiff before, during and after the meetings described in subparagraphs 1(j) and 1(l) above. It is also believed that one or more of them either disseminated George Breed's letter or made its contents known to the general public. Concerned about the negative publicity resulting

from the failure to apprehend persons who supposedly were engaged in crime in Sea Pines, Mr. Birdwell is believed to have pressured Mr. Breed to take some action to address that and other "security matters." Messrs. Birdwell and Corbitt also knew that the "investigation" of Otis Coffey and his mother was conducted in violation of the laws of South Carolina.

(o) Matt Harvey
Exact Address Unknown
Jacksonville, FL

Mr. Harvey has knowledge about the statements that the Plaintiff and John Jolin had a sexual relationship, as described in the Answer to interrogatory No. 12 below.

(p) Beaufort County Sheriff's Officers
2001 Duke Street
Beaufort, SC 29902

A number of employees of the Beaufort County Sheriff's Office (herein "BCSO") have knowledge about the investigation of Otis Coffey and/or the reputation of the Plaintiff, including, without limitation, Meredith Florencio, Brian Baird, Sgt. Blackmon, Sgt. Norton and Officer Murphy.

(q) C. Russell Keep, III, Esquire
Post Office Drawer 5857
Hilton Head Island, SC 29938

Mr. Keep has knowledge of his accusation of bias against the Plaintiff, as described in the Answer to the Interrogatory No. 13. He is also believed to have knowledge of many other facts set forth in subparagraph 1(i) above.

(r) Physicians

One or more of the physicians and medical providers described in the Answer to Interrogatory No. 14 may be called as a witness.

2. Identify by full name, address and phone number, all Plaintiff's immediate family members, including parents and siblings.

ANSWER: Members of the Plaintiff's family are set forth as follows:

- (a) Ann T. Coffey
4 Gadwall Road
Hilton Head Island, SC 29928
(843) 671-5746
- (b) Katie M. Coffey
4 Gadwall Road
Hilton Head Island, SC 29928
(843) 671-5746
- (c) Michael P. Coffey
431 N. Elmwood
Oak Park, IL 60302
(708) 445-1352
- (d) Christopher M. Coffey
1112 Woodard Ave.
Beaufort, SC 29902
(843) 476-2915
- (e) Otis Coffey
454 Live Oak Walk
Bluffton, SC 29910
(843) 298-0868
- (f) Avraham Edri
163/5 Derekh Mezada
Beer Sheva, Israel 84105
- (g) Zachary, Lily & Ava Edri
59 Ashton Cove Dr.
Hilton Head, SC 29928
(843) 686-2261

3. For each person known by Plaintiff or her counsel to have knowledge of facts which relate to this case, set forth a summary of the facts known or observed by that person which relate to this action.

ANSWER: Please see the Answer to Interrogatory No. 1, specifically in subparagraphs 1(a) through (r), as well as the Answer to Interrogatory No. 14.

4. Please describe and list all documents, photographs, plats, or sketches which the Plaintiff intends to introduce into evidence at trial, indicating the title, date, and name and residential address and phone number of the person who prepared every such document.

OBJECTION: This interrogatory seeks a list of documents that is subject to the attorney's work product privilege. It also seeks to impose the burden upon the Plaintiff of making a massive list, when the Defendant has elected to furnish her own business records, under Rule 33(c), SCRCP, and the answer may be derived or ascertained from the items produced in response to the Discovering Defendants' Request for Production. Accordingly, the Interrogatory constitutes oppression, undue burden and expense.

ANSWER: The Plaintiff's counsel has not determined what evidence will be introduced at trial. Prior to trial, the Plaintiff will provide notice to the Defendants of such exhibits as the Plaintiff intends to introduce as part of her case in chief, provided such notice is required by an applicable rule, order or agreement among the parties.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering to have been sustained by Plaintiff.

ANSWER: Damages incurred by the Plaintiff are the following: (a) Damage to her reputation (unknown at this time); (b) loss of present and future income (\$200,000.00); (c) attorney's fees and costs to clear the Plaintiff's name (\$11,000.00); (d) medical costs for treatment (\$7,478.00); (e) increased baby sitting charges (\$800.00); (f) transportation costs (\$107.24); and, (g) pain and suffering.

6. List the names, addresses, and expected testimony of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case.

ANSWER: The Plaintiff has not retained an expert, and, thus, at present she has no information that is responsive. The Plaintiff, nevertheless, reserves that right to employ an expert in the future, in which event she will supplement this answer as may be necessary.

In addition, one or more fact witnesses may be qualified as an expert. The physicians and other medical providers identified in the Answer to Interrogatory No. 14 may well be called. At this point, however, the Plaintiff does not know the subject matter about which any fact witness might be requested to testify as an expert.

7. Identify any lawsuit or administrative proceeding in which the Plaintiff has been or currently is a party or respondent, including the name of each, nature of each, where filed, date of filing, docket number, date of trial or disposition, and ultimate disposition thereof.

ANSWER: The Plaintiff is not currently involved in any lawsuit as a party except this one.

The Plaintiff, as a party, is not currently involved in any administrative proceeding. Her only experiences in that regard are the two matters brought before the Commission on Judicial Conduct, as described in the Answer to Interrogatory No. 13. The Plaintiff's entire response to that interrogatory, including the objection, is adopted and incorporated by reference into this response to Interrogatory No. 7.

The Plaintiff has previously been a party to five lawsuits—three of which are domestic relations cases:

(a) She was the plaintiff in a divorce action against her former husband, Brett David Mouser, that was brought in the Family Court for the Fourteenth Judicial Circuit (herein "the Family Court"), with a Decree of Divorce having been entered on April 19, 1999 (Case No. 1997-DR-07-01114).

(b) She was a party plaintiff in a termination of parental rights and adoption proceeding that was brought in the Family Court against Mr. Mouser, with an Order granting the relief sought having been entered on June 8, 2001 (Case No. 2000-DR-07-01666).

(c) She was the plaintiff in a separate maintenance action that was brought in the Family Court against her current husband, Avraham Edri, with a Decree of Separate Maintenance and Support having been entered on April 11, 2007 (Judgment Roll No. 2007-CP-07-01091).

(d) She was a defendant in an action in the Court of Common Pleas for Beaufort County brought by Wachovia Bank, N.A., against her mother, Ann T. Coffey, and the other heirs and distributees of her father, wherein the Plaintiff sought unsuccessfully to foreclose a mortgage (Case No. 2006-CP-07-01655). The Plaintiff herein, Maureen Coffey, was dismissed from Wachovia's action before it went to judgment, which was adverse to Wachovia. An appeal followed, which was also unsuccessful. **Wachovia Bank, N.A. v. Ann T. Coffey**, 389 S.C. 68, 689 S.E.2d 244 (S.C. App. 2010).

(e) She was named a co-defendant in an action brought in Magistrate's Court in Beaufort County by Gray's Heating and Air Conditioning against Fiesta Grille, Inc., evidently because the Plaintiff herein was the registered agent for the Fiesta Grille. The case went to judgment on or about April 13, 1998, in the amount of \$1,213.00, after which the judgment was paid and cancelled by the Fiesta Grille on or about April 8, 1999, before the Plaintiff herein even learned about the case (Case No. 9701158).

8. Please describe Plaintiff's educational background including, school, date of graduation or degree, and degree earned (high school through Plaintiff's highest level of education).

ANSWER: The Plaintiff has attended the following educational institutions:

St. Ignatius College Prep
1076 W. Roosevelt Road
Chicago, IL

Graduated in May of 1983

Vanderbilt University
Nashville, TN

B.A. May 8, 1987

George Mason University
Fairfax, VA

J.D. May 22, 1993

9. Please list every job Plaintiff has held since college, including the name of the organization, the address of the organization, the name and address of Plaintiff's supervisor, the dates of employment, reason for leaving, and beginning and ending salary at each location.

ANSWER: The Plaintiff's job history is set forth below. Her Curriculum Vitae, as of the date of her application to become a municipal judge in 2000, is included in the Response to the Discovering Defendants' Request to Produce at Bates No. 00054.

<u>Organization</u>	<u>Dates</u>	<u>Position/Wage</u>	<u>Supervisor</u>
ANEC, Washington, DC	1/88-4/88	Temp \$8-12/Hour	Mary
Congressman Mike Bilarakis Washington, DC	04/88-11/88	Congressional Aide \$12,000.00	Mike Bilarakis
Congressman Jack Fields Washington, DC	11/88-07/90	Congressional Aide \$20,000.00	Bob Ferguson
Kline & Joseph, P.A. Washington, DC	01/91-05/91	Intern: General Litigation \$7-10/Hour	Unknown
U.S. Department of Treasury Washington, DC	05/91-08/92	Intern: Contracts \$7-10/Hour	Unknown
Epilepsy Foundation of America Washington, DC	01/02-08/92	Intern: ADA \$8-12/Hour	Unknown

Public Defender's Office Alexandria, VA	01/93-05/93	Intern: Criminal Law Unpaid	Marty Lester
Powell, Goldstein, Frazier & Murphy Washington, DC	08/92-05/93	Intern: Antitrust \$8-10/Hour	Anne Bingaman
The Quarterdeck 160 Lighthouse Road Hilton Head Island, SC 29928	03/94-08/94	Waitress \$400.00/Week	Unknown
Wilson & Coltrane, P.A. 18 Executive Park Road Suite 1 Hilton Head Island, SC 29928 (843) 842-5500	08/94-10/96	Associate ca. \$25,000.00	Curtis Coltrane
Law Office of Maureen T. Coffey	10/98-12/00	Attorney \$8-12,000.00/Year	N/A
Town of Hilton Head Island One Town Center Hilton Head Island, SC 29928	12/00-05/05	Associate Municipal Court Judge \$25,000.00-\$40,000.00.	Greg Deloach
Town of Hilton Head Island One Town Center Hilton Head Island, SC 29928	05/05-Present	Municipal Court Judge \$70,000.00-\$87,400.00	Greg Deloach

Each job that the Plaintiff held through 1993 ended either because she found better employment or because the internship expired. Upon returning to Hilton Head Island, the Plaintiff worked primarily for tips as a waitress, until she found employment as an associate for Wilson & Coltrane, P.A. She left the law firm to

have her son and returned to the practice of law two years later as a sole practitioner.

10. In regard to paragraphs 16, 17, 18 and 19 of the Amended Complaint, please list each oral or written statement, writing or other publication to which Plaintiff is referring; and for each please list the person(s) who delivered, displayed or discussed the contents of the letter; to whom, when, where and how the alleged publication was made; and all witnesses of the alleged publication.

ANSWER: The written statements, of which the Plaintiff is aware, are set forth in George Breed's letter of June 6, 2008, as well as in paragraph 15 of the Amended Complaint dated February 8, 2011 (herein "the Amended Complaint"). Discovery will reveal whether other written statements were made.

The oral statements were variations or paraphrasing of the defamatory remarks set forth in George Breed's letter, and they were made before, during and after the events described specifically in paragraphs 16, 17 and 18 of the Amended Complaint.

The persons who made and heard the statements were George Breed, Cary Kelley and the other employees of CSA, the members of the Board of Directors of CSA, the Board of Directors of the Association of Sea Pines Plantation Property Owners, Steve Birdwell, Cary Corbitt, the employees and members of the Board of Directors of Sea Pines Resort, LLC, and various managers and employees at the Town of Hilton Head Island.

11. For each statement, writing or other publication listed in the Answer to paragraph number 10 above which you claim is defamatory, please specifically site the language in each statement, writing or other publication which you claim to be defamatory.

ANSWER: The Plaintiff knows only that the statements, whether written or oral, were variations of the same defamatory remarks set forth in paragraph 15 of the Amended Complaint. In addition, Mr. Breed is known to have said that he intended to "get rid" of the Plaintiff.

12. With regard to the alleged statement made regarding the Plaintiff's alleged affair with a security officer, please identify the statement, the date, the time of the statement, to whom and by whom the statement was made, and the alleged identity of the security officer.

ANSWER: The statement that John Jolin and the Plaintiff had a sexual relationship was made: (a) By George Breed to Lt. Bobbie Martin; (b) by Lt. Bobbie Martin to John Jolin; (c) by Lt. Randy Woods to Mike Ryan; (d) by Mike Ryan to John Jolin; and (e) by John Jolin to the Plaintiff's administrative assistant, Sherry Hamilton. It is not known, at present, how many times the statement was repeated, by whom, or to how many people, all of which is subject to discovery by the Plaintiff. In view of the fact that Mr. Jolin heard about it from two separate sources, it appears to have been widespread at CSA.

13. Has anyone ever accused Plaintiff of (1) acting with misconduct in her office as Municipal Judge, (2) irresponsibly wasting public funds, (3) violating county policies, and (4) bias in decision making?

If the answer is yes, please describe each individual accusation and describe who made such accusations and the events leading up to the accusations. Also, please list all documents which contain or relate to any such accusations.

OBJECTION: Rule 12, RJDE, of Rule 502, SCACR, appears to be obscure by design on the issue of confidentiality. The so-called "General Rule," which is set forth in Rule 12(a), RJDE, appears to impose a duty to maintain confidentiality on everyone except the person who complained and the person about whom the complaint was made.

Virtually identical language to that in Rule 12(a), RJDE, also appears in Rule 12(a) of the Rules for Lawyer Disciplinary Enforcement. Rule 12, RLDE, of Rule 413, SCACR. That language has been construed by the Supreme Court of South Carolina to mean, "[N]either the attorney nor the complainant [is] prohibited from disclosing the existence of an ethical complaint. *Richardson v. State*, 377 S.C. 103, 659 S.E.2d 493 Note 4 (2008)[herein after "*Richardson*"].

While the statement quoted from *Richardson* appears to be a dictum, and the "General Rule" itself begins with a limitation ("Except as otherwise provided in these Rules . . ."), the Plaintiff has no compunction about disclosing the existence of the grievance filed by George Breed and the response to that grievance. One of the documents was ostensibly prepared by Mr. Breed, and the other one was sent to him by the Commission on Judicial Conduct.

The other grievance, however, may not have been made public by the person who complained. That person, under Rule 12(d), RJDE, has the right to

seek a protective order. Accordingly, the Plaintiff plans to afford the person who complained ten days within which to move for a protective order, and, if that person fails to do so, the Plaintiff will produce the documents described below in the Answer to Interrogatory No. 13 that will identify the complainant, the nature of his complaint and the resolution of it.

ANSWER: The Plaintiff has been accused of bias in decision making by George F. Breed, Jr., and by his friend, C. Russell Keep, III, Esquire. To the best of her knowledge, the Plaintiff has not been accused of "irresponsibly wasting public funds" or "violating county policies." However, the Plaintiff has been accused of misconduct as a Municipal Judge by Mr. Breed and by another individual, who shall be anonymous for the present.

The first accusation of bias was made by Mr. Keep initially to Brian Hulbert, who, at the time, was the Prosecutor for the Town of Hilton Head Island. The subject was then raised again shortly thereafter during a hearing before the Plaintiff on or about April 26, 2007. Mr. Keep claimed that, as a consequence of his representation of the Plaintiff's former husband in their 1997 divorce action, the Plaintiff was biased against him. Mr. Keep had appeared in the intervening years, often successfully, in a number of cases heard by the Plaintiff, without questioning her fairness. However, to avoid the appearance of impropriety to Mr. Keep's client, Mr. Hutka, the Plaintiff recused herself from hearing that case, as well as from any subsequent case in which Mr. Keep makes an appearance.

The accusation of bias by George F. Breed, Jr., is described in his letter dated June 6, 2008, as well as in paragraphs 14 and 15 of the Amended

Complaint. Because the letter was addressed (and ultimately sent) to the Commission on Judicial Conduct (herein "the Commission"), it constituted an accusation of judicial misconduct. The accusation, however, was dismissed as unfounded by letter to George F. Breed, Jr., from Deborah S. McKeown dated October 1, 2009. In that letter the following language appears:

In accordance with [the] Rules, the panel's inquiries were limited to whether or not there was evidence of ethical misconduct on the part of Judge Coffey as would warrant further investigation or the filing of formal charges. After considering the report of Disciplinary Counsel setting forth the results of the investigation, the panel voted to dismiss your complaint.

After the Plaintiff had filed and served her Complaint in this action, an individual sent a letter dated December 15, 2008, to the Commission in which that person contended that the Plaintiff had engaged in misconduct. On or about August 3, 2009, the Commission sent a letter to the Plaintiff resolving the matter.

14. Identify by full name, address and phone number each medical doctor, psychiatrist, psychologist, or other type of counselor which Plaintiff has seen in the past five years. For each person listed, please state the type of professional he/she is, and include the reason why Plaintiff sought treatment from each one.

ANSWER: The Plaintiff has used the following healthcare providers within the last five years:

- (a) David E. Dorsner, M.D.
Cross Island Medical Center
157 William Hilton Parkway
Hilton Head Island, SC 29926
(843) 681-8260

Dr. Dorsner served as the Plaintiff's primary care physician during most of the last five years.

- (b) Dr. Patrick Jordan, M.D.
Comprehensive Family Health Care
2 Greenwood Drive
Suite C
Hilton Head Island, SC 29928
(843) 341-3232

Dr. Jordan occasionally provided primary healthcare services for the Plaintiff and her family during 2007 and 2009, though she returned to Dr. Dorsner.

- (c) Women's Healthcare Associates, P.A.
100 Exchange St.
Suite 200
Hilton Head Island, SC 29926
(843) 681-9099

Women's Healthcare Associates delivered two of the Plaintiff's three children and was initially the Plaintiff's primary care physician during the period in question. Once the Plaintiff's needs were no longer primarily obstetric in nature, the Plaintiff began to use other physicians.

- (d) Dr. David Mauer, M.D. [Otolaryngologist]
Hilton Head ENT & Sinus Center
23 North Main Street
Hilton Head Island, SC 29926
(843) 682-3955

The Plaintiff sought treatment from Dr. David Maurer on February 4, 2009, due to frequent, intense headaches, which were believed to be either stress-related or sinus-related.

- (e) MRI at Belfair
18 Clark Summit Drive
Bluffton, SC 29910
(843) 815-9700

Finding nothing wrong with the Plaintiff's sinuses, Dr. Mauer recommended the Plaintiff undergo an MRI on February 9, 2009, to investigate further the cause of her headaches. The Plaintiff had also received a previous MRI from MRI at Belfair in February of 2008, as a consequence of a rollerblading injury in 2007.

- (f) Main Street Chiropractic
60 Main Street
Unit G
Hilton Head Island, SC 29926
(843) 342-3333

and

- (g) Palmetto Therapy Services
811 William Hilton Parkway
Hilton Head Island, SC 29926
(843) 842-3222

Main Street Chiropractic and Palmetto Therapy Services provided treatment for the 2007 rollerblading injury mentioned above.

- (h) Lynn E. Geiger, PhD.
19 Executive Park Road
Hilton Head Island, SC 29928
(843) 341-3020

The Plaintiff, along with her estranged husband, began to see a psychologist, Dr. Geiger, initially in October of 2007, in an attempt to reconcile. It became apparent that reconciliation was not possible, and the Plaintiff's husband stopped attending. The Plaintiff continued to see Dr. Geiger once a month to resolve her own marital issues. As her counseling was concluding, the Plaintiff

received the notice of George Breed's letter on or about June 26, 2008. She had an appointment scheduled for July 1, 2008, and related what had transpired to Dr. Geiger, who has continued to counsel the Plaintiff about stress, anxiety and other issues resulting from Mr. Breed's letter.

- (i) Beaufort OB/GYN Associates
Westbury Park
11 Arley Way
Bluffton, SC 29910
(843) 706-8664

The Plaintiff currently relies upon Dr. Norton and Beaufort OB/GYN for her annual OB/GYN check-ups and any issues the Plaintiff feels might be more related to women's medical health. In 2010, the Plaintiff, who was concerned about weight gain and other issues, had some thyroid testing done, initially by a mobile medical unit through Holy Family Catholic Church. When the results showed a possible irregularity, the Plaintiff called Dr. Norton. At that time, Dr. Norton ordered blood tests, thyroid tests and a thyroid ultrasound to take place on August 4, 2010. The hospital results were sent to Dr. Norton, who was concerned about the thyroid ultrasound and referred the Plaintiff to Dr. Rzeczycki.

- (j) Dr. Thomas Rzeczycki
Hilton Head General & Laparoscopic Surgery
25 Hospital Center Commons
Suite 100
Hilton Head Island, SC 29926

Dr. Rzeczycki performed more tests, including another ultrasound on the thyroid, after which he noted three nodules, only one over 5 mm. He wanted to see if it grew and scheduled an appointment months later.

(k) Joshua D. Hornig, MD [Otolaryngologist]
Medical University of South Carolina
135 Rutledge Avenue
Charleston, SC 29425

Concerned, the Plaintiff went to see Dr. Hornig—an Otolaryngologist and Thyroid surgery specialist. He conducted more tests. The blood tests came back normal, and Dr. Hornig confirmed that there were three nodules, only one about 5 mm. He also wanted to wait 6 months to see if it grew before deciding how to proceed. The Plaintiff is scheduled to see Dr. Hornig for a follow up on May 23, 2011.

15. Please identify by full name, address and phone number each friend, neighbor, and associate of the Plaintiff in whose eyes Plaintiff's standing and esteem has been doubted and questioned.

ANSWER: The Plaintiff's immediate supervisor, Assistant Town Manager, Greg DeLoach, whose address has been supplied in subparagraph 1(d) above. Also, Darby Cusick, 3 Gadwall, Hilton Head Island, SC, 29928.

16. Please describe Plaintiff's reputation prior to the allegations contained in the Complaint.

ANSWER: Strict but fair; open-minded; consistent; and compassionate, especially with young people.

17. Please identify any allegations relating to civil conspiracy which do not relate to either the defamation or the tortious interference with contract causes of action.

ANSWER: None of the substantive allegations relating to the defamation claim also relate to the conspiracy claim. Paragraph 53 of the Amended

Complaint incorporates only the jurisdictional allegations from the Prologue into the cause of action for conspiracy.

The crux of the conspiracy claim is that the named Defendants, colluding with others, trumped up an excuse to require the Plaintiff to recuse herself from hearing cases brought by Sea Pines Security. Fearing that their harassment of Otis Coffey and Ann Coffey might lead to unfair treatment at the Plaintiff's hands, the Defendants put the cart before the horse and simply pretended that it already had happened.

The conspiracy was in the nature of an interference with the Plaintiff's contract. The elements of that tort are set forth in *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981). The conspiracy claim is also analogous to interference with prospective contractual relations, the elements of which are set forth in *Santoro v. Schulthess*, 384 S.C. 250, 681 S.E.2d 897 (S.C. App. 2009).

Conspiracy jurisprudence teaches that a plaintiff may have a cause of action for conspiracy, or for the underlying tort, but not for both. *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 538 S.E.2d 15 (S.C. App. 2000); *Todd v. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981). Clearly, the Plaintiff herein has sought to plead neither interference with a contract nor interference with a prospective contract. In the absence of such underlying torts, the conspiracy claim is entirely appropriate.

18. Please list the special damages resulting to the Plaintiff from the civil conspiracy cause of action which do not relate to the defamation cause of action and the negligence cause of action.

ANSWER: Special Damages flowing solely from the cause of action for conspiracy are additional baby sitting costs for the Plaintiff which are anticipated to exceed \$2,500.00 per year. The Plaintiff is being assigned new duties, including early morning and late afternoon bond hearings that must be accomplished by teleconference between the court and the Beaufort County Detention Center. The Plaintiff has coverage for the afternoon hours, but the morning hours are expected to begin at 7:00 a.m.

Because of the Plaintiff's recusal, the Town of Hilton Head Island has had to pay other judges to hear the cases brought by Sea Pines Security. In order to recoup some of that expense, the Town has decided to assign more duties to the Plaintiff.

19. Identify by full name, address, and phone number each person with whom Plaintiff or her counsel discussed any allegations contained in the Complaint or Amended Complaint prior to the filing of the lawsuit.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

ANSWER: Subject to the objection, the Plaintiff discussed the allegations contained in the Complaint only with her attorney, Tom Holloway, prior to the filing of the lawsuit. For obvious reasons no discussion of the Amended Complaint took place at that time.

20. Identify the date(s) upon which the disclosure(s) set forth in Item 19 were made.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

ANSWER: Subject to the objection, the Plaintiff began discussions with her attorney in August of 2008.

21. Identify by full name, address and phone number each person with whom Plaintiff or her counsel discussed Plaintiff's belief that Defendants committed unlawful or tortious acts prior to the filing of the lawsuit.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

ANSWER: Subject to the foregoing objection, the Plaintiff may have discussed such matters with her attorney, Desa Ballard, who defended the grievance filed by George Breed. She definitely discussed them with her attorneys in this action.

22. Identify the date(s) upon which the disclosure(s) set forth in Item 21 were made.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

23. Identify by full name, address and phone number each person or entity which either Plaintiff or her counsel showed the Complaint or the Amended Complaint in this action (including any part or parts thereof) prior to the filing of either.

ANSWER: No such disclosure was made.

24. Identify the date or dates upon which the disclosure(s) set forth in Item 23 were made.

ANSWER: No such disclosure was made.

25. Please provide a list of all speaking engagements, panel discussions or public appearances made by Plaintiff in Beaufort County during Plaintiff's residence in the county, to include the occasion and group spoken to, the date of the event, and the topic covered.

ANSWER: The Plaintiff (a) gave a speech at Hilton Head Island High School to the Lady Seahawks in November of 2010; (b) spoke to the Interact Club once in 2009 and again in 2010; and (c), in 2005, 2006 and 2007, gave a talk about the court system, along with William C. Clark, Esquire, at "law school for non-lawyers" sponsored by Lowcountry Legal Clinic.

26. Please provide a list of all civic involvement participated in by Plaintiff, including but not limited to church membership and civic group membership, non-profit board association, involvement (other than by monetary donation) with a charitable organization.

ANSWER: The Plaintiff was a member of Holy Family Catholic Church from approximately January 1983 to January 1996, at which time she joined St. Francis by the Sea Catholic Church. She subsequently rejoined Holy Family in September of 2008 and remains a parishioner today.

In September of 2010, the Plaintiff's family also joined Beth Yam Synagogue so that the Plaintiff's two daughters can be raised in the faith of their father.

The Plaintiff was a founding member of Lowcountry Legal Aid. However, she resigned from the board in 2000 when family and job commitments took precedence.

Although she has been invited to join service clubs, the Plaintiff has declined because, as a working mother with an absent spouse and a demanding job, she lacks the time to commit to anything but her children and the court.

27. For each civic involvement listed in Item 26, please provide a list of any awards or recognition received as a result of such involvement.

ANSWER: The Plaintiff received an award for being one of the founders of Lowcountry Legal Aid.

28. Please provide a list of all public social events, including but not limited to charitable fundraisers, dinners, auctions, and other functions to which Plaintiff received an invitation or attended from January 2005 through the present.

ANSWER: The Plaintiff has received invitations to a number of fundraisers, dinners and other functions, including the Sea Pines Montessori Gala (2004-2008), Hilton Head Prep functions (2009 and 2010) and the fundraising dance for St. Francis by the Sea (2000-2004). Lacking the time or the money, the Plaintiff does not attend.

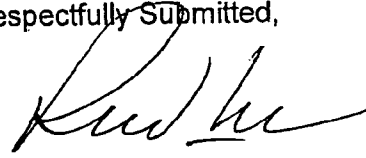
29. Please provide a list of all professional organizations in which Plaintiff has been a member and her role in each organization.

ANSWER: The Plaintiff is a member of the South Carolina Bar, the Beaufort County Bar and the South Carolina Summary Court Judges' Association. She does not hold an office in these organizations.

The Plaintiff reserves the right to amend or supplement these responses as additional information becomes available.

Respectfully Submitted,

By:



Robert V. Mathison, Jr.
Attorney for the Plaintiff
Maureen T. Coffey

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29928
Telephone: (843) 785-6503
Facsimile: (843) 785-6170
Email: mathlaw@aol.com

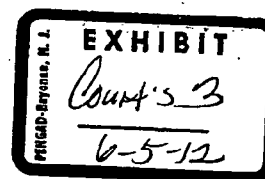
April 25, 2011

Hilton Head Island, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MAUREEN T. COFFEY,)
Plaintiff,)
v.)
COMMUNITY SERVICES ASSO-)
CIATES, INC., GEORGE F.)
BREED, JR., SEA PINES)
RESORT, LLC, and ASSOCIA-)
TION OF SEA PINES PLANT-)
ATION PROPERTY OWNERS,)
INC., AND THE ADVISORY)
BOARD,)
Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

NOTICE AND MOTION
(Spoliation of the Evidence)



PLEASE TAKE NOTICE that the Plaintiff herein, Maureen T. Coffey, by and through her undersigned attorney, on May 29, 2012, at 9:30 a.m., or upon such other date and at such time as shall be scheduled by the court, will move before the Honorable Carmen T. Mullen, at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina, for the following relief:

(a) An order permitting the Plaintiff's attorney to comment during the trial and to argue to the jury that the Defendants Community Services Associates, Inc. (herein "CSA") and George F. Breed, Jr. (herein "Mr. Breed") lost or destroyed evidence, including, without limitation, nearly all pertinent email sent to or from Mr. Breed during 2008 on his private America On-Line (herein "AOL") account, the only account that he used for work during the period in question; and

(b) An instruction to the jury with respect to the evidence lost or destroyed as follows:

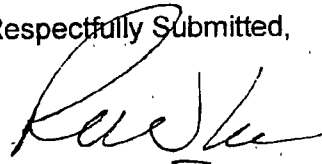
I charge you that when a party fails to preserve material evidence for trial, it is for you to determine whether the party has offered a satisfactory explanation for that failure. If you find the explanation unsatisfactory, you are permitted but not required to draw the inference that the evidence would have been unfavorable to the party's claim [or defense]. **Stokes v. Spartanburg Reg. Med. Center**, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006).

(c) The grounds for this motion are (i) the Defendants did not provide the lost or destroyed information in response to a relevant request for production; (ii) the Plaintiff was required to, and did in fact, obtain from other sources some, but not all, of the missing email, including, without limitation, Mr. Breed's email of May 20, 2008, to Toby McSwain and Meredith Hatch (now Florencio), a copy of which was furnished by the Beaufort County Sheriff's Office (along with sundry other email from or to Mr. Breed) and is attached hereto as Exhibit A; (iii) when questioned about the email, Mr. Breed first dissembled and then promised to retrieve his email from AOL, as appears from his deposition testimony, a copy of which is attached hereto as Exhibit B; and (iv) instead of fulfilling that promise, through counsel, Mr. Breed delivered nothing at all from AOL to the Plaintiff, choosing instead to provide the product of a search engine query (Exhibit C), which revealed (correctly) that AOL permanently archives user email unless the user has purposefully deleted it; and (v) in view of the facts that the Plaintiff's action was filed and served fewer than five months after the event giving rise to the Plaintiff's primary claims, namely, the defamatory letter of Mr. Breed dated

June 6, 2008, and that the Defendants contend that an investigation was ongoing at the time, only one inference remains—that the Defendants intentionally deleted the email and made no effort to recover it.

THIS motion is based upon the facts presented above, and those to be developed at trial, as well as upon the applicable law. *Stokes, supra*, 368 S.C. 515, 520-22, 629 S.E.2d 75, 678-79; *see also Pringle v. SLR*, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009); *Kershaw Co. Bd. of Ed. V. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990).

Respectfully Submitted,



By:

Robert V. Mathison, Jr.
Attorney for the Plaintiff
Maureen T. Coffey

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Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Facsimile: (843) 785-6170
Email: rmathlaw@aol.com

May 25, 2012

Hilton Head Island, South Carolina.

Meredith Hatch

From: Securegate@aol.com
Sent: Tuesday, May 20, 2008 5:21 AM
To: polygraph99@hotmail.com
Cc: Meredith Hatch
Subject: (no subject)

Last night at midnight one of my officers was on foot near South Beach Lane. He saw a B/M on a bike (Midnight!) and identified him as Otis Coffee and called out to him. He took off. He radioed another officer who set up out of sight at Gadwall (Coffee's house) and a few minutes later observed him run into the house and then shut off all interior lights.

Your guys had been called to assist and went to the house with my officers. Mrs. Coffee came to the door and said no one was home. Your officer told them that Sea Pines Officers saw Otis enter the house minutes prior. She said that Sea Pines security is always trying to pin things on him and then blew them off.

We almost got his little butt, I want his little butt and I don't want it to get back to you know who. He thinks he can get away with this crap because he has cover. Do you think we have enough to secure a search warrant? His house is smack in the center of the B&E's, he matches the description of our B&E suspect AND the peeper and he is on a bike at midnight right in the middle of our stakeout, takes off and runs into a house, cuts off lights and then has Mommy lie for him. And for heavens sake you know not where to go to get the SW.

I think over the past several months his looking into windows for targets may have been mistaken for a Peeper. Maybe able to close both groups.

Report to follow.

George F. Breed, Jr.
DABCHS, CHS-V, CFE, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC

This communication contains information that may be confidential. Except for personal use by the intended recipient or as expressly authorized by the sender, any person who receives this information is prohibited from disclosing, copying, distributing, and/or using it. If you have received this communication in error, please immediately delete it and all copies, and promptly notify the sender. Nothing in this communication is intended to operate as an electronic signature under applicable law.

Wondering what's for Dinner Tonight? [Get new twists on family favorites at AOL Food.](#)

EXHIBIT

A

5/20/2008

FLORENCIO

1832

PLAINTIFF'S
EXHIBIT

72
BREED

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT
6

7 MAUREEN T. COFFEY,

8 Plaintiff,
9

10 vs.

CIVIL ACTION NUMBER
2011-CP-07-00013
11
12
13

14 COMMUNITY SERVICES ASSOCIATES, INC., GEORGE F.
15 BREED, JR., SEA PINES RESORT, LLC, and
16 ASSOCIATION OF SEA PINES PLANTATION PROPERTY
OWNERS, INC., and THE ADVISORY Board,
Defendants.

-----/
17 VOLUME 2

18 The deposition of GEORGE BREED, a
19 witness in the above-entitled cause, taken
20 pursuant to Notice and agreement, before Kyle J.
21 Saniga, Certified Court Reporter and Notary
22 Public, at the McNair Law Firm, 23-B Shelter
23 Cove Lane, Suite 400, Hilton Head, South
24 Carolina 29928, on the 5th day of April 2012,
25 commencing at or about the hour of 10:00 p.m.

EXHIBIT

B

1 MATHISON - BREED (DIRECT EXAMINATION)

2 Q So you had a single computer, is that
3 correct?

4 A I believe so.

5 Q Did you have an e-mail address other
6 than securegate?

7 A I don't recall but I don't believe so.

8 Q Have you produced any documents that
9 purport to be your e-mail that don't have the
10 securegate address on it?

11 A I don't know without looking at all of
12 them. I don't believe so.

13 Q Have you had another e-mail address
14 than securegate since 2008?

15 A I don't believe so.

16 Q Who purchased computers when the
17 computers were replaced?

18 A Which computers?

19 Q Computers at CSA?

20 A Specifically what area?

21 Q Did Ms. McNeil purchase computers or
22 did you purchase them?

23 A Again, I can't speak to which computer,
24 what time frame or what location.

25 Q During 2008 and 2009?

1 MATHISON - BREED (DIRECT EXAMINATION)

2 A I have no idea.

3 Q Did anyone, other than you or Ms.

4 McNeil, purchase computers?

5 A I don't recall.

6 Q When, if ever, have you changed your

7 server at Sea Pines Security?

8 A I don't understand the question.

9 Q Do you operate on a network, sir?

10 A Do I or does security?

11 Q Does security?

12 A I believe they do.

13 Q Don't they have an in-house server?

14 A I believe they do.

15 Q Has that server been changed since

16 2008?

17 A I have no idea.

18 Q So I'd have to ask somebody who knows
19 about those things, is that what you're saying?

20 A Yes.

21 Q Would that be Ms. McNeil?

22 A I -- that might be an option.

23 Q Well, if not she who else has the
24 prerogative to make that kind of decision?

25 A I do not know.

1 MATHISON - BREED (DIRECT EXAMINATION)

2 Q If your server has not been changed,
3 isn't it a fact you can recover all your e-mail
4 from 2008?

5 A I do not know.

6 Q Have you made an effort to recover your
7 e-mail in order to respond to the plaintiff's
8 request for production?

9 A Have I made an effort to recover my
10 e-mail?

11 Q Yes, sir.

12 A Yes, sir, I have.

13 Q Is your e-mail on the server that
14 provides service for the rest of the network at
15 Sea Pines Security?

16 A I don't believe it is.

17 Q Then what server are you using?

18 A I'm not using a server.

19 Q Are you telling me that your computer
20 is not the Sea Pines Security network?

21 A Correct.

22 Q Do you still have a Hewlett-Packard
23 computer?

24 A I don't know the name of it.

25 Q You don't know what kind of computer

1 MATHISON - BREED (DIRECT EXAMINATION)

2 you have?

3 A Honestly, no.

4 Q Securegate is an America Online
5 address, is it not?

6 A Yes, it is.

7 Q How long have you had an account with
8 America Online?

9 A I believe 17 years.

10 Q Certainly since 2008, isn't that
11 correct?

12 A Yes, sir.

13 Q Do you know whether America Online,
14 A-O-L, maintains an archive of your e-mail?

15 A I can't speak for America Online.

16 Q Have you made an effort to access your
17 e-mail for 2008 from A-O-L?

18 A Yes, I have.

19 Q How did you communicate with them?

20 A I didn't communicate with A-O-L. I
21 made every attempt that I knew was available to
22 me to access any e-mails.

23 Q Well, do you routinely archive your
24 e-mails?

25 A Define archive? No, I don't --

1 MATHISON - BREED (DIRECT EXAMINATION)

2 Q Keep them, put them in a library?

3 A No.

4 Q So they're just left random
5 willy-nilly, is that what you're telling me?

6 A I wouldn't use -- I wouldn't describe
7 it quite like that. (Witness shakes head) The
8 mechanism is what the mechanism is.

9 Q Well, how often does the mechanism
10 expire? When do your e-mails go off your screen
11 so that you can't recover them easily?

12 A I don't know, I think it's a time-based
13 or volume-based beyond a certain point or
14 certain number, it just -- again, like a
15 computer database, will refresh itself.

16 Q Do you know whether there's an archive
17 of your e-mail that's maintained by A-O-L that
18 can be retrieved?

19 A By A-O-L?

20 Q Yes, sir.

21 A No, I do not.

22 Q Would you mind finding out if you can
23 retrieve it?

24 A I will make every effort to contact
25 A-O-L to see if that is, in fact, possible.

1 MATHISON - BREED (DIRECT EXAMINATION)

2 Q Specifically, I want your e-mail
3 related to this case from 2008.

4 A Okay.

5 Q Did you communicate with anyone about
6 this case in 2008 on a computer other than
7 securegate?

8 A I don't recall.

9 Q Well, do you know whether you had
10 another e-mail address or not?

11 A I don't believe I did.

12 Q Did you use other peoples e-mail with
13 their permission?

14 A I don't think I ever did.

15 Q Your attorney's made a good faith
16 presentation of a document production, I
17 believe, of materials that you gave them, which
18 included an e-mail or two from 2008 but did not
19 include the one I'm about to hand you. Can you
20 tell me why you didn't give them that e-mail?

21 MR. PATTERSON: Which one is this,

22 Rob?

23 MR. MATHISON: It's the one done

24 on May 20th.

25 THE WITNESS: What was your

1 MATHISON - BREED (DIRECT EXAMINATION)

2 question, sir?

3 BY MR. MATHISON:

4 Q Why didn't you provide that e-mail to
5 your attorney so they could provide it to me?

6 A If I didn't have it I didn't provide
7 it. Unless I printed it out I wouldn't have had
8 it.

9 Q Your position is that you have nothing
10 left from 2008 unless you printed it out?

11 A Correct.

12 Q Do you know where the e-mail in front
13 of you came from?

14 A No, sir.

15 Q Do you know who polygraph99@hotmail.com
16 is?

17 A I believe so.

18 Q Who is it?

19 A I believe it's Captain McSwain.

20 Q And you know who Meredith Hatch is,
21 don't you?

22 A I know of her.

23 Q And you identify that as your e-mail?

24 A It appears to be.

25 Q Let me have it.

1 MATHISON - BREED (DIRECT EXAMINATION)

2 (Whereupon, Plaintiff's Exhibit
3 Number 12 was marked for
4 identification.)

5 THE WITNESS: Did you want me to
6 have that?

7 MR. MATHISON: I want you to hold
8 onto it, yes. I'm going to ask you a
9 question or two about it.

10 BY MR. MATHISON:

11 Q How much more e-mail, from this period
12 of time, could there be if we can recover it
13 from A-O-L?

14 (Whereupon, Maureen Coffee joined
15 the proceedings.)

16 THE WITNESS: I couldn't hazard a
17 guess.

18 BY MR. MATHISON:

19 Q How many more e-mails, similar in tone,
20 were written about either Otis Coffee or his
21 sister, Maureen Coffee?

22 A I have no idea.

23 Q But there could be more, couldn't
24 there?

25 A Again, I have no idea.

1 MATHISON - BREED (DIRECT EXAMINATION)

2 Q Why does the Beaufort County Sheriff's
3 Office have a pretty good archive of your e-mail
4 when you don't have any?

5 MS. JONES: Object to the form.

6 THE WITNESS: I can't speak to how
7 they're operation functions.

8 BY MR. MATHISON:

9 Q Does this e-mail set forth your
10 understanding of what had happened at about
11 midnight on the morning of which it was sent?

12 A I can read -- I don't recall that
13 e-mail but I can read the e-mail.

14 Q Please do.

15 A Did you want me to read it?

16 Q I don't want you to read it into the
17 record. I want you to read it so that we can
18 discuss it.

19 A Okay.

20 (Whereupon, a short break was
21 taken.)

22 BY MR. MATHISON:

23 Q Have you had a chance to review the
24 memorandum?

25 A Yes.

From: Jones, Celeste <CJones@MCNAIR.NET>
To: 'mathlaw@aol.com' <mathlaw@aol.com>; 'Andrew Halio' <ashalio@bellsouth.net>
Cc: Shuler, Ann <AShuler@MCNAIR.NET>; Jolley, Kelly <KJolley@MCNAIR.NET>
Subject: Follow up Breed's deposition
Date: Mon, May 14, 2012 3:46 pm

Rob,

At the deposition you asked Mr. Breed to check on his personal email account for any possibility his emails were stored anywhere or could be retrieved. He did so and the information is apparently on the web site and publically available. I will send you the link.

In addition I have medical bills from February and March 2008 where Breed was seen by 2 specialists. I propose a resolution by way of our agreeing to produce those bills under a confidentiality and non disclosure agreement. Breed does not consent to disclosure of his medical records or condition and I would redact his diagnosis or treatment information from the bills. Please advise me if this is acceptable to you.

Celeste

MCNAIR
ATTORNEYS

Celeste T. Jones
Shareholder
cjones@mcnair.net

McNair Law Firm, P.A.
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803 799 9800 Main | 803 753 3278 Fax
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EXHIBIT

C

FW: How long will AOL save EMAIL

From: Jones, Celeste <CJones@MCNAIR.NET>
To: 'mathlaw@aol.com' <mathlaw@aol.com>; 'Andrew Halio' <ashalio@bellsouth.net>
Cc: Shuler, Ann <AShuler@MCNAIR.NET>; Jolley, Kelly <KJolley@MCNAIR.NET>
Subject: FW: How long will AOL save EMAIL
Date: Mon, May 14, 2012 3:47 pm

HERE IS THE LINK, CELESTE

<http://www.emailquestions.com/aol/2357-long-will-aol-save-my-email.html>

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5/14/2012

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↳ **How long will AOL save my email?**

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AOL AOL and Project Phoenix email questions

How long will AOL save my email?

AOL

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Thursday,
December 23rd,
2010

#1

popowich
Postmaster

**How long will AOL save my email?**

AOL will save your email for different amounts of time depending on which folder(s) you are using to store your email.

Inbox -

- Email is not removed from your inbox until you delete it

Sent -

- Email is not removed from your sent mail until you delete it

Spam -

- Email older than 5 days will automatically be deleted from your spam folder

Trash -

Join Date:
Aug 2008
Location:
Rochester, NY
Posts: 4,311
Thanks: 515
Thanked 454
Times in 428
Posts

- Email older than 7 days will be automatically deleted from your Trash folder

Recently Deleted -

- Email older than 7 days will be automatically deleted from your recently deleted folder

Saved Folders -

- Email saved in the **Saved on AOL, Saved on My PC, or My Folders** mail folder will not be deleted until you delete it.

For more information on AOL folder message limits see - [What is the limit on the number of emails in my AOL mail folders?](#)

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Tuesday, March 15th, 2011

#2

onegreenday

New Email

Join Date: Mar 2011
Posts: 1
Thanks: 0
Thanked 0 Times in 0 Posts

Re: How long will AOL save my email?

I lost ALL my sent mail for the last 3 years.

I have AOL webmail and save nothing on my computer.

That's why I save it on AOL; in case my computer crashes or is stolen.

Somebody hacked my computer or AOL and for 2 days....

I was getting a bunch of returned "undeliverable" mail, that I never sent.

Then my "sent" mail folder was total empty.

How can I get my "sent mail" folder back?

thank you.

Quote:

[popowich](#)

AOL will save your email for different amounts of time depending on which folder(s) you are using to store your email.

Inbox -

- Email is not removed from your Inbox until you delete it

Sent -

- Email is not removed from your sent mail until you delete it

Spam -

- Email older than 5 days will automatically be deleted from your spam folder

Trash -

- Email older than 7 days will be automatically deleted from your Trash folder

Recently Deleted -

- Email older than 7 days will be automatically deleted from your recently deleted folder

Saved Folders -

- Email saved in the **Saved on AOL, Saved on My PC, or My Folders** mail folder will not be deleted until you delete it.

For more information on AOL folder message limits see - [What is the limit on the number of emails in my AOL mail folders?](#)

[Share](#)[Quote](#)

Thursday, August 25th, 2011

#3

raydco

New Email -

Join Date: Aug 2011
Posts: 3
Thanks: 0
Thanked 0 Times in 0 Posts

Re: How long will AOL save my email?

How about on AOL servers after a person deletes from folder?

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« [AOL email sort problem](#) | [AOL : Error Downloading Required Content An error occurred while downloading required content](#) »

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Do you save your email passwords in your web browser?	popowich	Email Discussions	10	Wednesday, December 1st, 2010 07:46 PM
How long will a barracuda try to deliver email if my mail server goes down?	popowich	Mail Server Support	0	Thursday, February 11th, 2010 03:02 PM
Outlook 7 - save outgoing email in inbox until send and receive is clicked	Watwaat	Outlook Express	1	Monday, February 1st, 2010 10:06 PM
How can I save bandwidth when checking my email over a slow internet connection?	popowich	Microsoft Outlook	0	Sunday, July 26th, 2009 09:48 AM
How long will Hotmail save my old emails?	popowich	Hotmail	2	Wednesday, July 15th, 2009 11:33 AM

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**Maureen Coffey v. Community Services Associates, Inc., George Breed, Jr., and
Association of Sea Pines Plantation Property Owners, Inc.**

2011-CP-07-00013

**Civil Conspiracy & Defamation of a Public Official
Beaufort CP – Week of June 4, 2012**

INTRODUCTION



MISTER FOREPERSON and members of the jury, you have heard the evidence and arguments of both parties. I will now explain to you the law which applies to this case.

This case was initiated by the Plaintiff, **Maureen Coffey**, who brought an action for Defamation against Defendants **Community Services Associates, Inc.** and **George Breed, Jr.**

THE JURY: FINDER OF THE FACTS AND CREDIBILITY

Under our Constitution and Code of Laws, only you, the Jury, can make the findings of fact in this case. I am not permitted to tell you how I feel about the evidence which has been presented, and throughout this trial, I have intended to be fair and impartial toward each of the parties involved.

Ladies and Gentlemen, to determine the facts in this case, you will have to evaluate the credibility, or believability of witnesses. I have already discussed with you some of the things you may consider as you decide whether or not to believe a witness' testimony about a particular matter.

You can believe as much or as little of each witness' testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite. You may believe a part of a witness's testimony and disbelieve the rest. You should

not determine the truth merely by counting the number of witnesses presented by each side. Throughout this trial, you have but one objective, to seek the truth, regardless of its source.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is testimony by a witness about what the witness personally saw, heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact. You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any evidence.

DEPOSITION TESTIMONY

During the trial of this case, we have had testimony by way of deposition of witnesses taken outside of the courtroom. That witness may or may not appear personally before you. The deposition was taken in the manner prescribed by law and you will consider the testimony from that deposition just as if the witness were here upon the stand testifying. You take this deposition testimony in connection with all other testimony and you assess the credibility of that witness from anything that is in the record that will aid you in doing so. You consider that deposition evidence along with the testimony of the witnesses who have appeared in person and you determine from all the evidence in the case whether by witnesses present or by depositions or whether by exhibits in the case what the truth of this controversy is according to the facts as you find them to be and then apply the law as I give it to you.

EXPERT TESTIMONY

The Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become expert in some art, science, or profession, may give an opinion as to the subject the witness claims to be an expert in, and may also give the reasons for the opinion.

You should consider an expert opinion given by a witness and, like any other evidence, give it the weight you think it deserves. If you decide that an expert witness' opinion is not based on sufficient education and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert, and you do not have to accept an expert's opinion, even though it is uncontradicted.

THE JUDGE: INSTRUCTOR OF THE LAW

The same Constitution and Laws which designate and make you the finders of the facts also make me the instructor of the law. You must accept the law as I give it to you. If I am wrong, there is another place and time for that error to be considered, and if necessary, corrected. But for now, you must accept the law as I give it to you. This means that you should not be concerned with what you may think the law should be, but only with what I charge you that the law is.

The cause of action in this case is defamation

DEFAMATION

The tort of defamation allows a plaintiff to recover for injury to their reputation as the result of a defendant's communication or publication to others of a false message about the plaintiff. The focus of defamation is not on the hurt to the defamed party's feelings, but on the injury to his reputation. Defamatory communications take two forms: libel and slander.

LIBEL

An action for libel is based on the violation of a person's right to enjoy his good reputation, unimpaired by false and defamatory attacks. Libel is a written defamation or one accomplished by actions or conduct.

Libel consists of the publication of defamatory material by written or printed words, by its embodiment in physical form or any other form of communication that has the potentially harmful qualities characteristic of written or printed words

SLANDER

An action for slander is based on the violation of a person's right to enjoy his good reputation, unimpaired by false and defamatory attacks. Slander is a spoken defamation. Slander consists of the publication of defamatory matter by spoken words, transitory gestures or by any form of communication other than those defined as part of libel.

DEFAMATION – PRINCIPAL'S LIABILITY FOR AGENT'S DEFAMATORY

STATEMENT

A principal may be held liable for defamatory statements made by an agent acting within the scope of his employment or within the scope of his apparent authority.

Apparent authority arises if a third party believes that an agent has the authority to act for another person or company, called the principal, when that authority has not in

reality been granted. If an agent acts with apparent authority, the agent's acts legally bind the principal. The doctrine of apparent authority focuses on principals' manifestations to a third party that the agent has certain authority.

DEFAMATION – PUBLIC OFFICIAL

In a defamation action brought by a "public official, the First Amendment requires "the Plaintiff must prove the defamatory falsehood was made with "actual malice." To meet this standard, the plaintiff must show the defendant made the statement either with knowledge that it was false or with reckless disregard for its truth.

Actual malice is a subjective standard which tests the defendant's good faith belief in the truth of their statements. To recover on a claim for defamation, the constitutional "actual malice" standard requires a "public official" to prove by clear and convincing evidence that the defamatory statement relating to matters of public interest or concern regarding the plaintiff's status or conduct as a public official was made with knowledge of its falsity or with reckless disregard of whether it was true or false.

Clear and convincing evidence is an elevated standard of proof, which lies between the lesser standard of "preponderance of the evidence," used in most civil cases, and the higher standard of "beyond a reasonable doubt," which is required in criminal cases. Clear and convincing evidence is that degree of proof which will produce in the mind of the ...[jury] a firm belief as to the allegations sought to be established. Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit; and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the ... [jury] a firm belief

or conviction, without hesitancy, as to the truth of the allegations sought to be established.

When the law places upon a party a burden of proof by clear and convincing evidence, the law means that the evidence is not ambiguous, doubtful, equivocal, or contradictory, but the evidence is pointed to the issue and satisfactory in the sense that the source from which it comes is one in which you jurors can place credence.

The constitutional "actual malice" standard is not satisfied merely through a showing of ill will or "malice" in the ordinary sense of the term. It is insufficient to show the defendant made an editorial choice or simply failed to investigate or verify information. There must be evidence at least that the defendant purposefully avoided the truth.

A "reckless disregard" for the truth requires more than a departure from reasonably prudent conduct. There must be sufficient evidence to conclude either the defendant made the statements with a high degree of awareness of probable falsity or that the defendant in fact entertained serious doubts as to the truth of his publication.... Mere negligence is insufficient to prove "actual malice."

The Plaintiff will rarely find success in proving awareness that a statement is false from the mouth of the Defendant himself. Any direct or indirect evidence relevant to the Defendant's state of mind may be considered to prove actual malice. The Plaintiff may present competent circumstantial evidence of bad faith to establish actual malice despite a Defendant's contention that the publication was made with a belief the statements were

true. A jury may infer reckless conduct sufficient to constitute actual malice by looking at the totality of the evidence.

Failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard.

When a libel action is brought by a "public official" the plaintiff must make an affirmative showing that the defamatory statement was false. A defamed "public official" must prove the falsity of the allegedly defamatory publication.

You must determine from the evidence present what the truth was and compare that with the statements or publication you find were made by the defendant, considering the statements according to the ordinary meaning of the language used.

There can be no recovery in defamation for a statement of fact that is true, although the statement made for no good purpose and is inspired by ill will toward the person about whom it is published and is made solely for the purpose of harming him.

If you find there was no substantial difference between the statements and the truth or the statements did not differ in substantial respects from the truth, then the Plaintiff has not met her burden of proving the falsity of the statements.

DEFAMATION – DEFENSE OF FAIR COMMENT AND CRITICISM

The defendant claims the words spoken or written were in the form of legitimate criticism or fair comment upon the public acts of an official. A fair and reasonable criticism of that kind is allowed, provided it contains no reference or reflections that defame the individual's private affairs, character or business.

Fair and honest criticism in matters of public concern is privileged, but the privilege is limited strictly to comments and criticisms and does not intend to protect false statements, unjust inferences, imputations of evil motives, or criminal conduct, the truth of what he alleges to be the facts. It is for you as a jury to determine whether the criticisms or statements affecting a public officer or a public matter ceased to be fair and honest.

Every person has a right to comment on matters of public interest and general concern, provided it is done fairly and with an honest purpose. Such comments are not slanderous nor libelous, however severe in their terms, unless they are spoken or written intemperately and maliciously.

To support a plea of fair comment, the statement has to be in whole or in part, a matter of comment or opinion, rather than an assertion of a factual proposition. In this regard, an expression of simple or pure opinion asserting personal comment on certain stated facts constitutes the type of expression of opinion to which the privilege of fair comment applies, in contrast to slander or libel based upon misstatements of facts.

The policy of the law is to permit everyone freely to discuss and criticize matters of public interest, provided the statements made be:

- (1) Statements of opinion rather than fact;
- (2) Based on facts truly stated;
- (3) Fair; and
- (4) The honest expression of the writer's real opinion.

Under the fair comment privilege, matters of public interest and concern which are legitimate subjects of fair comment and criticism are privileged. The doctrine of fair comment has been said to be qualified or conditional privilege.

To constitute fair comment, the publication must:

- (1) Relate to a matter of public interest;
- (2) Not impute dishonorable motives to its subject;
- (3) Generally be based on facts truly stated; and
- (4) Be honest and fair expression of opinions on the facts.

While the comment must be "fair," this does not mean that it must be reasonable or moderate, but that it must be published, in part at least, for a bona fide purpose of giving the public the benefit of comment which it is entitled to have, rather than for an ulterior motive of causing harm to the plaintiff. A slight exaggeration does not render a comment unfair. Furthermore, to qualify under the fair comment privilege, the comments must be substantially accurate and complete or constitute a fair abridgment. If the statement condenses a long discussion, it must be a summary of substantial accuracy.

A statement of opinion is fair if it is related to the acts of the plaintiff being commented upon and is one which a reasonable person might honestly entertain based on the facts truly stated. The fact that you disagree with the comment, or that it appears wrong to you does not make it unfair if the opinion it expresses is one that a fair-minded

person might reasonably entertain based on the facts truly stated

The defense of a fair comment is not absolute, but may be lost by abuse.

Comments and criticisms within the fair comment defense are not actionable unless made with actual malice. Mere expressions of opinion concerning matters of public interest or concern are privileged as being "fair comment" when made without actual malice.

In considering whether defendant's statements constituted fair comment, you will first determine what part of the statements consisted of statements of fact and whether the fact statements were substantially true. The burden of proof on those questions is on the defendant. If you conclude that all of the statement would be understood by a person of average intelligence as statements of fact, your finding will be that the statements were not privileged as fair comment. Additionally, you will find the statements not privileged if you conclude that part of the statements would be understood as opinion or comment, but that the fact statements upon which the opinion or comment was based were not substantially true.

DEFAMATION – DEFENSE OF PRIVILEGE

In a defamation action, the defendant may also assert the affirmative defenses of absolute and qualified privilege.

A "privilege" is an immunity granted to some person or group of persons which is not enjoyed by others. As the term is used in this case, a "privileged communication" is one which is made on such an occasion that the publisher will not be held responsible in an action for defamation. A privileged communication, under defamation law, is a

communication which, except for the occasion on which or the circumstances under which it is made, would be defamatory and actionable. Privileged communications are either (1) absolute or (2) qualified.

An absolute privilege is a complete bar to liability for making defamatory statements. When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published. In other words, a statement that is absolutely privileged, even though it would otherwise constitute libel or slander, is not actionable. There is no liability, even though the defamatory words may have been false and made with malice. In that situation, the plaintiff is not entitled to recover damages because the statement was made.

Where the defamation is made in good faith and with proper motives, a defendant may claim a qualified or conditional privilege. The privilege exists if the defendant correctly or reasonably believes that some important interest of his own or a third party is threatened. A qualified privilege may exist where the parties have a common business interest. However, the qualified privilege exists only when the publication has occurred in a proper manner and to proper parties only.

Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice. "Prima facie" refers to a fact presumed to be true unless disproved by some evidence to the contrary. Even if a privilege exists, a defendant may still be liable for defamation if he abuses the privilege:

- (1) by exceeding the scope of the privilege and publicizing the defamatory statement to persons who do not need to have it in order to further the interest protected by the privilege; or

(2) by making the defamatory statement with constitutional actual malice.

Once it has been proven by the defendant that the communication was protected by a qualified privilege, the burden of proof shifts back to the plaintiff to prove either the scope of the privilege was exceeded or the defamatory statement was made with constitutional actual malice.

DEFAMATION – SPECIFIC CHARGE ON DAMAGES

In this case, the plaintiff must plead and prove constitutional actual malice by clear and convincing proof and special and general damages by a preponderance of the evidence.

A preponderance of the evidence simply means that a fact is more likely true than not true. In this case, the Plaintiff must prove her special and general damages by a preponderance of the evidence, a lesser standard than clear and convincing which was the burden of proof in deciding whether a Defendant made a defamatory statement with knowledge of its falsity or reckless disregard of whether it was true or false. .

A plaintiff who proves she is entitled to special damages may recover as special damages any expenses or loss of value that can be attributed to the slanderous and libelous statement. Special damages consist of specific identifiable economic or material losses to the plaintiff as a result of the defamation. Special damages are tangible losses or injury to the plaintiff's property, business, occupation or profession, which are capable of being assessed monetarily and which result from injury to the plaintiff's reputation. Special damage is the manifestation of injury to reputation which is computable in money or capable of being assessed at monetary value. Once the Plaintiff has proved special damages, you may then consider general damages for the Plaintiff.

general damages would include:

- (1) injury to reputation and standing in the community;
- (2) embarrassment;
- (3) personal humiliation;
- (4) mental anguish and suffering;
- (5) wounded feelings caused by injury to reputation.

If you find the Plaintiff is entitled to special and general damages, you may also consider awarding the Plaintiff punitive damages.

Punitive damages, also known as exemplary damages, are imposed as punishment. They are not intended to compensate. Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.

Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence a defendant acted with actual malice, that the Defendant's action were willful, wanton, malicious, or in reckless disregard of the truth.

The test for determining whether a tort may be deemed reckless, willful or wanton is whether it has been committed in such a manner and under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the rights of the injured party.

Before you can award punitive damages, you must first find the plaintiff is entitled to special damages. There must be an award of special damages for a verdict of punitive damages to be supported. This rule is premised on the fact that liability must be established before a plaintiff can seek punitive damages. Therefore, if you do not award special damages, then you cannot award punitive damages.

There is no formula or standard that can be used as a measure for assessing punitive damages. However, factors relevant to your consideration of punitive damages are:

- (1) the character of the defendant's acts;
- (2) the nature and extent of the harm to plaintiff which defendant caused or intended

to cause;

(3) defendant's degree of culpability;

(4) the punishment that should be imposed;

(5) duration of the conduct;

(6) defendant's awareness or concealment;

(7) the existence of similar past conduct;

(8) likelihood the award will deter the defendant or others from like conduct;

(9) whether the award is reasonably related to the harm likely to result from such conduct; and

(10) defendant's wealth or ability to pay.

The financial condition of a defendant is a factor you should consider in awarding punitive damages. However, there is no requirement that the defendant be a person of means before you are justified in awarding punitive damages. While the wealth of a defendant is a relevant factor in assessing punitive damages, it is not necessarily controlling. In other words, the financial worth of a defendant is a fact properly to be considered by you in determining the amount to be awarded as punitive damages, but evidence of net worth is not a prerequisite to a punitive damage award.

Law relevant to this case:

PRE-EXISTING INJURY

The Plaintiff can recover for pre-existing injuries only to the extent they were aggravated by the defendant's actions. Any portion of the injuries which was not caused by an act or omission on the part of the defendant is not compensable. You can award damages for any aggravation of a pre-existing

condition, but not for the original injury itself. Likewise, a Defendant is not liable for the natural progression or worsening of a pre-existent condition or disease.

Under the South Carolina Rules of Civil Procedure:

RULE 40(j) Case Stricken From Docket by Agreement. A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule.

It is the law of this state:

SECTION 40-18-110. Authority and arrest powers of those licensed or registered under chapter.

A person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of this State but possesses the powers of arrest only on the property on which he is employed.

It is the law of this state pursuant to:

Code of Laws of South Carolina – Regulations 73-418

1) Private security officers are required to immediately secure the scene of a discovered crime on protected property, to immediately notify the law enforcement agency of jurisdiction, and to report suspected criminal activity on the protected property to the primary law enforcement agency of jurisdiction as soon as reasonably possible.

2) Private security officers must receive training by their employer sufficient to ensure adequate knowledge to properly and competently secure and preserve a crime scene.

I charge you that when a party fails to preserve material evidence for trial, it is for you to determine whether the party has offered a satisfactory explanation for that failure. If you find the explanation unsatisfactory, you are permitted but not required to draw the inference that the evidence would have been unfavorable to the party's claim

Erasure of a tape recording when done as part of a routine practice is not evidence of actual malice

I charge you, under our appellate court rules, Rule 502, 13 states:

RULE 13. IMMUNITY FROM CIVIL SUITS

Communications to the Commission, Commission counsel, disciplinary counsel, or their staffs relating to misconduct or incapacity and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit predicated thereon may be instituted against any complainant or witness. Members of the Commission, Commission counsel and staff, and disciplinary counsel and staff shall be absolutely immune from civil suit for all conduct in the course of their official duties.

FAIR AND IMPARTIAL TRIAL

MISTER FOREPERSON, Ladies and Gentlemen of the Jury, as you retire to begin your deliberation, I wish to express the hope that each of you will be mindful of the importance of your responsibility here today. You are not called upon to serve as jurors very often, and the proper performance of the duty requires each of you to reach the height of freeing your mind of all improper influences. You and I are acting for the community and that is why we must see to it that this trial is fair and the verdict is just.

You have observed that the presiding officer of this Court is always addressed as YOUR HONOR. The reason is that this Court is entrusted with the honor of this community, the honor of this state, and the honor of this country, in seeking that every case tried here receives fair and impartial justice.

Now, you, the Jury, take into your care the preservation of the honor of this community, the honor of this state, and the honor of this country.

Please do not get the idea that I am trying to intimate to you how I might think you should decide this case. As I have already told you, under the laws of the State of South Carolina, you, the Jury, are the sole judge of all questions of fact. It would be highly improper for me to influence you in the performance of that duty.

So, I am not trying to tell you what verdict you should find. But as the presiding of Officer of this Court, I am vitally concerned that whatever verdict you find will be the result of your going into the jury room and confining your consideration to the evidence and the law that you have heard in this courtroom, weighing it fairly and impartially, as I have every confidence that you will.

Everyone is entitled to justice in this case, both the State and the Defendant. You owe no support or sympathy to anyone. The Court is of the confirmed opinion that whatever verdict you will reach will represent TRUTH AND JUSTICE for all parties involved.

Remember, your VERDICT MUST BE UNANIMOUS. I will now explain the verdict form and possible verdicts.

PLEASE DO NOT BEGIN DELIBERATING UNTIL I TELL YOU TO DO SO.



ADMINISTRATIVE OFFICES
OFFICE (843-) 671-1343
FAX (843) 671-4027
www.csascapines.com

June 6, 2008

Commission on Judicial Conduct
1055 Sumter Street
Room 111
Columbia, SC 29201



Re: Judge Maureen T. Coffey
Town of Hilton Head Island-Municipal Court

To the members of the Judicial Conduct Commission:

This is a letter of complaint regarding previous and ongoing conduct of Judge Maureen T. Coffey, Town of Hilton Head Island-Municipal Court. There is a pattern of reactive and overt actions that have/are undermining the criminal justice process. For the reasons that will be outlined below, it is apparent that Judge Coffey has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts & criminal justice procedure. This conduct was/is pervasive and invasive in nature, and directly results in Judge Coffey's inability to maintain the impartiality so necessary to the successful balance of our legal system.

Presently I have the responsibility of serving as the Director of Security & Community Affairs for Sea Pines, Hilton Head Island. In total, I have more than 30 years in a variety of capacities that include Law Enforcement & U.S. Government service in the Greater Washington, DC area. My present position oversees a staff of approximately 50 officers and support staff whose primary concern is the public safety, security and law enforcement for our community of 25,000 to 75,000 residents and visitors. This responsibility includes not only the public at large but extends to the certified officers charged with this enforcement.

1)

During the last several months of 2004 our community was the victim of a rash of burglaries, thefts and residential break-ins. After an exhaustive investigation by the Beaufort County Sheriff's Office, the primary suspect was identified as OTIS COFFEY (sibling of Judge Coffey). Prior to and since, this suspect had/has more than a passing familiarity with many law enforcement and parole & probation departments in several jurisdictions. During the course of these burglaries my department began a process of saturation patrols in the areas that the pattern dictated were of greatest exposure. On 12-10-04 at approx. 6 AM Otis Coffey's vehicle was reported to have backed into the driveway of a person unknown to him well off the main roadway and had exited his vehicle. Our officers & the BCSO responded. Otis Coffey eventually appeared in another vehicle in the company of his father (Michael Coffey-deceased). At that time Otis Coffey was lawfully arrested for trespassing. On the scene, Mr. Michael Coffey (father of Judge & Otis Coffey) attempted to insert himself into the arrest process and then proceeded to call Judge Coffey via cell phone and presented the phone to the on scene supervisor.

COMMUNITY SERVICES ASSOCIATES INC. 175 OCEANVIEW DRIVE HILTON HEAD ISLAND SC 29929

Sometime after this arrest Capt Toby McSwain-BCSO had a meeting with Judge M. Coffey and advised her that Otis was the prime suspect in a rash burglaries occurring over the previous several months. Judge Coffey stated to Capt. McSwain that she was "going to get him out of town", or words to that effect. From the date of that arrest and after that statement, our burglaries ceased.

From the date of December 10, 2004 the burglaries plaguing the community of Sea Pines ceased.

2) Several months ago (Feb to May 2008) our community again was the victim of a rash of burglary cases. The route of travel, target homes, times, dates and M.O. were very similar (almost exact) to the cases of approx 3 1/2 years ago where Otis Coffey was the primary suspect. It was at about that time that it was learned that Otis Coffey had returned to this community at approximately the same time frame as the first burglary. I instructed the late shift patrols to focus in the areas of pronounced exposure and that fit the on going and familiar pattern. On May 20 around midnight one of our officers observed the suspect dressed in black travelling on a bike (our community does not offer any type of bike path or roadway lighting, nor is it permitted). The suspect was confronted & identified by our officer, at which time he rode off before he could be detained. A radio call was made to another officer who pulled his vehicle to within eyesight of the suspects home. Approximately 15 min. later that officer observed a suspect matching the same description run into the home and the lights were cut off. Our officers along with BCSO responded to the home where the owner answered the door (Ann Coffey-mother of Judge Coffey & Otis). She stated that she was home alone, no one was there and that Sea Pines Security was always trying to pin something on her son.

We continued our 24-hour patrol saturation process in the general area of the break-ins. On May 23 at approximately 8:30 PM one of my patrol officers (retired Indiana Police Officer-new hire) observed a person unknown to him (Judge Matthew Coffey) walking outside on the street of the Coffey residence and offered a pleasantry. Judge Coffey replied, "We needed to quit harassing him". The officer stated that he did not know what she was referring to. She replied, "She was the Judge for the Town of Hilton Head Island". The officer said that he had never met her nor was he aware of who she was and that he was new to the area. Judge Coffey stated, "that she would go see Chief Breed but did not have the time. Further that she does not know if he is guilty or not and that she was going to have him moved out".

From the date of May 20, 2008 the community of Sea Pines has not had one burglary or report of break-in.

3) On May 21, 2008 one of our patrol officers found a vehicle parked in the roadway in front of 4 Gadwall Rd. (Coffey residence). The vehicle was found to be registered to a Michael Coffey (deceased). Several attempts were made via phone and in person at 4 Gadwall to have the vehicle moved from the road

with no response. After approx. 1 hour a tow vehicle responded at which time both Otis Coffey & Ann Coffey emerged from the home. The officer issued Mrs. Coffey a parking citation. During this process Mrs. Coffey asked the officer if he was new to the department. The officer stated that he had been employed here for many years. Mrs. Coffey then stated "You do know who the judge is don't you...my daughter".

CANON 1
A JUDGE SHALL UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY

CANON 2
A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN
ALL OF THE JUDGE'S ACTIVITIES

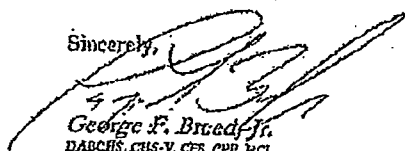
CANON 3
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND
DILIGENTLY

This complaint is the result of much serious, sober and deliberate examination and contemplation. In my many years of public service, this is the first time that I have generated correspondence such as this. It is also, however, the first time that I have been faced with such concerns. I am most profoundly aware of the possible effect of this correspondence in as much as Judge Coffey is the only Municipal Court Judge for Hilton Head Island and as such is the only judicial conduit available to my officers for their numerous traffic and criminal cases. Nonetheless, my alarm for this community and the responsibility for its safety & security is much greater.

I believe that Judge Coffey's inability to remove and insulate herself from personal relationships and overt involvement both past and present have caused her to insert herself in these scenarios to the detriment of the community at large. Further, it has manifested itself and caused her to engage in conduct prejudicial to the effective and expeditious administration of the business of the courts and criminal justice process. In summary, as a result of Judge Coffey's actions, she has given the distinct and transparent appearance of bias and partiality, and is not able to be a neutral and detached arbiter of the many cases that have been and will be pending before her.

If I can provide any additional information that you require please do not hesitate to contact me.

Sincerely,


George F. Broad Jr.
DABCHS, CUS-V, CFS, CPP, PCI
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7170 / 671-5009



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Monday, December 08, 2008 | Hilton Head Island - Bluffton, SC

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Judge files lawsuit against Sea Pines POA

By DANIEL BROWNSTEIN
dbrownstein@islandpacket.com
843-706-8125

Published Monday, December 8, 2008

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Hilton Head Island's municipal court judge has sued the Sea Pines property owners association, saying the plantation's private security force harassed and publicly defamed both she and her family since trying to solve a series of burglaries in 2004.

In the lawsuit, filed Nov. 20 in the Beaufort Court of Common Pleas, Judge Maureen Coffey argues Sea Pines Security had no probable cause to consider her adopted brother, Otis Coffey, a suspect in the burglaries.

She claims the security force "began a pattern of harassing conduct designed to jail Otis Coffey and have (Maureen Coffey) removed as the municipal judge as well as disbarred from the South Carolina Bar," according to the suit.

The Sea Pines property owners association, Community Services Associates, lodged a judicial complaint against Judge Coffey in June. That complaint of judicial wrongdoing was investigated by the S.C. Supreme Court's Office of Disciplinary Counsel, which dismissed it after finding it was without merit, according to Coffey's lawsuit.

Lesley M. Coggiola, the state's disciplinary counsel, said she couldn't comment on the complaint, citing confidentiality rules.

In order to avoid potential conflicts, the Town of Hilton Head Island began using Beaufort

<http://www.islandpacket.com/news/local/story/691832.html>

Continued
12/8/2008

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magistrate Ned Tupper in August to hear cases brought to the court by Sea Pines Security, town officials said.

When reached by phone in her office Friday afternoon, Judge Coffey declined to comment on the specifics of the lawsuit, but she did say she was confident the court would arrive at a "just" decision.

"While our judicial system isn't perfect, it's a great one," she said. "You have to have integrity on both sides to make it work."

Cary Kelley, executive vice-president of CSA, disagreed with Coffey's descriptions of what happened.

"We feel strongly that the lawsuit is without merit, and our attorneys will address it next week," he said.

In addition to the alleged harassment and intimidation, Judge Coffey claims Sea Pines security director George Breed falsified a police report written by one of his officers.

In the initial report, the officer allegedly wrote that he was unable to identify a "suspicious" black man riding a bike near the Coffey family's Sea Pines home last February. Coffey claims Breed changed the report to read that the officer identified her brother as the suspect who rode off from the security guard.

A Sea Pines security officer allegedly said he saw Otis Coffey run into the family's home about 15 minutes later. Beaufort County sheriff's deputies responded, but they did not find Otis Coffey at the house, according to the lawsuit.

Security officers were instructed to conduct surveillance on the home, the suit alleges.

Beaufort County court records show Otis Coffey pled guilty to two counts of possession of narcotics in 1991. A string of larceny and burglary charges the following year never were prosecuted, records show.

He has not faced any significant criminal charges since then.

The Coffey family has lived in Sea Pines since 1980. Maureen Coffey's parents had three children of their own, and adopted two black siblings. Otis Coffey and his younger brother, Christopher, were among the very few black people living in Sea Pines, according to the lawsuit.

Maureen Coffey became an associate municipal court judge for the Town of Hilton Head Island in December 2000. She was promoted to full-time judge in February 2005.

Statements made by Sea Pines exposed Maureen Coffey to "public hatred, contempt and ridicule" and have been a source of "great embarrassment and humiliation," the lawsuit says.

00300

Other stories

Food banks busier
Judge files lawsuit
Heyward House g
Deep Well helps y
Beaufort building
ETV employees lo
Greater Bluffton b
first time since bru
Island officials reje
Jumbo shrimp! Gi
How Charles Fras
island Eden
More

She is seeking an unspecified amount of money.

More on islandpacket.com

Coffey's lawsuit has created a stir within some circles of Sea Pines residents, according to e-mail exchanges obtained by The Island Packet.

In one of those e-mail blasts sent between residents, home-owner Daniel Westerbeck, wrote "the clear, unambiguous facts alleged (in the lawsuit) ... indicate CSA is out of control and wasting our money on matters unrelated to the maintenance of the Plantation and that its managers may be pursuing personal agendas."

"Regardless of merit, it will cost a lot of money to defend because you can bet the judge is not going to go away," Westerbeck continued.

He called for his neighbors to press Kelley and board members for answers.

CSA currently is involved in a second significant lawsuit, one that involves the property owners association being sued by some of its own members over perceived violations of the neighborhoods covenants and other agreements.

The Sea Pines Country Club has sued CSA over the \$5 gate pass fee now being charged to guests of special events at the country club. The country club claims covenants and the 1989 transfer of the club's ownership from Sea Pines to its members prohibit charging the fee.

In its legal arguments, CSA claims only people attending events sponsored by a Sea Pines resident should be exempt from the fee and that security officers mistakenly have not been following that rule.

Patricia Jenkins, president of CSA's Board of Directors, urged homeowners not to rush to judgment and issued a stern warning to those who may want to speak out.

"Correspondence, e-mail blasts and other statements, without the knowledge of all of the facts and circumstances that reach conclusions and make assertions are harmful to the reputation of our community and the morale of the staff and employees of CSA," she wrote in a Nov. 24 letter to homeowners. "Personal and public attacks should have no place in this community and will be responded to appropriately."

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MAUREEN T. COFFEY,)
Plaintiff,)
v.)
COMMUNITY SERVICES ASSO-)
CIATES, INC., GEORGE F.)
BREED, JR., SEA PINES)
RESORT, LLC, and ASSOCIA-)
TION OF SEA PINES PLANT-)
ATION PROPERTY OWNERS,)
INC., AND THE ADVISORY)
BOARD,)
Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

PLAINTIFF'S WITNESS LIST

The Plaintiff proposes to call the following witnesses to testify at trial:

PROBABLE TO BE CALLED:

Maureen T. Coffey
John A. Jolin, Jr.
Meredith Florencio
Gregory D. DeLoach
Curtis L. Coltrane
Brian E. Hulbert
Steve Birdwell
David Dorsner, MD
Richard Sonberg

Deposition Testimony:
George F. Breed, Jr. (CSA)
Cary Kelley (CSA)

AVAILABLE TO BE CALLED:

Eric Calendine (BCSO)
Brian Baird (BCSO)
David Murphy (BCSO)
Kyle Blackmon (BCSO)
Marie Degler
Harold Harris
Ann Coffey
Randy Woods (CSA)
Todd McNeil (CSA)
Tracey McNeil (CSA)
Bill Campbell (CSA)
Bobbie Martin (CSA)
Frank Fryman (CSA)
Stephen Wright (CSA)
Jeanne Pearse (CSA)
William Waxel (CSA)

Respectfully Submitted,

By: _____
Robert V. Mathison, Jr.
Attorney for the Plaintiff
Maureen T. Coffey

May 28, 2012

Hilton Head Island, South Carolina.

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29928
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Facsimile: (843) 785-6170
Email: rmathlaw@aol.com

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., GEORGE F. BREED, JR., SEA
PINES RESORT, LLC, and
ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. AND THE ADVISORY BOARD,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-07-00013

TRIAL STIPULATION

The parties stipulate to the following:

1. On November 20, 2008, the Plaintiff filed Plaintiff's First Complaint, Civil Action No. 2008-CP-07-4540, in Beaufort County Court of Common Pleas.
2. On December 29, 2008, Defendants filed an Answer to Civil Action No. 2008-CP-07-4540, Plaintiff's First Complaint.
3. On January 13, 2009, Defendants filed a Motion to Dismiss Civil Action No. 2008-CP-07-4540, Plaintiff's First Complaint.
4. On January 12, 2010 in Civil Action No. 2008-CP-07-04540, a Rule 40(j) Consent Dismissal was entered upon Motion of the Plaintiff Maureen T. Coffey and stricken from the trial roster.
5. On December 20, 2010 Plaintiff filed a Notice of Motion and Motion to Restore Civil Action No. 2008-CP-07-04540.

Joint Exhibit
1 6-5-12

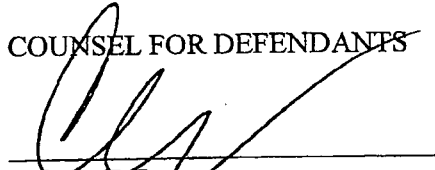
6. On January 4, 2011, an Order (Restoring Case) in Former Case No. 2008-CP-07-04540, was filed, assigning the New Case Number 2011-CP-07-0013.

7. On February 10, 2011, Plaintiff filed an Amended Complaint in Civil Action No. 2011-CP-07-0013.

6. On August 31, 2011, Plaintiff served her First Interrogatories and Requests for Production of Documents on Defendant Community Services Associates, Inc. No Discovery was served on Defendant George Breed.

IT IS SO STIPULATED.

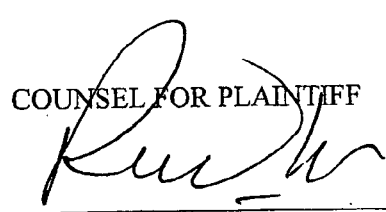
COUNSEL FOR DEFENDANTS


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(843) 577-5200

COUNSEL FOR PLAINTIFF


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Hilton Head Island, SC 29938
(843) 785-6503

June 5, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2011-CP-07-00013
COUNTY OF BEAUFORT	)	
MAUREEN T. COFFEY,	)	MEMO IN OPPOSITION TO
Plaintiff	)	GIVING A JURY CHARGE FOR
v.	)	SPOILATION OF EVIDENCE
	)	
COMMUNITY SERVICES,	)	
ASSOCIATES, INC., <i>et al.</i> ,	)	
Defendants	)	

Defendants Community Services Associates, Inc. ("CSA"), George F. Breed, Jr., and Association of Sea Pines Plantation Property Owners, Inc. and the Advisory Board ("ASPPPO") (hereinafter jointly the "Defendants"), by and through their undersigned counsel, hereby submit this memorandum in support of their request that this Court not give a jury charge for spoliation of evidence.

In *Welsh v. Gibbons*, 211 S.C. 516, 46 S.E.2d 147 (1948), distinguished by *Ex parte Goodyear Tire & Rubber Co.*, 248 S.C. 412, 415-16, 150 S.E.2d 525, 526-27 (1966), the South Carolina Supreme Court recognized circumstances under which a jury should be able to consider missing evidence. Later, relying on the holding in *Welsh*, the Supreme Court upheld a jury charge which advised that "when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party." *Kershaw County Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990). Most recently, in *Stokes v. Spartanburg Regional Medical Center*, the South Carolina Court of Appeals held that a trial court's error of failing to give a spoliation-of-evidence jury instruction prejudiced the plaintiff.

However, in each case, there was evidence in the record that one party had physical evidence within the party's possession that the party did not hand over to the opposing side. In

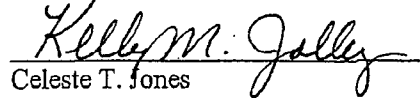
Welsh, the plaintiff sued a bottling plant, alleging it sold a soft drink which contained poison. The plaintiff had in his possession the bottled drink, but refused to test the contents himself or to allow the defendant to test its contents. 211 S.C. 516, 523, 46 S.E.2d 147, 150. Similarly, in *Kershaw*, the school board sued the manufacturer of the ceiling plaster that had been installed in many of Kershaw County's schools on the grounds that the plaster contained asbestos. Although, a court had ordered that the manufacturer be notified prior to any asbestos being removed, the school board did not notify the manufacturer before removing asbestos at one of its schools. The trial court denied the manufacturer's motion for judgment in its favor on the claims related to that school for failure of notice, but charged the jury as in *Welsh*. *Kershaw*, 302 S.C. 390, 394, 396 S.E.2d 369, 372. In *Stokes*, there was evidence that two pieces of medical evidence were missing from the plaintiff's medical record: results from a blood test and the floor nurse's chart detailing plaintiff's vital signs on the evening of his death. 369 S.C. 515, 521, 629 S.E.2d 675, 678-9. In each case, the jury charge was given or should have been given based on the fact that the party failed to produce evidence in his possession that was properly part of his case which justifies an inference that this evidence, if it had been presented, would be unfavorable. Upon information and belief, there is no South Carolina case supporting a spoliation-of-evidence charge based on the speculation of the plaintiff that other evidence might or should exist.

Additionally, the primary claim in this case is for defamation of a public official. Insofar as Plaintiff claims that actual malice is shown by the routine destruction of a recording taken by the CSA Security office, that claim fails as a matter of law. Erasure of a tape recording when done as part of a routine practice is not evidence of actual malice. *Peeler v. Spartan Radiocasting*, 324 S.C. 261, 478 S.E.2d 282 (1996). George Breed testified in his deposition that all security recordings are stored in a file of limited capacity that eventually records over itself. Additionally, the recording system in place in 2008 has since been replaced. (Depo. George

Breed, pp. 42-42, 45-46, 50-51, 58-60). Plaintiff's first request for production was served almost three years after the alleged incidents in the complaint. Defendants contend that no relevant recording was ever made; however, even if one was, it was automatically destroyed in the ordinary course of business long before Plaintiff filed this action or requested discovery.

Respectfully submitted,

McNAIR LAW FIRM, P.A.



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Community Services Associates, Inc. Association
of Sea Pines Plantation Property Owners, Inc. and
George F. Breed, Jr

May 25, 2012

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

MAUREEN T. COFFEY,)

Plaintiff,)

v.)

COMMUNITY SERVICES ASSO-)
CIATES, INC. and GEORGE F.)
BREED, JR.)

Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

VERDICT FORM

We, the jury find unanimously as follows:

1a. The plaintiff has proved by clear and convincing evidence that the defendant, **George F. Breed, Jr.**, published a false statement of fact of and concerning plaintiff.

☒ yes
☐ no

1b. The plaintiff has proved by clear and convincing evidence that the defendant, **Community Services Associates, Inc.**, published a false statement of fact of and concerning plaintiff.

☒ yes
☐ no

If no for both 1a & 1b, please sign and date the form and advise the court that a verdict has been reached.

2a. The plaintiff has proved by clear and convincing evidence that the defendant, **George F. Breed, Jr.**, published a statement concerning the Plaintiff with knowledge that it was false or with reckless disregard of its falsity.

☒ yes
☐ no

2b. The plaintiff has proved by clear and convincing evidence that the defendant, *Community Services Associates, Inc.*, published a statement concerning the Plaintiff with knowledge that it was false or with reckless disregard of its falsity.

☒ yes
☐ no

If no for both 2a & 2b, please sign and date the form and advise the court that a verdict has been reached.

3. The plaintiff has proved by a preponderance of the evidence that she has sustained special damages.

☒ yes
☐ no

If yes, write the amount of special damages and proceed to question 4. If no, sign the form and advise the court that a verdict has been reached.

\$ 6,050.00 Special Damages

4. The plaintiff has proved by a preponderance of the evidence that she has sustained damage to her reputation/ general damages as a consequence of the defendants' publication.

☒ yes
☐ no

If yes, write the amount of reputation/ general damages.

\$ 2,000,000.00 General Damages

If you answer question 3 yes, you may then consider punitive damages

5. The plaintiff has proved by clear and convincing evidence that the Plaintiff is entitled to punitive damages.

☒ yes
☐ no

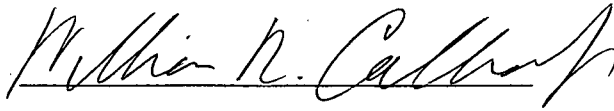
☒ against George F. Breed, Jr.
☐ against Community Services Associates, Inc.
☒ against Community Services Associates, Inc. & George F. Breed, Jr.

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Certificate of Counsel

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in cursive script, reading "William R. Calhoun, Jr.", written over a horizontal line.

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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
Appeal Tracking Number: 2012-213252

Maureen T. Coffey..... Respondent,

v.

Community Services Associates, Inc. and George F. Breed, Jr. Appellants.

PROOF OF SERVICE

I, the undersigned, of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for the Appellant Community Services Associates, Inc., do hereby certify that I have served a copy of Record of Appeal (4 volumes) in connection with the above-referenced appeal by mailing a copy of the Record by United States Mail, postage prepaid, to the following address:

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Mathison & Mathison
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ATTORNEY FOR RESPONDENT

I have also had copies of the cited Record on Appeal delivered by courier to the offices of the following attorneys at the addresses indicated. The courier has confirmed delivery to me.

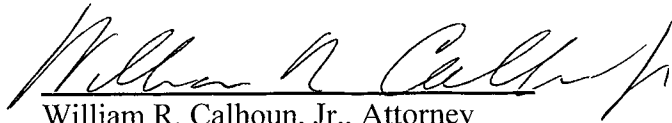
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