

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 27 2015

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Court of Appeals No. 2014-001249
Civil Case No. 2012-CP-26-3804

David Wren and Sun Publishing Company Inc.,
d/b/a The Sun News,.....Appellants,

v.

Mark Kelley,.....Respondents.

RECORD ON APPEAL

Volume 1 of 2

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2603804

Mark Kelley

David Wren
Sun Publishing
Company Inc

Sun News

FILED
HORRY COUNTY
CLERK OF COURT
14 MAY 13 PM 4:04

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
☐ Self-Represented Liantant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

WE THE JURY, FIND FOR THE PLAINTIFF IN THE AMOUNT OF \$400,000.00 ACTUAL DAMAGES. WE FIND FOR THE PLAINTIFF IN THE AMOUNT OF \$250,000.00 PUNITIVE DAMAGES.

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
MARK KELLEY	THE SUN PUBLISHING CO., INC D/B/A THE SUN NEWS; AND DAVID WREN	\$400,000.00 ACTUAL DAMAGES
MARK KELLEY	THE SUN PUBLISHING CO., INC. D/B/ A THE SUN NEWS; AND DAVID WREN	\$250,000.00 PUNITIVE DAMAGES

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Jan R/m
Circuit Court Judge

2152

Judge Code

5/13/2014

Date

For Clerk of Court Office Use Only

13th May 2014
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

James P. Stevens Jr. Stevens Law Firm, PC PO Box 127
Loris, SC 29569-0127
Natalie Shawn Stevens-Graziani PO Drawer 127 Loris, SC
29569-0127

Jerry Jay Bender PO Box 8057 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins-Ward

Melanie Huggins-Ward - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2012-CP-26-3804

MARK KELLY,

Plaintiff,

v.

THE SUN PUBLISHING CO., INC.
d/b/a THE SUN NEWS; and DAVID
WREN

Defendants.

FILED
HORRY COUNTY
14 MAY 13 PM 1:04
CLERK OF COURT

VERDICT FORM

Instructions: Mark the appropriate response to the following questions. Each response must be unanimous.

VERDICT FORM AS TO NEWS ARTICLES

- I. As to the MAY 21, 2010, the May 23, 2010, or the May 25, 2010 articles authored by Defendant David Wren, we find that the plaintiff has proven by clear and convincing evidence that the defendants publication of said article was willful, wanton, or reckless.

YES



NO

If the jury unanimously answers YES to the finding above, we find for the Plaintiff against both defendants Punitive Damages in the amount of \$ Two Hundred Fifty Thousand and no/100 (\$ 250,000⁰⁰) Dollars.
(write your verdict in words and figures)

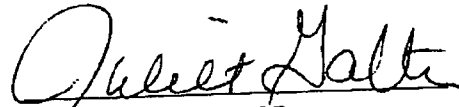
If the jury unanimously answers NO to the finding above, we find for the Defendant as to the articles identified above.

____ (Initial Here)

COURT'S	
EXHIBIT NO.	<u>6</u>
IDENTIFICATION EVIDENCE	
DKT.#	
DATE	<u>5/14/14</u>

I certify the verdict above is unanimous, as witness that each juror adopted each answer as her or his own answer.

Conway, South Carolina


Juliet Galt
Jury Foreperson

May 8, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2012-CP-26-3804

MARK KELLY,

Plaintiff,

v.

THE SUN PUBLISHING CO., INC.
d/b/a THE SUN NEWS; and DAVID
WREN

Defendants.

VERDICT FORM

FILED
HORRY COUNTY
14 MAY 13 PM 1:04
CLERK OF COURT

Instructions: Mark the appropriate response to the following questions. Each response must be unanimous.

VERDICT FORM AS TO NEWS ARTICLES

- I. As to the MAY ²¹~~20~~, 2010, the May 23, 2010, or the May 25, 2010 articles authored by Defendant David Wren, we find ~~the~~ that the plaintiff has proven by clear and convincing evidence that the defendants made a false statement about the plaintiff, published said statement, and that said statement injured the plaintiff personally and in his occupation and profession.

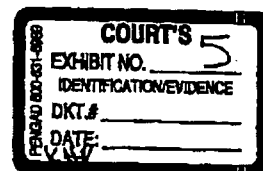
YES ☒ NO ☐

If YES, we also find that the plaintiff has proven by clear and convincing evidence that said statement was published with actual malice, which is the statement was made with knowledge of its falsity or reckless disregard of its truth or falsity.

YES ☒ NO ☐

If YES, we also find that the plaintiff has proven by clear and convincing evidence that Plaintiff sustained actual damages.

YES ☒ NO ☐



If the jury unanimously answers YES to all three findings above, we find for the Plaintiff against both defendant Actual Damages in the amount of \$ Four Hundred Thousand and ^{no}/100 (\$ 400,000.00) Dollars.

(write your verdict in words and figures)

If the jury unanimously answers NO to any of the findings above, we find for both Defendants as to the articles identified above.
_____ (Initial Here)

I certify the verdict above is unanimous, as witness that each juror adopted each answer as her or his own answer.

Conway, South Carolina

Juliet H. H.
Jury foreperson

May 8, 2014.

VERDICT FORM AS TO EDITORIAL

- II. As to the editorial dated May 30, 2010, we find that the plaintiff has proven by a Clear and Convincing Evidence that the defendants made a false statement about the plaintiff, published said statement, and that said statement injured the plaintiff's reputation.

YES _____ NO ✓

If YES, we also find that the plaintiff has proven by clear and convincing evidence that said statement was published with actual malice, which is the statement was made with knowledge of its falsity or reckless disregard of its truth or falsity.

YES _____ NO _____

If YES, we also find that the plaintiff has proven by clear and convincing evidence that Plaintiff sustained actual damages.

YES _____ NO _____

If the jury unanimously answers YES to all three findings above, we find for the Plaintiff only against defendant, Sun Publishing Company, Inc. Actual Damages in the amount of \$ _____ (\$ _____) Dollars.
(write your verdict in words and figures)

If the jury unanimously answers NO to either of the findings above, we find for Defendant Sun Publishing Company, Inc. as to the editorial identified above. SG (Initial Here)

I certify the verdict above is unanimous, as witness that each juror adopted each answer as her or his own answer.

Conway, South Carolina

Juliet L. Luten
Jury Foreperson

May 8, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
FILE NO. 2012-CP-26-3804

MARK KELLEY,)
)
Plaintiff,)
)
vs.)
)
THE SUN PUBLISHING COMPANY)
INC. d/b/a THE SUN NEWS and)
DAVID WREN)
)
Defendants.)
_____)

SECOND
AMENDED
COMPLAINT

(Jury Trial Requested)

Now comes the Plaintiff, Mark Kelley, by his undersigned attorney, and alleges as follows:

1. That the Plaintiff is a citizen and resident of Horry County, South Carolina and at all times mentioned in this complaint enjoyed a good name and reputation, both personally and in his occupation as a lobbyist for his clients.
2. Defendant, David Wren (hereinafter referred to as reporter) is an individual and is now and, at all times mentioned in this complaint, was a resident of Horry County, South Carolina. At all times mentioned in this complaint, defendant reporter was employed by defendant, The Sun Publishing Company Inc. as a reporter.
3. Plaintiff is informed and believes that at all times mentioned herein, defendant reporter was acting individually with his own motives and also was acting as the agent, servant and employee of The Sun Publishing Company Inc. and/or The Sun News. In committing the acts alleged herein below, defendant reporter was acting within the course and scope of his employment. All of the acts done by defendant reporter were known to, accepted by, and ratified by defendant, The Sun Publishing Co., Inc.
4. Defendant The Sun Publishing Company Inc. (hereinafter referred to as

Newspaper) is now and, at all times mentioned in this complaint, a corporation organized and existing under the laws of the State of South Carolina, with its principle place of business in Horry County, South Carolina. Defendant Newspaper is and was engaged in business as the owner of THE SUN NEWS, a newspaper of general circulation in Horry County, South Carolina and other counties in the state.

FOR A FIRST CAUSE OF ACTION

(Libel *per se* – Article of May 23, 2010)

5. That on or about May 23, 2010, Defendants engaged in the business of reporting and publishing in the newspaper, THE SUN NEWS, an article accusing the Plaintiff of delivering about \$84,000 of campaign contributions to a gubernatorial candidate. (A copy of said newspaper article is attached hereto, marked as Exhibit 1, and made a part of this Complaint).

6. The above-mentioned publication referred to plaintiff by name, was made of and concerning plaintiff, and was so understood by those who read the article.

7. That said statement accused the Plaintiff of a crime in violation of the statutory laws of the State of South Carolina.

8. That said statement accused the Plaintiff of being unfit in his trade and profession.

9. That said statement accused the Plaintiff of an act of dishonesty and unethical conduct.

10 That the statement as set forth above and in the article is and was false as it pertains to the Plaintiff.

11. That said statement as set forth above was published with knowledge of its falsity or with a reckless disregard of its truth or falsity.

12. That said statement as set forth above was published with actual or implied malice.

13. That the article referred to above is libelous *per se* or on its face; and exposes

Plaintiff to hatred, contempt, ridicule, and obloquy.

14. As a direct and proximate result of the above-described publication, Plaintiff has suffered loss of his personal and business reputation, has suffered shame, embarrassment, mental suffering, and emotional distress.

15. That the Plaintiff is informed and believes that he is entitled to both actual and punitive damages on his First Cause of Action.

FOR A SECOND CAUSE OF ACTION

(Libel *per se* – Article of May 25, 2010)

16. Plaintiff realleges the above allegations as though set out herein verbatim.

17. That on or about May 25, 2010, Defendants reported and/or published in its newspaper, THE SUN NEWS, an article again accusing the Plaintiff of delivering, being involved in, and/or causing the delivery of about \$84,000 of campaign contributions to a gubernatorial candidate. (A copy of said newspaper article is attached hereto, marked as Exhibit 2, and made a part of this Complaint).

18. The above-mentioned publication referred to plaintiff by name, was made of and concerning plaintiff, and was so understood by those who read the article.

19. That said statement accused the Plaintiff of a crime in violation of the statutory laws of the State of South Carolina.

20. That said statement accused the Plaintiff of being unfit in his trade and profession.

21. That said statement accused the Plaintiff of an act of dishonesty and unethical conduct.

22. That the statement as set forth above and in the article is and was false as it pertains to the Plaintiff.

23. That said statement as set forth above was published with knowledge of its

falsity or with a reckless disregard of its truth or falsity.

24. That said statement as set forth above was published with actual or implied malice.

25. That the article referred to above is libelous *per se* or on its face; and exposes Plaintiff to hatred, contempt, ridicule, and obloquy.

26. As a direct and proximate result of the above-described publication, Plaintiff has suffered loss of his personal and business reputation, has suffered shame, embarrassment, mental suffering, and emotional distress.

27. That the Plaintiff is informed and believes that he is entitled to both actual and punitive damages on his Second Cause of Action.

FOR A THIRD CAUSE OF ACTION

(Libel *per se* – Article of May 30, 2010)

28. Plaintiff realleges the above allegations as though set out herein verbatim.

29. That on or about May 30, 2010, Defendants published in its newspaper, THE SUN NEWS, an article again insinuating, inferring and/or accusing the Plaintiff of delivering, being involved in, and/or causing the delivery of about \$84,000 of campaign contributions to a gubernatorial candidate. (A copy of said newspaper article is attached hereto, marked as Exhibit 3, and made a part of this Complaint).

30. The above-mentioned publication referred to plaintiff by name, was made of and concerning plaintiff, and was so understood by those who read the article.

31. That said statement accused the Plaintiff of a crime in violation of the statutory laws of the State of South Carolina.

32. That said statement accused the Plaintiff of being unfit in his trade and profession.

33. That said statement accused the Plaintiff of an act of dishonesty and

unethical conduct.

34. That the statement as set forth above and in the article is and was false as it pertains to the Plaintiff.

35. That said statement as set forth above was published with knowledge of its falsity or with a reckless disregard of its truth or falsity.

36. That said statement as set forth above was published with actual or implied malice.

37. That the article referred to above is libelous *per se* or on its face; and exposes Plaintiff to hatred, contempt, ridicule, and obloquy.

38. As a direct and proximate result of the above-described publication, Plaintiff has suffered loss of his personal and business reputation, has suffered shame, embarrassment, mental suffering, and emotional distress.

39. That the Plaintiff is informed and believes that he is entitled to both actual and punitive damages on his Third Cause of Action.

FOR A FOURTH CAUSE OF ACTION

(Libel *per quod* – All Articles between May 21, 2010 & November 11, 2010)

40. Plaintiff realleges the above allegations as though set out herein verbatim.

41. That between the dates of May 21, 2010 and November 11, 2010, Defendants published a series of articles dated May 21, 23, 24, 25, 30, July 14, 15, August 8, and November 10, 2010 in its newspaper, THE SUN NEWS, which insinuated, inferred and/or accused Plaintiff of raising, delivering, being involved in, and/or causing the delivery of about \$84,000 of campaign contributions to a gubernatorial candidate. (A copy of said newspaper articles are attached hereto, marked as Exhibits 1 through 9 inclusive, and made a part of this Complaint).

42. The above-mentioned publications referred to plaintiff by name, were made of and concerning plaintiff, and were so understood by those who read the article.

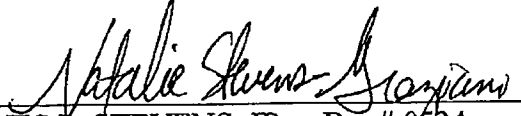
43. That said statements or articles accused the Plaintiff of a crime in violation of the statutory laws of the State of South Carolina.
44. That said statements or articles accused the Plaintiff of being unfit in his trade and profession.
45. That said statements or articles accused the Plaintiff of an act of dishonesty and unethical conduct.
46. That the statements or articles are and were false as it pertains to the Plaintiff.
47. That said statements or articles were published with knowledge of their falsity or with a reckless disregard of their truth or falsity.
48. That said statements or articles were published with actual or implied malice.
49. That the articles referred to above are libelous *per quod*; and exposes Plaintiff to hatred, contempt, ridicule, and obloquy.
50. As a direct and proximate result of the above-described publications, Plaintiff has suffered loss of his personal and business reputation, has suffered shame, embarrassment, mental suffering, and emotional distress.
51. That the Plaintiff is informed and believes that he is entitled to both actual and punitive damages on his Fourth Cause of Action.

WHEREFORE, Plaintiff prays for judgment against the Defendants, both jointly and/or severally as follows:

- (A) For actual damages in an amount to compensate the Plaintiff for his loss of and/or damage to his good name, his personal and business reputation;
- (B) For actual damages for his shame, embarrassment, mental suffering, and emotional distress;
- (C) For punitive damages in an amount found to be just and fair by a jury;
- (D) For the costs and disbursements of this action;

(E) For such other and further relief as this Court may deem just and proper.

STEVENS LAW FIRM, P.C.

By: 

JAMES P. STEVENS, JR. – Bar # 0634

NATALIE S. STEVENS-GRAZIANI – Bar # 74222

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Loris, S. C. 29569-0127

Tel. 843-756-7652

Fax: 843-756-3785

Attorneys for Plaintiff

February 28, 2013

05/23/2010

Bad debt adds to ^② donor *Sunday* mystery

Late on bills,
LLC cut checks
to politicians

By DAVID WREN
dwren@thesunnews.com

GARDEN CITY BEACH | The foreclosure of a beach house here is raising more questions about the source of campaign donations made last year by a group of corporations with ties to the Myrtle Beach Area Chamber of Commerce.

The home - at 551 S. Waccamaw Drive - is owned by Garden City Partners LLC, which made 13 campaign donations totaling \$20,500 last year to political action committees, incumbent state legislators, Myrtle Beach City Council members and U.S. Rep. Gresham Barrett, R-3rd District, who is running for governor.

While Garden City Partners was donating thousands of dollars to politicians, it also was failing to pay a bank loan tied to the beach house, according to court documents filed earlier this month in Georgetown County.

Shep Guyton, a Myrtle Beach lawyer and the registered agent for Garden City Partners, did not return telephone calls last week.

Robert Kelley - founder of Business Owners Organized to Save Tourism, a group of area tourism-related business owners - said he questions why Garden City Partners would make political donations instead of paying its bills.

Kelley said he also doubts whether the corporation truly was the source of money for those donations. Court and property records show the corporation's only asset is the beach house.

"It's been our point this



FROM PAGE 1A

HOUSE

From Page 1A

whole time that it looks like someone came up with a large amount of money and used these LLCs to make political contributions," said Kelley, whose organization has questioned whether the donations were political payback for a tax increase that benefits the chamber of commerce.

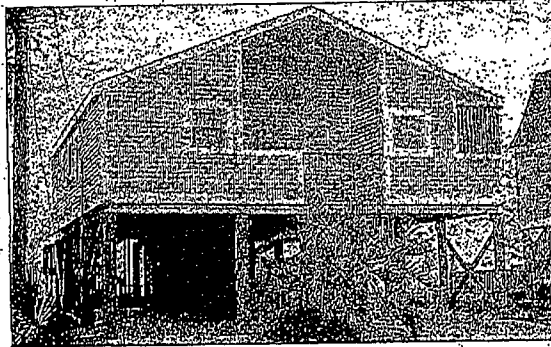
"This whole thing could be cleared up today if they would just say, 'Here are the businessmen and women behind these LLCs who gave the money,'" Kelley said.

Political donations by corporations that don't have to disclose their membership represent "a huge problem," according to John Crangle, director of Columbia-based Common Cause of South Carolina, which advocates for open government.

"Donors can hide behind multiple LLCs and the ultimate source of their money is often unknown," Crangle said.

Guyton, a former chamber board chairman, also is the registered agent for 14 other corporations that donated money to politicians last year. All told, those corporations made 160 donations totaling \$225,000 — all of them in the form of cashier's checks in sequential order purchased on the same day at South Atlantic Bank, where Guyton is board member.

Cathy Hazelwood — general counsel for the S.C. Ethics Commission, which oversees campaign donations — said she can

BY DAVID WREN dwren@thesunnews.com

The beach house at 551 S. Waccamaw Drive belonging to Garden City Partners.

not discuss the contributions associated with Guyton's corporations. Hazelwood would not say whether the commission is investigating the matter, but previously has said the donations appear to have been legal.

Brad Dean, the chamber's president, said last week that the chamber acted as a clearinghouse for some of the donations — corporations would send the contributions to the chamber's headquarters and the money then would be distributed to politicians.

Dean, along with chamber lobbyist Mark Kelley, delivered about \$84,000 of those contributions to Barrett in June. Those contributions included a \$3,500 cashier's check from Garden City Partners.

South Carolina Bank & Trust filed a foreclosure lawsuit against Garden City Partners on May 13, claiming the corporation owes nearly \$1.2 million on a

past-due loan. Garden City Partners has not yet filed an answer to the lawsuit.

Court documents show Garden City Partners took out the loan on April 17, 2006, to buy the beach house. The loan was supposed to be repaid within two years, but the bank allowed the corporation to extend the loan maturity date four times. When the most recent due date passed in January without any payment, the bank opted to foreclose on the property.

Garden City Partners is trying to sell the house before the foreclosure is final. The house, which has been on the market since January, has a list price of \$649,900 — a little more than half of the amount owed.

Guyton and the four other members of Garden City Partners each signed personal guarantees on the loan, and the bank has asked the court for a deficiency judgment, which means

those members would be responsible for paying back the difference between a sale price and the loan amount.

Three of the other members — Edward Williams, Dean Karavan and John Miller — could not be reached for comment. The fourth, Heyward Gullede, said he sold his interest in Garden City Partners years ago and was not aware of the foreclosure.

Gullede said he also was not aware that the corporation had made any political donations.

"I'm probably the least political person you'll ever meet," Gullede said.

Mark Lazarus, a member of another Guyton-related corporation called Creek View Land Partners LLC, has said that he also did not know Guyton was making political contributions in the corporation's name. Creek View Land Partners distributed \$13,500 in cashier's checks to politicians last year.

Lazarus said that corporation "did not have any money to make political donations."

"It does not have money, it has a piece of land," he said.

Other than Guyton, none of the other members of Garden City Partners has ever made personal donations to a political candidate, according to state and federal databases. An Edward Williams made a combined \$50 donation to two local political action committees last year, but it is not the same person as the corporation's member.

It is not clear whether any of the members of Garden City Partners also are members of

some of the other Guyton-related corporations that made campaign contributions. That is because the S.C. Secretary of State does not require public disclosure of a corporation's members.

However, court documents show that while Garden City Partners was making political contributions, some of its members were facing other debt-related legal action:

➤ First National Bank of the South filed a debt collection lawsuit in April against the members of Sand Dollar Cottage LLC — including Williams, Karavan and Guyton — for failing to repay a \$300,000 loan;

➤ Carolina First Bank filed a foreclosure lawsuit this month against Front and Orange Partners LLC — whose members include Williams, Karavan and Guyton — for failing to repay a loan used to purchase property on Front Street in Georgetown; and

➤ Thornburg Mortgage foreclosed on Karavan's home in The Forest at Briarcliffe neighborhood this year, and the home will be sold at auction next month.

Money from the Guyton-related corporations is among \$324,500 in campaign donations given to Barrett, four City Council incumbents and seven state legislators in the months after the council members and state legislators passed laws that allowed a 1 percent sales tax increase in Myrtle Beach.

Most money from that tax is given to the chamber of commerce for tourism advertising purposes. The tax is expected to

generate up to \$18 million per year, or as much as \$180 million over the 10-year life of the legislation, though the city will take nearly 20 percent of the funds for property tax breaks and tourism infrastructure.

Dean and Brant Branham, the chamber's board chairman, have insisted for months that there is no tie between the chamber and the campaign contributions. Branham said he solicited the contributions on his own from "like-minded businessmen and women."

Branham also said he "delivered these contributions to candidates that deserve re-election."

Last week, Dean said he delivered contributions to Barrett and state Sen. Ray Cleary, R-Murrells Inlet. Dean previously has distanced himself from the political donations.

Robert Kelley said ties between the corporation's contributions and the chamber of commerce should prompt Dean Guyton and others to "be forthcoming about who the money and why."

"With so much public money now going to the chamber, we'd like transparency over where the money came from to make those contributions," he said. "They're going to get up to \$18 million of our money over the next 10 years, but they won't even tell us where more than \$300,000 in donations came from."

➤ Contact DAVID WREN at 626-0281.

05/25/2010

Donations tied to MB chamber blasted

③

Tuesday

BOOST calls for return of politicians' \$225,000

BY DAVID WREN
dwren@thesunnews.com

A group of Myrtle Beach area business owners on Monday called for gubernatorial candidate Gresham Barrett and 10 other local politicians to return \$225,000 in campaign contributions given to them last year by corporations with ties to the Myrtle Beach Area Chamber of Commerce.

The group - Business Owners Organized to Support Tourism, or BOOST - has questioned whether the con-

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tributions were legal, and it wants the chamber of commerce to prove that no public money went to political candidates.

See **BOOST** | Page 3A



By STEVE JESSMORE sjessmore@thesunnews.com

BOOST president Robert Kelley and a group of Myrtle Beach area business owners, citizens and taxpayers called Monday on Gresham Barrett and other politicians to return campaign donations.



BOOST

From Page 1A

Brad Dean, the chamber's president, has said no public money or chamber funds were included among the corporations' donations.

Dean did not return telephone calls Monday seeking comment. In a prepared statement sent to area media, Dean said it is "sad and disappointing that a fringe special-interest group continues to repeat old accusations and unfounded allegations" about the chamber of commerce.

City Councilman Randal Wallace, who received \$15,000 from the corporations, said he believes the current controversy is being driven by the tight governor's race and the GOP primary on June 8.

"This is typical election-year politics," Wallace said. "It all goes away when Barrett either wins or loses."

BOOST President Robert Kelley said during a news conference that there are too many unanswered questions about the source of money used by the corporations, which do not have to disclose their membership.

Kelley questioned why at least one of the corporations made \$20,500 in political contributions last year yet failed to pay the mortgage on its only asset—a beach house—which now is in foreclosure.

Kelley also said Dean has changed his story about the chamber's involvement in the campaign donations.

"In the past, the chamber has denied any involvement in this scandal, but now Brad Dean admits he set up the lunch with [chamber] lobbyist Mark Kelley and he handed Mr. Barrett the envelope full of checks," said

Robert Kelley, who is not related to the lobbyist.

A Barrett spokesman told The Sun News last week that Dean arranged the meeting in which the corporations' donations were given to the politician.

"We may never know whether what took place was sloppy, stupid or arrogant—my guess is it's a lot of each," Robert Kelley said.

Barrett and local politicians—including six state legislators and four City Council members—should return the money or donate it to charity, he said.

"I know the candidates haven't done anything illegal, but if I was running for office, I would want to know where every penny came from," he said.

A spokesman for Barrett could not be reached for comment. U.S. Rep. Barrett, R-3rd District, is one of four GOP candidates running for governor. Barrett told The Sun News last week that he believes the donations were legal and he has no intention of returning the money.

State Sen. Ray Cleary, R-Murrells Inlet, said he would give back the money if it is proved that there were problems with the funds but he has not seen any proof of that.

"The people who contributed are honorable people; if they did something wrong, I'll give it back," Cleary said. "But I'm not going to insult the people who raised money for me by giving it back based on these allegations. That wouldn't be fair because it would make it appear as if they had done something wrong."

A seventh state legislator—state Rep. Tracy Edge, R-North Myrtle Beach—is the only politician to have returned the money he received from the corporations. Edge told The Sun News

that he returned the money because he could not get anyone at the chamber or Shep Guyton, the corporations' registered agent, to explain the source of the money.

Guyton has not returned telephone calls to The Sun News.

Robert Kelley said he wants the chamber of commerce to open its financial records for the past 18 months "for full transparency in the spending of every single dollar."

"I don't feel that they are being completely forthcoming with all of the facts," he said.

Wallace said there is no mystery behind the donations. Wallace said he asked Brant Brantham, the chamber's board chairman, to help raise money in what he felt would be a tightly contested council race.

"I was having trouble raising money, and I was worried about it," Wallace said. "I asked for a lot of area business leaders to help, and I spent every dime I raised to get re-elected."

City Councilman Wayne Gray said he believes the contributions were gathered legally.

"No regulatory office has stated that they were improper or illegal," Gray said. "The donations were very legal."

Mayor John Rhodes agreed, saying the state Ethics Commission "found there was nothing wrong with the checks, so there's no reason to give them back."

Rhodes said he would return the money if further investigation shows there was any wrongdoing.

Guyton, a former chamber board chairman, is the registered agent for 15 corporations that donated money to politicians last year. All told, those corporations made 160 donations totaling \$225,000—all of them in the form of cashier's

checks in sequential order purchased on the same day at South Atlantic Bank, where Guyton is a board member.

Money from the Guyton-related corporations is among \$324,500 in campaign donations given to Barrett, four City Council incumbents and seven state legislators in the months after the council members and state legislators passed laws that allowed a 1 percent sales tax increase in Myrtle Beach.

Most money from that tax is given to the chamber of commerce for tourism advertising purposes. The tax is expected to generate up to \$18 million per year, or as much as \$180 million over the 10-year life of the legislation, though the city will take nearly 20 percent of the funds for property tax breaks and tourism infrastructure.

Robert Kelley has said he suspects the contributions were payback for legislators' and council members' support of the tax.

Cathy Hazelwood—general counsel for the S.C. Ethics Commission, which oversees campaign donations—has said she cannot discuss the contributions associated with Guyton's corporations. Hazelwood would not say whether the commission is investigating the matter, but previously has said the donations appear to have been legal.

Former City Councilman Chuck Martino also received contributions from the corporations, as did the following state legislators: Rep. Alan Clemmons, R-Myrtle Beach; Rep. Liston Barnfield, R-Aynor; Rep. Nelson Hardwick, R-Surfside Beach; and Rep. George Hearn, R-Conway.

➤ Contact DAVID WREN at 626-0281

EDITORIAL

ABSENCE OF EVIDENCE

The fundamental premise behind our campaign finance laws is simple: The public has a right to know who is paying for a candidate's political campaign.

It's a premise, of course, that gets trampled upon in every election that features any significant fundraising. You'd be hard-pressed to find a candidate with more than mere pocket change in his campaign account who isn't reporting donations from an assortment of all-but-anonymous companies. Because South Carolina's campaign-finance reporting laws are so weak, this practice is unfortunately legal — even though it violates the spirit that prompted our laws.

Last year's \$324,000 donation dump on a variety of local and state politicians, however, shows such brazen disregard for this premise that we have to wonder if it may have crossed even the faint lines in the sand drawn by state law.

When we don't know who's donating the money, it's impossible to know if a second principle of campaign finance is being followed: There should be limits on how much money a candidate can receive from any one person.

This view is not as universally held as the first one. Some hard-line libertarians believe that campaign cash is a form of political speech that should not be restricted, and about a dozen states support this view by allowing unlimited contributions. State Rep. Thad Viers (a recipient of the above money) is paying homage to this idea, for example, in saying

Candidates who got donations

Governor | Gresham Barrett
State House of Representatives | Alan Clemmons, Liston Barfield, Tracy Edge (since returned), Nelson Hardwick, George Hearn, Thad Viers
State Senate | Ray Cleary
Myrtle Beach City Council | Mayor John Rhodes, Wayne Gray, Chuck Martino, Randal Wallace

ble. As we now know based on David Wren's reporting, it was Myrtle Beach Area Chamber of Commerce President Brad Dean who personally handed the \$34,000 in checks to Barrett, with lobbyist Mark Kelley sitting by his side. (If Kelley handed the money over, the transaction would have been explicitly illegal — effectively forcing Barrett to say Kelley had no involvement and pinning the donations on Dean no matter what the unprovable truth is.)

The chamber's defense all along has been that the checks came not from the chamber, but from the companies under whose name the donations were made. Dean says now that he simply collected and delivered them. Again, there is no evidence disproving this statement, but the circumstances make it difficult to believe.

Several of the donations "came" from companies in serious financial trouble, such as landholding companies that were unable to make mortgage payments on properties they owned that have since fallen into foreclosure. Further, the checks were cashier's checks, which are bought from a bank rather than drawn from an ac-



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> Increase
openness in
government
> Promote
good works
> Analyze
policy effects
on the
community's
long-term
health
> Hold lead-
ers account-
able to the
people

Some hard-line libertarians
sue that campaign cash is
a form of political speech
that should not be restricted,
and about a dozen states
support this view by allow-
ing unlimited contributions.
State Rep. Thad Viers (a re-
cipient of the above money)
is paying homage to this
idea, for example, in saying
he might support a ban on
contributions from corpora-
tions if the limits on individu-
al contributions were raised.

Most people, however, be-
lieve that allowing any one
donor to dump unlimited
amounts of cash on a candi-
date essentially amounts to
buying them. This is where
the deep concern about last
year's donations springs
from: If some entity spent
\$96,000 on four City Council
races - well above what any
individual council candidate
spent to win - who owns the
City Council?

On this second point, S.C.
law is actually much clearer,
setting absolute limits on do-
nations from individuals in
state and local races. Unfor-
tunately, with the require-
ments of reporting who's be-
hind the money so weak, it is
very easy to get around those
limits: Just pass the money
through the bank account of
an LLC you own, and it's
clean and legal - political
money laundering 101; de-
fended with a smirk by any
candidate who received the
money.

□ □ □

The darkest accusation in
this affair is that the money
in question came directly
from the Myrtle Beach Area
Chamber of Commerce as a
kickback for passing the
1 percent sales tax for tour-
ism advertising, passed out
to City Council members
and state representatives
who helped make it happen -
and, inexplicably, Gresham
Barrett in his bid for
governor.

There is virtually no evi-
dence to prove this allega-
tion, but there's a host of cir-
cumstance to make it plausi-

Several of the donations
"came" from comp in
serious financial trouble,
such as landholding compa-
nies that were unable to
make mortgage payments on
properties they owned that
have since fallen into foreclo-
sure. Further, the checks
were cashier's checks, which
are bought from a bank rather
than drawn from an ac-
count, with the LLC names
simply written in the memo
line. Further, the check num-
bers are in sequential order,
suggesting they were all
bought at once.

The simplest conclusion is
that the money came from
the same source, with the
LLC names added as an af-
terthought. According to Po-
litical Money Laundering
101, all they had to do to make
it legal was pass the money
through an LLC's bank ac-
count to make it donation-
ready. It's unclear at this
point whether the donors
even took that simple step.

Ultimately, whether the
source of money is one per-
son, one organization, or just
a group of like-minded indi-
viduals with more money
than bodies to pin it on has
yet to be shown. (Technically,
it's impossible that the dona-
tions actually came directly
from sales tax money - the
donations were made in
June, and the first sales tax
check was not collected until
August.) Bank statements of
the LLCs in question would
settle the question defini-
tively, but those are beyond
reach of the public - suggest-
ing that some authority with
stronger investigatory pow-
ers should consider this
case.

Though their long denials
of any involvement have
damaged their credibility in
this case, the chamber may
yet be telling the truth that
the donations did not come
from them. But hiding be-
hind the cloak of anonymity
afforded by state law makes
that claim harder for them to
substantiate, and they de-
serve the scrutiny they are
now receiving.

5/21/10

①

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80

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THE SUN NEWS

Dean handed over envelope of \$84,000

Rep. confirms meeting with chamber chief

By DAVID WREN
dwren@thesunnews.com

Brad Dean arranged a meeting last year with gubernatorial candidate Gresham Barrett in which he gave Barrett an envelope of cashier's checks from local corporations linked to a former chamber board chairman, Dean and Barrett confirmed Thursday.

There is no indication that Dean, president of the Myrtle Beach Area Chamber of Commerce, did anything illegal by delivering about \$84,000 in campaign contributions to Barrett.

Dean said local business owners often sent campaign donations to the chamber's headquarters because they knew current and past chamber board members were raising money for candidates.

Dean said he delivered some

 **FACEBOOK**

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of those checks to Barrett because he knew the politician would be in town for an unrelated fundraiser.

"This was not the chamber of commerce raising money," Dean said. "There was no public money or chamber money involved."

Since October, Dean has asserted that the chamber had nothing to do with raising money for candidates, including members of the Myrtle Beach City Council who were seeking re-election last November.

At least one local group has questioned whether a series of contributions was related to lawmakers' passage of the 1 percent sales tax for tourism, which funnels money to the chamber.

Dean told The Sun News on Thursday that he has never denied attending meetings where the campaign donations were

See DEAN | Page 9A



DEAN

From Page 1A

delivered, including a second meeting with state Sen. Ray Cleary, R-Murrells Inlet, but his attendance did not represent an endorsement by the chamber.

U.S. Rep. Barrett, R-3rd District, is one of four GOP candidates vying for the governor's office.

Barrett's money was among \$324,500 in donations given to him, four City Council incumbents and seven state legislators in the months after the council members and state legislators passed laws that allowed the sales tax increase in Myrtle Beach.

Money from that tax is given to the chamber for tourism advertising purposes.

Brant Branham, the chamber's board chairman, also has insisted for months that there is no tie between the chamber and the campaign contributions. Branham said he solicited the contributions on his own from "like-minded businessmen and women."

Branham also said he "delivered these contributions to candidates that deserve re-election."

Dean gave the money to Barrett during a June 20 lunch meeting at Roy and Sid's restaurant at The Market Common in Myrtle Beach, according to Barrett and documents obtained by The Sun News. Barrett spokesman B.J. Boling said Dean arranged the meeting through Barrett's finance and scheduling staffs.

Mark Kelley, a lobbyist for the chamber of commerce, also attended that meeting, according to Barrett. Kelley did not return a telephone call Thursday.

There are strict rules that forbid lobbyists from facilitating campaign donations for statewide candidates; however, a spokeswoman for the S.C. Ethics Commission said it does not appear any laws were violated in this case.

"Just being in the same room is not a violation, it happens all the time," said Cathy Hazelwood, the commission's general counsel. "He [Kelley] is not supposed to touch the envelope or hand over the envelope."

The campaign contributions have drawn scrutiny because it is not clear where at least 15 of

the corporations obtained the money to make the donations. One of the corporations was dissolved in 2007 because it failed to pay its taxes. Some of the other corporations are land-holding entities with no revenue.

Myrtle Beach lawyer Shep Guyton, a former chamber board chairman, is the registered agent for those 15 corporations. Guyton did not return telephone calls Thursday.

Hazelwood said she cannot talk about the campaign donations, and she would not say whether the commission is investigating the matter. Hazelwood previously has said the donations appear to have been legal.

"I can neither confirm nor deny the existence of a complaint," she said.

Donations from the Guyton-related corporations were made by cashier's checks, making it difficult to trace the source of the funds. All of the cashier's checks to all candidates are dated June 8 and all of them are in sequential order. The cashier's checks were drawn off accounts at South Atlantic Bank, where Guyton is a board member.

Barrett, who was in Myrtle Beach on Thursday to announce his endorsement by three local mayors, said he has no plans to return the money.

"At the present time, we feel certain the spirit of the law and the letter of the law has been followed," he said.

State Rep. Tracy Edge, R-North Myrtle Beach, is the only candidate who has returned the campaign donations. Edge said he had concerns about the donations' origin, but he "couldn't get anybody to answer my questions or even talk about it."

Edge said he held onto the cashier's checks until December, when Guyton demanded their return.

"He was adamant about wanting them back," Edge said.

A Myrtle Beach-based group called Business Owners Organized to Support Tourism, or BOOST, has questioned whether the campaign donations were payback for legislators' and council members' approval of the 1 percent sales tax for tourism development.

That tax, which went into effect Aug. 1 and is expected to generate up to \$18 million a year,

was tacked onto the city's sales tax.

BOOST also has questioned whether at least some of the money came from the chamber of commerce.

"BOOST's contention all along is that the chamber of commerce was directly responsible for coordinating hundreds of thousands of dollars of campaign contributions for incumbents," said Tom Herron, a spokesman for the group.

Contact DAVID WREN at 625-0281.

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2010-05-24

BOOST calls for Barrett, others to return campaign money (with video)

David Wren, dwren@thesunnews.com

A group of Myrtle Beach area business owners on Monday called for gubernatorial candidate Gresham Barrett and 10 other local politicians to return \$225,000 in campaign contributions given to them last year by corporations with ties to the Myrtle Beach Area Chamber of Commerce.

The group -- Business Owners Organized to Support Tourism, or BOOST -- has questioned whether the contributions were legal and it wants the chamber of commerce to prove that no public money went to political candidates.

Brad Dean, the chamber's president, has said no public money or chamber funds were included among the corporations' donations.

Dean did not return telephone calls Monday seeking comment. In a prepared statement sent to area media, Dean said it is "sad and disappointing that a fringe special-interest group [BOOST] continues to repeat old accusations and unfounded allegations" about the chamber of commerce.

City Councilman Randal Wallace, who received \$15,000 from the corporations, said he believes the current controversy is being driven by the tight governor's race and the GOP primary on June 8.

"This is typical election-year politics," Wallace said. "It all goes away when Barrett either wins or loses."

BOOST President Robert Kelley said during a news conference that there are too many unanswered questions about the source of money used by the corporations, which do not have to disclose their membership.

Kelley questioned why at least one of the corporations made \$20,500 in political contributions last year yet failed to pay the mortgage on its only asset -- a beach house -- which now is in foreclosure.

Kelley also said Dean has changed his story about the chamber's involvement in the campaign donations.

"In the past, the chamber has denied any involvement in this scandal, but now Brad Dean admits he set up the lunch with [chamber] lobbyist Mark Kelley and he handed Mr. Barrett the envelope full of checks," said Robert Kelley, who is not related to the lobbyist.

A Barrett spokesman told The Sun News last week that Dean arranged the meeting in which the corporations' donations were given to the politician.

"We may never know whether what took place was sloppy, stupid or arrogant -- my guess is it's a lot of each," Robert Kelley said.

Barrett and local politicians -- including six state legislators and four City Council members -- should return the money or donate it to charity, he said.

"I know the candidates haven't done anything illegal, but if I was running for office I would want to know where every penny came from," he said.

A spokesman for Barrett could not be reached for comment. U.S. Rep. Barrett, R-3rd District, is one of four GOP candidates running for governor. Barrett told The Sun News last week that he believes the donations were legal and he has no intention of returning the money.

State Sen. Ray Cleary, R-Murrells Inlet, said he would give back the money if it is proven that there were problems with the funds but he has not seen any proof of that.

"The people who contributed are honorable people; if they did something wrong, I'll give it back," Cleary said. "But I'm not going to insult the people who raised money for me by giving it back based on these allegations. That wouldn't be fair because it would make it appear as if they had done something wrong."

A seventh state legislator -- state Rep. Tracy Edge, R-North Myrtle Beach -- is the only politician to have returned the money he received from the corporations. Edge told The Sun News that he returned the money because he could not get anyone at the chamber or Shep Guyton, the corporations' registered agent, to explain the source of the money.

Guyton has not returned telephone calls to The Sun News.

Robert Kelley said he wants the chamber of commerce to open its financial records for the past 18 months "for full transparency in the spending of every single dollar."

"I don't feel that they are being completely forthcoming with all of the facts," he said.

Wallace said there is no mystery behind the donations. Wallace said he asked Brant Branham, the chamber's board chairman, to help raise money in what he felt would be a tightly contested council race.

"I was having trouble raising money and I was worried about it," Wallace said. "I asked for a lot of area business leaders to help, and I spent every dime I raised to get re-elected."

City Councilman Wayne Gray said he believes the contributions were gathered legally.

"No regulatory office has stated that they were improper or illegal," Gray said. "The donations were very legal."

Mayor John Rhodes agreed, saying the state Ethics Commission "found there was nothing wrong with the checks, so there's no reason to give them back."

Rhodes said he would return the money if further investigation shows there was any wrongdoing.

Guyton, a former chamber board chairman, is the registered agent for 15 corporations that donated money to politicians last year. All told, those corporations made 160 donations totaling \$225,000 -- all of them in the form of cashier's checks in sequential order purchased on the same day at South Atlantic Bank, where Guyton is a board member.

Money from the Guyton-related corporations is among \$324,500 in campaign donations given to Barrett, four City Council incumbents and seven state legislators in the months after the council members and state legislators passed laws that allowed a 1 percent sales tax increase in Myrtle Beach.

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Robert Kelley has said he suspects the contributions were payback for legislators' and council members' support of the tax.

Cathy Hazelwood -- general counsel for the S.C. Ethics Commission, which oversees campaign donations -- has said she cannot discuss the contributions associated with Guyton's corporations. Hazelwood would not say whether the commission is investigating the matter, but previously has said the donations appear to have been legal.

Former City Councilman Chuck Martino also received contributions from the corporations, as did the following state legislators: Rep. Alan Clemmons, R-Myrtle Beach; Rep. Liston Barfield, R-Aynor; Rep. Nelson Hardwick, R-Surfside Beach; Rep. Thad Viers, R-Myrtle Beach; and Rep. George Hearn, R-Conway.



FBI, IRS probe donors

MB Chamber
politicians
investigated

By DAVID WREN
dwren@thesunnews.com

The FBI and the Internal Revenue Service have launched criminal investigations into \$239,500 worth of campaign contributions given last year to political action committees and area politicians, including former gubernatorial candidate Gresham Barrett and members of the Myrtle Beach City Council.

The FBI and the IRS want to know where the money came from and why the donations were made in the form of cashier's checks purchased at Myrtle Beach-based South Atlantic Bank.

The contributions purportedly were given by 14 corporations with ties to the Myrtle Beach Area Chamber of Commerce.



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See FBI, Page 7A

FBI

From Page 1A

However, some of those corporations had no money when the donations were made, according to court documents and interviews by The Sun News. One of the corporations had been dissolved for nearly two years for failing to pay its taxes when the donations were made.

Denise Taiste, spokeswoman for the FBI, would neither confirm nor deny any active investigation. The IRS office in Myrtle Beach did not return a telephone message left by The Sun News.

However, the federal agencies have interviewed at least two people since the investigation started.

State Rep. Fray Edge, R-North Myrtle Beach, said he met with investigators on July 7. He said the investigation appears to focus on possible money laundering, criminal conspiracy and tax fraud.

Edge, the only politician who refused to accept the cashier's checks, said he gave the money back because no one would tell him the source of the funds.

Investigators also have interviewed Tom Herron, spokesman for a local business group that has been critical of the campaign donations. Herron declined to discuss specifics of that meeting.

Herron's group - Business Owners Organized to Support Tourism - has questioned whether the donations were payback for politicians who last year pushed through a 1 percent sales tax increase that helps fund the chamber's marketing programs.

Myrtle Beach lawyer Shep Guyton, a former chairman of the chamber's board of directors, is the registered agent for all of the corporations that made campaign donations with cashier's checks.

Guyton, who also is a board member at South Atlantic Bank, has not responded to re-

quests for interviews.

Wayne Wicker, the bank's chief executive officer, did not respond to a request for comments.

Edge said the FBI and the IRS indicated that they were going to obtain bank records to see if any wrongdoing occurred.

The federal Bank Secrecy Act requires financial institutions to keep records of and report to the IRS and others all cash purchases of cashier's checks totaling \$10,000 or more in a day.

The cashier's checks used for campaign donations all have the same date - June 8, 2009 - and they are in sequential order.

Banks also are supposed to file a suspicious activity report if money laundering or any other criminal act is suspected.

It is not clear whether South Atlantic Bank reported the purchase of those checks to the federal government.

U.S. Rep. Barrett, R-3rd District - who lost the gubernatorial bid to Nikki Haley in last month's primary election - received \$49,000 in cashier's checks from Guyton's corporations.

Those checks were among campaign donations that Brad Dean, the president of the chamber of commerce, delivered to Barrett during a lunch meeting last summer.

Mark Kelley, the chamber's lobbyist, also attended that meeting.

Dean did not return telephone calls to The Sun News on Wednesday.

Although Dean has repeatedly stated that the chamber was not involved in raising money for political candidates, he told The Sun News in May that the chamber acted as a clearinghouse for contributions.

Local business owners often sent campaign donations to the chamber's headquarters, Dean said, because they knew current and past chamber board members were raising money.

for candidates. Chamber officials then would disburse the money.

This was not the chamber of commerce raising money, Dean told The Sun News in May.

There was no public money or chamber money involved.

Brant Brannham, the chamber's board chairman when the donations were made, has said for months that there is no tie between the chamber and the campaign contributions. Brannham has said he helped raise the money on his own from "like-minded businessmen and women."

Brannham also did not return a telephone call to The Sun News on Wednesday.

Incumbent candidates for the City Council, including Mayor John Rhodes, also received cashier's checks from Guyton's corporations, according to filings with the state's Ethics Commission.

Rhodes said neither the FBI nor the IRS have asked to meet

with him.

"If anybody wants to talk to me, I welcome that," Rhodes said. "I'll talk to them all day if they want."

Edge and other members of Horry County's legislative delegation also received cashier's checks.

All of those politicians, with the exception of Edge, have said they do not believe the contributions violate any laws. Edge said he is not sure whether any laws were violated.

The donations were very legal, City Councilman Wayne Gray told The Sun News last month.

Herb Hayden, executive director of the Ethics Commission, has said the donations do not appear to have violated state election laws, even though their source is difficult to trace because of the cashier's checks.

Hayden did not return a telephone call to The Sun News on Wednesday.

Edge, however, said he was

suspicious of the donations and held onto them until December, when Guyton demanded their return.

He was adamant about wanting them back, Edge said.

Each of the 14 corporations issued cashier's checks of \$1,000 to council candidates and legislators and \$3,500 to Barrett and the political action committees—the maximum amount allowed under state law.

Robert Kelley, president of BOOST, has questioned how a group of corporations with little apparent financial backing could have raised so much money for candidates.

Mark Lazarus, a former Horry County councilman and a partner in one of Guyton's corporations, told The Sun News last year that the corporation had no money to make political donations.

"I have no idea where the money came from and I absolutely did not approve of this,"

Lazarus said.

The foreclosure of a beach house owned by another Guyton corporation is raising more questions about the source of campaign donations. The corporation failed to make its loan payments on the beach house yet donated \$20,500 to candidates and PACS.

We may never know whether what took place was sloppy, stupid or arrogant, Robert Kelley said during a May news conference in which BOOST called for the chamber to disclose its financial records. "My guess is it's a lot of each."

Chamber officials and politicians say there is no link between the donations and the 1 percent sales tax increase that was approved last year. That tax, which went into effect Aug. 1, was tacked onto the city's sales tax. It is expected to generate up to \$18 million a year for the chamber.

Contact DAVID WREN at 628-0291

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Sun News, The (Myrtle Beach, SC)

2010-07-16

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FBI, IRS probe Myrtle Beach campaign donations

■ MB Chamber, politicians investigated
David Wren, dwren@thesunnews.com

The FBI and the Internal Revenue Service have launched criminal investigations into \$239,600 worth of campaign contributions given last year to political action committees and area politicians, including former gubernatorial candidate Gresham Barrett and members of the Myrtle Beach City Council.

The FBI and the IRS want to know where the money came from and why the donations were made in the form of cashier's checks purchased at Myrtle Beach-based South Atlantic Bank.

The contributions purportedly were given by 14 corporations with ties to the Myrtle Beach Area Chamber of Commerce.

However, some of those corporations had no money when the donations were made, according to court documents and interviews by The Sun News. One of the corporations had been dissolved for nearly two years for failing to pay its taxes when the donations were made.

Denise Talsie, spokeswoman for the FBI, would neither confirm nor deny any active investigation. The IRS office in Myrtle Beach did not return a telephone message left by The Sun News.

However, the federal agencies have interviewed at least two people since the investigation started.

State Rep. Tracy Edge, R-North Myrtle Beach, said he met with investigators on July 7. He said the investigation appears to focus on possible money laundering, criminal conspiracy and tax fraud.

Edge, the only politician who refused to accept the cashier's checks, said he gave the money back because no one would tell him the source of the funds.

Investigators also have interviewed Tom Herron, spokesman for a local business group that has been critical of the campaign donations. Herron declined to discuss specifics of that meeting.

Herron's group - Business Owners Organized to Support Tourism - has questioned whether the donations were payback for politicians who last year pushed through a 1 percent sales tax increase that helps fund the chamber's marketing programs.

Myrtle Beach lawyer Shep Guyton, a former chairman of the chamber's board of directors, is the registered agent for all of the corporations that made campaign donations with cashier's checks.

Guyton, who also is a board member at South Atlantic Bank, has not responded to requests for interviews.

Wayne Wicker, the bank's chief executive officer, did not respond to a request for comments.

Edge said the FBI and the IRS indicated that they were going to obtain bank records to see if any wrongdoing occurred.

The Federal Bank Secrecy Act requires financial institutions to keep records of and report to the IRS and others all cash purchases of cashier's checks totaling \$10,000 or more in a day.

The cashier's checks used for campaign donations all have the same date - June 8, 2009 - and they are in sequential order.

Banks also are supposed to file a suspicious activity report if money laundering or any other criminal act is suspected.

It is not clear whether South Atlantic Bank reported the purchase of those checks to the federal government.

U.S. Rep. Barrett, R-3rd District - who lost the gubernatorial bid to Nikki Haley in last month's primary election - received \$49,000 in cashier's checks from Guyton's corporations.

Those checks were among campaign donations that Brad Dean, the president of the chamber of commerce, delivered to Barrett during a lunch meeting last summer.

Mark Kelley, the chamber's lobbyist, also attended that meeting.

Dean did not return telephone calls to The Sun News on Wednesday.

Although Dean has repeatedly stated that the chamber was not involved in raising money for political candidates, he told The Sun News in May that the chamber acted as a clearinghouse for contributions.

Local business owners often sent campaign donations to the chamber's headquarters, Dean said, because they knew current and past chamber board members were raising money for candidates. Chamber officials then would disburse the money.

"This was not the chamber of commerce raising money," Dean told The Sun News in May.

"There was no public money or chamber money involved."

Brant Branham, the chamber's board chairman when the donations were made, has said for months that there is no tie between the chamber and the campaign contributions. Branham has said he helped raise the money on his own from "like-minded businessmen and women."

Branham also did not return a telephone call to The Sun News on Wednesday.

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Chamber officials and politicians say there is no link between the donations and the 1 percent sales tax increase that was approved last year. That tax, which went into effect Aug. 1, was tacked onto the city's sales tax. It is expected to generate up to \$18 million a year for the chamber.

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2010-08-08

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Campaign staffers say Myrtle Beach Area Chamber of Commerce president brought in disputed cash

Chamber chief denies raising disputed cash
David Wren, dwren@thesunnews.com

E-mails sent between members of Gresham Barrett's gubernatorial campaign staff last fall point to Brad Dean, president of the Myrtle Beach Area Chamber of Commerce, as the person who raised political donations funneled through corporations that now are the focus of a federal criminal investigation.

Dean has denied raising the money for Barrett and other politicians, and said no chamber money was used to make political donations.

However, an advocate for open government said Barrett's perception that Dean or the chamber of commerce raised the money would be just as effective in garnering influence, regardless of the ultimate source of the donations.

"If a politician has it in his mind that the money came from a certain business or individual, he'll keep that in mind when it comes time for legislation that could affect that business or individual," said John Crangle, executive director of Common Cause South Carolina, a nonprofit group that advocates for more accountability in government.

Dean declined to comment on why these e-mails cite him as the person responsible for arranging contributions to Barrett and others following passage last year of a tax increase that benefits the chamber.

"I have not seen the e-mails you mention and, as such, I have no way of knowing the context of the e-mails nor can I know if they are authentic," Dean said.

The FBI and the Internal Revenue Service are investigating the source of the funds and why the donations were made through a series of sequentially numbered cashier's checks purchased on the same day at South Atlantic Bank, according to those who have been interviewed by the federal agencies.

Myrtle Beach lawyer Shep Guyton, who was a board member at South Atlantic Bank, is the registered agent for the corporations under investigation. It is not clear whether Guyton remains on the bank's board of directors. His name and photo have been removed from the bank's website.

Guyton and Wayne Wicker, the bank's president, have not returned telephone calls to The Sun News. Joy Kish, the bank's director of marketing, did not respond to a request for information about Guyton's status.

Dean declined to say whether he has been interviewed by the FBI or IRS.

"It is [the chamber's] policy not to comment on pending legal matters," he said.

The e-mails, obtained by The Sun News, show Barrett's staff attempting to pin down the source of the campaign donations after an Associated Press reporter raised questions about them in an Oct. 14 e-mail to B.J. Boiling. Boiling was communications director for Barrett during the Republican's failed gubernatorial run.

"There may be an issue with these donations," AP reporter Jim Davenport wrote in the e-mail to Boiling. "Want to get your head around the sources and get back to me?"

Boiling forwarded Davenport's e-mail to other campaign staffers, including Justin Stokes, Barrett's deputy campaign manager.

"These guys are tied to the Myrtle Beach Chamber of Commerce," Stokes said in an e-mail to Boiling and two of Barrett's political consultants - Warren Tompkins and Heath Thompson.

"Brad Dean, the chamber's president, worked behind the scenes to pull these together last quarter," Stokes said in the e-mail.

Tompkins, in another e-mail, told staff members that he "cannot figure what the issue would be" with the donations.

"Try Mark Kelley, our Horry expert, or perhaps Allan [sic] Clemmons," Tompkins wrote in the e-mail, suggesting that those two could answer questions about the donations.

"Talk to Mark Kelley," Stokes told Tompkins and the others in another e-mail. "He would be familiar with these contributions and the connection" between the corporations and the chamber of commerce.

Kelley is a former legislator who now is the chamber's lobbyist.

The e-mails do not make clear why Barrett's staff thought Kelley would be familiar with the contributions. The S.C. Ethics Commission has strict rules that prohibit lobbyists from participating in campaign fundraising for state politicians.

Kelley and state Rep. Alan Clemmons, R-Myrtle Beach, did not respond to requests for comments.

Clemmons also is among the politicians who received donations from the 14 corporations that are under investigation.

Those corporations made \$239,500 in campaign contributions to seven state legislators and four Myrtle Beach City Council incumbents in the weeks after they approved a 1 percent sales tax hike for the city last year.

Barrett - one of Kelley's political allies - also received the donations, although he had no role in passing the tax.

Crangle said the use of shell corporations to hide the true source of campaign donations is one of the biggest problems in S.C. politics, often allowing individuals to exceed contribution limits without detection.

"That type of corporate giving is inherently corrupt and ought to be banned," he said.

Crangle said he doubts legislation reining in such donations will occur, however, because the politicians benefiting from the system are the ones making the laws.

The state Ethics Commission has been reviewing whether the donations violated state laws, but that agency has not referred any information to Attorney General Henry McMaster, who would prosecute such violations, according to McMaster spokesman Mark Plowden.

"We are not involved in that situation down there with the chamber," Plowden said. "That's the feds' show right now."

Cathy Hazelwood, general counsel for the commission, said she "can neither confirm nor deny the existence of a complaint" about the campaign donations or possible violations by Kelley.

The donations that are under investigation are among at least \$324,500 in political contributions made to Barrett and others by chamber-related businesses and individuals in the weeks after the tax passed.

Most of the money from the tax, which is expected to generate about \$18 million a year for the next decade, goes to the chamber to pay for tourism marketing programs.

Barrett - who lost his bid for governor during a primary runoff against eventual Republican candidate Nikki Haley - told The Sun News in May that Dean delivered an envelope with \$84,000 in campaign donations, including those from Guyton's corporations, during a lunch meeting last year.



http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=13178CB4162232

Kelley also attended that meeting, Barrett said.

Dean has repeatedly said that the chamber does not raise money for political candidates. He said he delivered the contributions to Barrett because he knew the politician would be in town for an unrelated fundraiser.

Dean said the chamber last year acted as a clearinghouse for political donations - business owners would send the contributions to the chamber's headquarters and the money then would be distributed to politicians. Dean said the chamber has stopped that practice.

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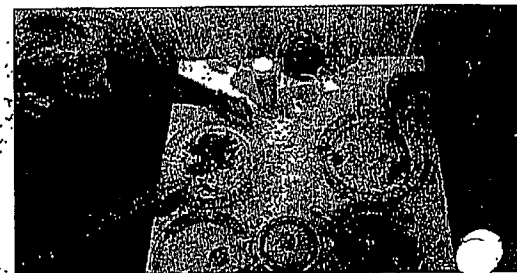


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Mobility gap



More people outliving
ability to drive safely | 6A



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opt for paper
over plastic | 7

MYRTLE BEACH, SOUTH CAROLINA | TheSunNews.com | NOVEMBER 10, 2010

Campaign donors face foreclosures

By DAVID WREN
dwren@thesunnews.com

A foreclosure lawsuit has been filed against two more of the corporations that made campaign contributions last year that have been tied to the Myrtle Beach Area Chamber of Commerce.

Bank of North Carolina filed the

lawsuit last week against WKG Land Partners LLC and Back Gate Partners LLC. The bank claims those corporations have defaulted on a \$500,000 loan. No court date has been set.

Shep Guyton, a Myrtle Beach lawyer who is the registered agent for both corporations, did not return a telephone call to The Sun News.

Guyton is the registered agent for



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14 corporations that made \$239,500 in campaign contributions that now are the focus of criminal investigations by the FBI and the Internal Revenue Service.

The investigations focus on possi-

ble money laundering, tax fraud and criminal conspiracy, according to state Rep. Tracy Edge, R-North Myrtle Beach, who has been interviewed by the agencies.

Edge is the only lawmaker who did not accept the campaign contributions.

See **LAWSUIT** | Page 8A



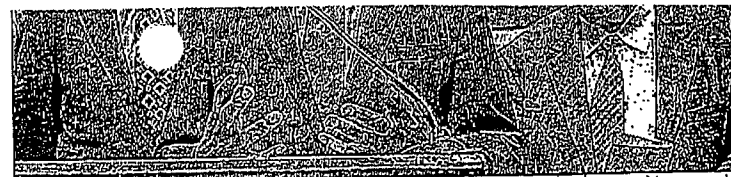
cil m ers to join me in opposi- tion. In the end, I think that Ms. Starnes realized it was going nowhere and withdrew her re-zoning application," he wrote.

Batch plants have been a topic of concern in Horry County lately. The county is trying to figure out which of its 16 plants

or she can ask for a different rezoning or leave the property as is.

Whatever she or other property owners plan to do in the area, Campisi said, "we will be keeping an eye on it."

> Contact LORENA ANDERSON at 444-1722.



House Majority Whip Rep. James E. Clyburn (center), Sen. Jeff Merkeley (left) and Rep. John Spratt introduce legislation March 10 in Washington.

ONE OF COLLEGE BUDGETS WAS A PAINFUL one for the family name.

B. his job to consider proposals, he said, and in this case try to gauge if Conway resided to make the deal.

"I ain't going to sneeze at it," he said.

> Contact STEVE JONES at 4-

LAW SUIT

From Page 1A

The campaign donations—all in the form of sequentially numbered cashier's checks purchased on the same day at South Atlantic Bank—were given to politicians who supported a 1 percent tax increase in Myrtle Beach. Money from that tax goes to the chamber of commerce for its tourism marketing efforts.

Guyton is a former president of the chamber's board of directors. Guyton also was a member of South Atlantic Bank's board of directors until his resignation earlier this year.

Donations also were made to failed gubernatorial candidate Gresham Barrett, who did not play a role in the tax increase but was supported by chamber board members. Barrett ac-

cepted the money last year during a luncheon with chamber President Brad Dean and Mark Kelly, the chamber's lobbyist.

This is at least the fourth Guyton-related corporation facing foreclosure in the months after they made campaign contributions.

The foreclosure lawsuits have some critics of the tax increase questioning how corporations that could not pay their bills managed to funnel thousands of dollars in contributions to politicians.

Dean has said the money did not come from the chamber of commerce.

Brant Branham, the chamber's board chairman when the donations were made, has said he raised the money independently from "like-minded businessmen and women."

WKG Land Partners made contributions of \$3,500 apiece

to political action committees that helped re-elect Myrtle Beach City Council members.

Back Gate made 10 contributions totaling \$12,500 to council candidates, state legislators and Barrett.

Bank of North Carolina said in its lawsuit that those corporations failed to repay a \$500,000 loan that came due in 2008. The bank, which is the successor to Beach First National Bank, said the corporations now owe \$570,245 with interest accruing at \$65.02 per day.

Those corporations pledged property they own in Cypress River Plantation, located in the Burgess community, and in a shopping center at the back

gate of the former Myrtle Beach Air Force Base as collateral for the loan.

In addition, Guyton and business partners Edward Williams and Dean Karavan signed personal guarantees for the loan.

Williams and Karavan could not be reached for comment.

Officials with the U.S. attorney's office and the S.C. Ethics Commission said Tuesday they cannot confirm or deny that an investigation is taking place. They declined to comment further on the matter.

At least two other Guyton-related corporations are facing foreclosure in separate lawsuits filed earlier this year.

Deluxe Land Partners, which made \$20,500 in dona-

tions to political candidates—failed to repay a \$350,000 loan, according to Bank of North Carolina.

Garden City Partners, which made \$20,500 in campaign contributions, failed to repay a \$1.2 million loan, according to S.C. Bank & Trust.

In addition to the foreclosures, a partner in another corporation tied to Guyton told The Sun News that the corporation had no money to make political donations. That corporation's only asset is a piece of land.

Another corporation for which Guyton was the registered agent was dissolved nearly two years before it made donations to political candidates.

Money from the Guyton-re-

lated corporations—\$324,500 in campaigns given to Barrett Council incumbents state legislators in the after the court me

legislators p a allowed a 1 percent s crease in Myrtle Bea

Most of that mon the chamber of con advertising. The city 20 percent of the fun erty tax breaks and frastructure project

[The tax is expected at up to \$18 million] er the 10-year l legislation.

> Contact DAVID W 626-0281

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Mark Kelley,)
)
Plaintiff,)
)
vs.)
)
McClatchy Newspapers, Inc.,)
d/b/a The Sun News and David)
Wren,)
)
Defendants.)

C. A. No. 12-CP-26-3804

ANSWER OF DAVID WREN

HORRY COUNTY
12 JUN 21 PM 3:06
MELANIE JUGGINS-WARD
CLERK OF COURT

Defendant, David Wren (Wren), responding to the allegations of the Amended Complaint alleges:

1. As to the allegations of paragraph 1, Wren admits the same.
2. As to the allegations of paragraph 2, Wren admits so much thereof as alleges that he is an individual and a resident of Horry County, South Carolina, but denies the remaining allegations thereof.
3. As to the allegations of paragraph 3 Wren denies the same.
4. As to the allegations of paragraph 4, Wren is informed and believes that defendant McClatchy Newspapers, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in California, but denies the remaining allegations thereof.

AS AND FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

- 
5. As to the allegations of paragraph 5, Wren denies the same, and alleges in connection therewith that while he was the author of the publication referenced, he made no decision with

reference to publication.

6. As to the allegations of paragraph 6, Wren admits the same.

7. As to the allegations of paragraphs 7, 8, 9, and 10, Wren denies the same, and alleges in connection therewith that the publication cannot be read as defamatory to plaintiff.

8. As to the allegations of paragraphs 11, 12, 13, 12 [14], and 13 [15], Wren denies the same.

9. All allegations in paragraphs 1 through 13 [15] not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

10. As to the allegations of paragraph 14 [plaintiff has mis-numbered the paragraphs in the Amended Complaint starting with the 14th paragraph. This defendant will respond using the numbers assigned in the Amended Complaint for the second, third and fourth causes of action. Wren reasserts and realleges the facts and matters contained in paragraphs 1 through 9 above, as fully and completely as if restated herein verbatim.

11. As to the allegations of paragraph 15, Wren denies the same, craves reference to the actual language of the publication and alleges in connection therewith that he had no role to play in the decision to publish.

12. As to the allegations of paragraph 16, Wren admits the same.

13. As to the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23, 24, and 25, Wren denies the same and alleges in connection therewith that the delivery by a lobbyist of a campaign contribution of another to a candidate who is not a member of the General Assembly, the Governor, the Lieutenant Governor, or any other statewide constitutional officer or specified public official is not prohibited by law.

14. All allegations in paragraphs 14 through 25 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

15. As to the allegations of paragraph 26, Wren reasserts and realleges the facts and matters contained in paragraphs 1 through 14 above as fully and completely as if restated herein verbatim.

16. As to the allegations of paragraph 27, Wren denies the same, craves reference to the publication, and alleges in connection therewith that he had no role to play in the publication decision.

17. As to the allegations of paragraph 28, Wren admits the same.

18. As to the allegations of paragraph 29, Wren denies the same, and alleges in connection therewith that the delivery by a lobbyist of a campaign contribution of another to a candidate who is not a member of the General Assembly, the Governor, the Lieutenant Governor or any other statewide constitutional officer or specified public official is not prohibited by law.

19. As to the allegations of paragraph 30, 31, 32, 33, 34, 35, 36, and 37, Wren denies the same.

20. All allegations in paragraphs 26 through 37 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

21. As to the allegations of paragraph 38, Wren reasserts and realleges the facts and matters contained in paragraphs 1 through 20 above, as fully and completely as if restated herein verbatim.

22. As to the allegations of paragraph 39, Wren denies the same, craves reference to the

publications complained of by plaintiff, and alleges in connection therewith that the delivery by a lobbyist of a campaign contribution of another to a candidate who is not a member of the General Assembly, the Governor, the Lieutenant Governor or any other statewide constitutional officer is not prohibited by law.

23. As to the allegations of paragraph 40, Wren admits the same.

24. As to the allegations of paragraph 41, Wren denies the same and alleges in connection therewith that the delivery by a lobbyist of a campaign contribution of another to a candidate who is not a member of the General Assembly, the Governor, the Lieutenant Governor, a statewide constitutional officer or other specified public official is not prohibited by law.

25. As to the allegations of paragraphs 42, 43, 44, 45, 46, 47, 48 and 49, Wren denies the same.

26. All allegations in paragraphs 38 through 49 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

27. The allegations of the Amended Complaint fail to state causes of action for libel.

AS AND FOR A FOR A THIRD DEFENSE TO THE AMENDED COMPLAINT

28. The publications complained of by plaintiff cannot reasonably be read to make false and defamatory statements of and concerning the plaintiff.

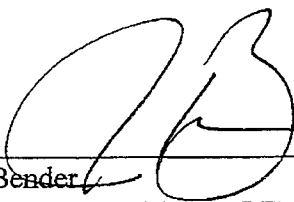
AS AND FOR A FOR A FOURTH DEFENSE TO THE AMENDED COMPLAINT

29. The publications complained of by plaintiff were true or substantially true.

AS AND FOR A FOR A FIFTH DEFENSE TO THE AMENDED COMPLAINT

30. The publications complained of by plaintiff were privileged under the First and Fourteenth Amendments to the United States Constitution and the common law of South Carolina.

WHEREFORE, defendant, Wren, having fully responded to the allegations of the Amended
Complaint, prays that the same be dismissed with costs assessed against the plaintiff together with
such other relief as may be appropriate.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for David Wren

Columbia, South Carolina

June 19, 2012

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Mark Kelley,	)	
	)	
Plaintiff,	)	C. A. No. 12-CP-26-3804
	)	
vs.	)	ANSWER OF SUN PUBLISHING COMPANY,
	)	INC. TO THE SECOND AMENDED COMPLAINT
Sun Publishing Co., Inc.,	)	
and David Wren,	)	
	)	
Defendants.	)	

Defendant, Sun Publishing Company, Inc., (Publishing Company), responding to the allegations of the Second Amended Complaint alleges:

AS AND FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. All allegations in the first cause of action not hereinabove admitted, qualified or explained are hereby denied.
2. As to the allegations of paragraphs 1 and 2, Publishing Company admits the same.
3. As to the allegations of paragraph 3, Publishing Company admits that that David Wren was its employee and acted within the scope and course of his employment in the preparation of news reports, but denies the remaining allegations thereof.
4. As to the allegations of paragraph 4, Publishing Company admits the same, but alleges that its principal place of business is in Horry County.
5. As to the allegations of paragraphs 5, Publishing Company denies the same and alleges in connection therewith that the news report stated that campaign contributions were delivered by Brad Dean.
6. As to the allegations of paragraph 6, Publishing Company admits the same.

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Horry County
2013 MAY 15 PM 4:08
MELANIE JOHNS-WARD
CLERK OF COURT

7. As to the allegations of paragraphs 7, 8, 9, and 10, Publishing Company denies the same, and alleges in connection therewith that the making of a campaign contribution to a member of Congress running for state office is not prohibited by South Carolina law.

8. As to the allegations of paragraphs 11, 12, 13, 14 and 15, Publishing Company denies the same.

AS AND FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

9. All allegations in the second cause of action not hereinabove admitted, qualified or explained are hereby denied.

10. This defendant reasserts and realleges the facts and matters contained in paragraph 1 through 16 as fully and completely as if restated herein verbatim.

11. As to the allegations of paragraph 17, this defendant denies the same, and alleges in connection therewith that the news report stated that plaintiff accompanied Brad Dean who made the campaign contribution to candidate Gresham Barrett.

12. As to the allegations of paragraph 18, this defendant admits the same.

13. As to the allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, 26, and 27, this defendant denies the same, and alleges in connection therewith that the making of a campaign contribution to a member of Congress running for state office is not a violation of South Carolina law.

AS AND FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

14. As to the allegations of paragraph 28, this defendant reasserts and realleges the facts and matters contained in paragraph 1 through 13 above as fully and completely as if restated herein verbatim.

15. As to the allegations of paragraph 29, this defendant denies the same, and alleges in

connection therewith that the publication complained of by plaintiff was an editorial expressing opinion on a matter of public interest, and that it stated that Brad Dean delivered campaign contributions to Gresham Barrett.

16. As to the allegations of paragraph 30, this defendant admits the same.

17. As to the allegations of paragraphs 31, 32, 33, 34, 35, 36, 37, 38, and 39, this defendant denies the same and alleges in connection therewith that the giving of a campaign contribution to a member of Congress who is candidate for state office is not a violation of South Carolina law.

18. All allegations in the third cause of action not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

19. As to the allegations of paragraph 40, this defendant reasserts and realleges the facts and matters contained in 1 through 18 above, as fully and completely as if restated herein verbatim.

20. As to the allegations of paragraph 41, this defendant admits that on the dates alleged it published news reports in its newspaper, but denies the remaining allegations thereof.

21. As to the allegations of paragraph 42, this defendant admits the same.

22. As to the allegations of paragraphs 43, 44, 45, 46, 47, 48, 49, 50 and 51, this defendant denies the same and alleges in connection therewith that the making of a campaign contribution to a member of Congress seeking state office is not a violation of South Carolina.

23. All allegations in the fourth cause of action not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

24. The allegations of the Second Amended Complaint fail to state causes of action for

libel.

AS AND FOR A THIRD DEFENSE TO THE ALL CAUSES OF ACTION

25. The news reports complained of by plaintiff were true or substantially true.

AS AND FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

26. The publications complained of by plaintiff are privileged under the first and fourteenth amendments to the United States Constitution.

AS AND FOR A FIFTH DEFENSE TO THE THIRD CAUSE OF ACTION

27. The publication of May 30, 2010 complained of by plaintiff was an editorial expressing opinion on matters of public interest and significance regarding the activities of public officials and public figures, and, as such, was protected under the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, having fully responded to the allegations of the Second Amended Complaint, defendant Sun Publishing Company, Inc., prays that the same be dismissed with costs assessed against the plaintiff together with such other relief as may be appropriate.



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Columbia, South Carolina

May 9, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2012-CP-26-03804

MARK KELLEY,)

Plaintiff,)

Transcript of Record

vs.)

May 5-12, 2014

SUN PUBLISHING COMPANY,)
INC., D/B/A THE SUN NEWS)
AND DAVID WREN,)

Defendants.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

James P. Stevens, Esquire
Natalie Stevens-Graziani, Esquire
Attorney for Plaintiff

Jerry Jay Bender, Esquire
George Redmond, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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1 (MAY 5, 2014)

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the Jury.)

4 BY THE COURT:

5 THE COURT: All right, gentlemen, as we begin, let me
6 tell you what I have discussed with Judge John. I briefly
7 told you a moment ago. He is starting a murder case which is
8 going to require a substantial jury panel. So he's going to
9 pull that -- I think he is pulling that now. As soon as he
10 has his panel selected, he's going to put the balance of the
11 jurors back in the jury pool and we'll have a panel come up.
12 I think that fifty would be adequate, but we're gonna hold the
13 balance of the jury pool just in case and we will bring other
14 jurors up if that is necessary. I have limited it to fifty
15 because that's every juror we can possibly put in this, this
16 courtroom. So we're limited somewhat as to space.

17 Let me say that I have, as I told you this morning, ruled
18 on your motion for summary judgment, Mr. Bender. Taking the
19 evidence in the light most favorable to the Plaintiff in this
20 matter, I find that there is no material issue of fact as to
21 whether or not Mr. Kelley is a public figure. However, I do
22 find issues of fact as to whether or not there was actual
23 malice shown and I would deny your motion in that regard.

24 Now, do we have any other outstanding motions that we
25 need to take up in this case, Mr. Bender?

1 288, William Martin, Jr.; Number 434, Elizabeth Street; Number
2 54, Deborah Cellucci; Number 118, Connie Edwards-Bellamy;
3 Number 484, Mary Williams; Number 283, Quinn Marinacci.

4 THE COURT: Mr. Stevens, will there be a challenge to the
5 panel? Will there be a challenge to the panel?

6 MR. STEVENS: No challenge.

7 THE COURT: Mr. Bender?

8 MR. BENDER: No challenge, Your Honor.

9 THE COURT: All right. Very well. The balance of the
10 jury panel is excused for today. I'll ask you to call back
11 afternoön tomorrow. There should be a message sometime after
12 noon tomorrow. We don't know whether we're gonna need another
13 jury this week, but I would ask you to please call back and
14 you'll get further instructions, but you are excused. You are
15 welcome to stay with us, but you are excused.

16 (REPORTER'S NOTE: Remaining Jury Venire released. 2:47 P.M.)

17 BY THE COURT:

18 THE COURT: All right. Madam Clerk, please swear the
19 jury.

20 CLERK: Yes, sir. Please stand and raise your right
21 hand.

22 (REPORTER'S NOTE: Jury sworn.)

23 CLERK: Thank you.

24 THE COURT: All right. Ladies and gentlemen of the Jury,
25 please let me make a few opening or preliminary remarks to

1 you. Ms. Galton, guess what?

2 JUROR 150: What.

3 THE COURT: I would ask you to always occupy that seat
4 because you will be our foreperson. You will be the Jury's
5 liaison with, with the Court and it will be your
6 responsibility to preside over the deliberations of the Jury.
7 If at any time during this trial, you or anyone on your jury
8 needs anything or you have any issues that arise, please make
9 those issues known to Mr. Ropp or the deputy that will be
10 assigned to you. There will always be some with you, someone
11 with you all throughout this trial. That deputy or that
12 bailiff's job is to make sure that you're comfortable and that
13 you have everything that you need. If any of you become
14 uncomfortable during the trial of this case, I would ask you
15 to simply raise your hand. That'll be your signal to me that
16 either you need a break or, if at any time during the trial of
17 the case, you can't hear or you can't see what's going on,
18 please let me know. This whole trial is a process by which we
19 present information to you as a, a Jury and if you can't see
20 or you can't hear, then our efforts are futile. So, please
21 let me know. I promise you I will not keep you sitting
22 usually more than an hour and a half. I figure if you can
23 make it through preaching, you can make it an hour and a half
24 in here. So I try to limit the, the sessions to about an hour
25 and a half, but if I go over and you become uncomfortable,

1 please, just let me know.

2 Ms. Williams and is it Mr. Marinacci?

3 JUROR 283: Yes.

4 THE COURT: Mr. Marinacci, I would ask you to always
5 occupy those two seats. You will be our alternates. You
6 will of course be with us throughout the trial and we may need
7 your services during the deliberation process, but I will ask
8 you, so that we can always identify you, to sit in those two
9 chairs and Ms. Galton, of course you will always occupy that
10 seat when we come back in the courtroom. The rest of you may
11 sit anywhere that you would like. And again, let me thank you
12 for being here and stress upon you that if you need anything
13 let us know. We have a comfortable jury room and there's
14 always coffee, soft drinks and, and snacks available for you,
15 but if for some reason that's not adequate, you let Mr. Ropp
16 know and we will take care of you.

17 Let me begin by first of all telling you that's the end
18 of the swearing that you have to do. And isn't that a
19 terrible amount of swearing just to get to where you are here?
20 You've been placed under oath three times today. But that
21 just emphasizes the importance of your job. It is -- this
22 case is, is so important to not only to Mr. Kelley but to Mr.
23 Wren and Sun Publishing. They have been unable to resolve
24 this matter and they bring it before you as citizens of this
25 state to resolve the issues that'll be presented. Let me tell

1 you though that during the trial of this case, you may
2 experience something different from what you may have seen on
3 TV You know every time we turn on TV now there seems to be
4 some program about a trial or somebody getting ready for a
5 trial or criminal matter or a civil matter or something of
6 that sort and those trials are always just action packed and
7 suspenseful. I will tell you that that is generally not the
8 case. There are moments that we have in this courtroom, but
9 generally speaking, the search for the truth, and that's what
10 we're about here, is the search for the truth. The search for
11 the truth is often slow and deliberate. Also these fine
12 attorneys and I want to tell you right up front, we're
13 fortunate in this case to have the excellent attorneys. I've
14 known these gentlemen and this lady for, for quite some time
15 and they're all very good attorneys, but they're under certain
16 constraints in their presentation of the evidence to you.
17 Often it's not so much a matter of what is produced, but how
18 it can be produced for you. There are rules that they have to
19 follow and sometimes those rules of evidence and the way
20 evidence is presented is tedious and redundant and you're
21 probably going to have moments in this trial where you feel
22 like goodness gracious, I know what you're trying to get at;
23 just move along, move along. Please don't hold that against
24 the attorneys. They're simply following the rules that have
25 been established by tradition and, and law in this, this state

1 and they have to follow those rules to present evidence to
2 you. So please don't hold that against them.

3 I will say this, that those attorneys and I are under an
4 oath to conduct ourselves professionally and ethically during
5 the trial of this case to insure that it is a fair trial for
6 everyone involved. But you know you, as jurors, also are
7 under an oath and your oath requires you to take this job very
8 seriously, to conduct yourselves professionally and ethically.
9 And that's probably even more important when it comes to a
10 jury because you see, at the end of this case, you're gonna be
11 asked to deliberate and that deliberation process involves
12 really three, three things. The most important of which is
13 your determination of the facts in this case, what occurred,
14 what is true; that is your main job to determine that. You
15 are the exclusive and absolute judges of what the facts are in
16 this case. And what makes your job so important is this, I
17 will instruct you on the law at the end of the, of the trial.
18 That's the second part of the deliberation process, learning
19 the law. You don't have much choice when it comes to the law.
20 You have to accept the law and apply the law just as I give it
21 to you. But if I make a mistake in my instruction on the law
22 or I make a mistake when I rule on evidence in this case,
23 these fine attorneys will take me up to Columbia before the
24 Supreme Court or the Court of Appeals and they will say
25 whether I did the right thing or not. And if I didn't do the

1 right thing, it can be corrected. But the deliberation
2 process, where you determine the facts, is the only part of
3 this trial that is not recorded. Everything that's said or
4 done in this courtroom is transcribed by this lady, Ms.
5 Richardson, who's down here to my left, and there's a record
6 of it. But when you go in that jury room, if you don't
7 truthfully and candidly and honestly look at the evidence
8 presented in this case and apply the law as I give it to you,
9 there's no way that that can be corrected. There's no way to
10 remedy that because nothing that you say or do in that jury
11 room will be recorded. So, your oath to conduct yourselves
12 professionally and ethically is very, very important.
13 I said a moment ago that you are the sole and exclusive judges
14 of the facts. I'm the sole and exclusive judge of the law. I
15 mentioned that a moment ago. I will instruct you on the law.
16 You may not agree with it; you may think it's wrong; you may
17 think it ought to be something else, but you're bound by your
18 oath to follow the law as I give it to you.

19 And the third part of that deliberation process is where,
20 and we can't forget that, is you take the facts as you find
21 them to be and then you take the law as I give it to you and
22 the third part is where you bring them together and you see
23 how they fit and that's where you reach a verdict in this
24 particular case. So, you have an awesome job. It is so
25 important that you be guided in your deliberations by only

1 what you hear from this witness stand. All of the questions I
2 asked you earlier in this case or in the jury selection
3 process, was to make sure that you have no outside influences
4 that are improper influences that might control how you look
5 at evidence or how you may consider a witness' testimony. You
6 must not allow any outside interference in your determination
7 of what the facts are.

8 In that regard, it is vitally important that you, as a
9 jury and individually, do not seek any further evidence. You
10 know, in today's world where we have computers and iPads and
11 iPhones, you can pick up that phone and you can go back and
12 you can look, you can scan the newspapers, you can look at in
13 some cases, courtroom pleadings, you can look up witnesses on
14 Facebook, you can do all manner of things. That would be
15 highly, highly improper and I ask you not to do that. Do not
16 speak to anyone about this case. Do not even discuss it among
17 yourselves until I instruct you to begin your deliberations.
18 You know there's always two sides to every story. And if you
19 begin your deliberations when you hear one witness or two
20 witnesses or even after a particular witness or later in the
21 trial, you have prejudged the case, you have begun your
22 deliberations prematurely, and I tell you, you absolutely must
23 not do that. You must at least or also wait until I give you
24 the law so you'll know what law to apply during your
25 deliberations process. I ask you to please pay, pay close

1 attention to everything that's said and done in this case.
2 That's why I tell you it's so important if you can't see or
3 hear, you just let me know that you've having a problem
4 because we want to make sure that you hear and see everything.
5 It's important to realize that during the trial of the case,
6 you're gonna hear from many witnesses and some of that
7 testimony may be contradictory. You -- we hear it in almost
8 every case. Someone has a different view of what was said or
9 done or, or, or seen. Let me say this, you can apply as a
10 jury, any test that you and your everyday experiences have
11 determined to lead you to the truth to a witness' testimony.
12 You can believe one witness over many witnesses, many
13 witnesses over one, you can believe all of what a witness
14 says, or nothing of what a witness says or you can believe any
15 portion of what a witness says in your search for the truth.
16 It is vitally important that you realize and keep in mind that
17 you will determine what the facts are in this case, but in
18 doing so, you must consider all the evidence that has been
19 presented to you.

20 Now, in just a moment, we're going to start the trial of,
21 the case and I want to tell you a little bit about how it will
22 proceed. I'm going to give each, each attorney an opportunity
23 to make an opening remark to you. It will begun -- begin with
24 Mr. Stevens or Ms. Stevens-Graziani, and he will tell you or
25 she will tell you about their client's position in this trial.

1 Basically, they will tell you what they think they can show,
2 what they believe they can show and why they believe that
3 relief should be granted to them. Please remember that what
4 they say during opening remarks is not evidence in the case.
5 You should not consider it as evidence. The only evidence you
6 consider is the evidence that comes from the witness stand.
7 Following that, Mr. Bender or Mr. Redmond will have an
8 opportunity to present the defense position. After these
9 arguments or opening remarks, you will have a better idea of
10 what this case is about. I purposely tried to give you just
11 the, a minimal amount of knowledge about this case, just
12 enough so that you could identify it if you knew something
13 about it. They will tell you what their position is in the
14 case. Again, what they say is not evidence in the case. It's
15 merely a road map for you, something that will help you
16 understand where they're trying to go as the testimony
17 develops.

18 Following that, the Plaintiff, Mr. Stevens, will produce
19 Plaintiff's witnesses. He will put up witnesses and he will
20 have an opportunity to examine those witnesses, to ask them
21 questions. Then the Defense will have an opportunity to cross
22 examine those same witnesses and we will go through the
23 Plaintiff's case. Following that, we will begin the Defense
24 and the Defendants will have an opportunity to put up
25 witnesses and examine those witnesses and Mr. Smith and -- I

1 mean, Mr. Stevens or Ms. Stevens-Graziani will have an
2 opportunity to cross examine those witnesses. When all that
3 is done, when all the evidence has been presented to you, they
4 will have another opportunity to sum up, to do what we call
5 arguments, last arguments, and they will tell you about what
6 the witnesses have said or what they believe the witnesses
7 have said and why it supports their case and why they should
8 prevail, whether it be the Defense or the Plaintiff's.
9 And then, finally, I will instruct you on the law and I do
10 something that I really don't know if any other judge in the
11 State is doing or not. I've been doing it for about seven
12 years now and that is I will prepare for you a, a written
13 transcript of my charge to you. I will charge on the law and
14 I will also provide you with a written transcript of that for
15 your use during the deliberations process. After that's done,
16 the case will be turned over to you and you will decide how
17 this case will be resolved.

18 Let me point out one other thing to you. During the
19 trial of this case, you may hear either one of these attorneys
20 say something like, Your Honor, we have a motion or Your
21 Honor, I have a matter to take up outside of the presence of
22 the Jury and that always concerns me because I think the
23 jurors get the impression that we're trying to keep something
24 from you and that's certainly not the case. It's not proper
25 for me to express any opinion about any evidence in this case.

1 That's beyond my authority. You are the sole judges of the
2 facts and the evidence in the case. And usually when that
3 happens, someone has asked to speak to the Court outside the
4 presence of the Jury, it involves the way evidence may be
5 presented to you. We spoke a moment ago about the rules that
6 control the way evidence is presented and ruling on the way a
7 piece of evidence may be presented or whether it should be
8 presented, I may have to express an opinion about the weight
9 or value of that particular piece of the evidence and that
10 would be highly improper for you to hear. So it's usually my
11 ramblings that they don't want you to hear, not the evidence.
12 So, please, draw nothing, draw no conclusions from, from that.
13 If an attorney objects or an attorney says that he needs to
14 speak to me outside the presence of the Jury, you should draw
15 no conclusions at all from that and I ask you not to.

16 Mr. Stevens, are you ready to make an opening remark?

17 MR. STEVENS: Yes, Your Honor.

18 THE COURT: All right. Thank you.

19 Anything further, Mr. Bender or Mr. Stevens, in the way
20 of preliminary instruction?

21 MR. BENDER: We do have two minor issues with respect to
22 witnesses. I think we can do it at a sidebar.

23 THE COURT: I tell you what. Why don't, why don't we
24 give you a short break. Show them where their jury room is,
25 familiarize them with that, Mr. Ropp. Bring them back in

1 I look forward to trying this case because I think this
2 is important in terms of how a newspaper serves the public by
3 reporting on matters that affect our governments, affect our
4 society and affect our lives. Thank you.

5 THE COURT: Counsel?

6 MR. STEVENS: We call our first witness, Mark Kelley.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible?

9 MARK KELLEY HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: Take a seat please, sir. State your name for the
12 Court please, sir.

13 MR. KELLEY: Mark Kelley.

14 DIRECT EXAMINATION OF MARK KELLEY BY MR. STEVENS:

15 Q: Would you state your full name please, sir?

16 A: Mark Steven Kelley.

17 Q: Okay. And where do you live?

18 A: 3083 Wild Horse Drive, Conway, South Carolina.

19 Q: All right. And what's your occupation now?

20 A: My occupation is a lobbyist and I also do some real
21 estate.

22 Q: And you're the Plaintiff in this case?

23 A: That is correct.

24 Q: How old are you and what's your date of birth?

25 A: I am fifty-nine years old born on September 19th, 1954.

- 1 Q: And are you married?
- 2 A: I am.
- 3 Q: What's your wife's name?
- 4 A: My wife's name is Lisa.
- 5 Q: Okay. Any children?
- 6 A: We have four children.
- 7 Q: How old are they?
- 8 A: My oldest, Christopher is thirty-four. Nicholas is
- 9 twenty-five; my daughter, Lisa is twenty-three and my son,
- 10 Shawn is twenty.
- 11 Q: Have all of them left the nest?
- 12 A: No.
- 13 Q: Okay.
- 14 A: In fact two of them are still there and one's coming back
- 15 from college so we'll have three of them in the nest.
- 16 Q: Okay.
- 17 A: I would like to just clarify that my three oldest children
- 18 are Lisa's by a previous marriage; they're certainly my
- 19 children now.
- 20 Q: Okay. And what's your educational background?
- 21 A: I have one year of college at Coastal Carolina University
- 22 and after I served time in the General Assembly was awarded an
- 23 honorary doctorate's degree from Coastal Carolina; that's the
- 24 extent.
- 25 Q: Okay. Have you served in the military?

1 A: I have. I spent four years in the Air Force, two tours in
2 Southeast Asia, was awarded the Vietnam conflict ribbon there
3 and served in the Panama Canal Zone. Basically, went TDY for
4 about thirteen times in four years. They kept me on the road,
5 kept me moving.

6 Q: You were in Vietnam?

7 A: Yes, sir, twice.

8 Q: Two tours?

9 A: Yes, sir. Part of it in Vietnam, part of it in Thailand;
10 yes, sir.

11 Q: Were you discharged from the Army?

12 A: I was honorably discharged.

13 Q: Can you tell the Jury a little bit about your employment
14 background?

15 A: I've been a pretty busy guy since -- I will start probably
16 just since the military, but ---

17 Q: Could you speak up just a little bit?

18 A: I'm sorry.

19 Q: You can sit back a little bit I think.

20 A: Yeah. Since the military when I got out I did some work
21 in remodeling work and carpet and vinyl installation, moved
22 into bartending business working in, in bars and nightclubs.
23 Eventually in 1981 opened up my first restaurant in North
24 Myrtle Beach called Kelley's. Ended up running and owning
25 four different locations through the years; my last one being

- 1 Shamrocks in Myrtle Beach. Also after I served in the General
2 Assembly, I got out, I got my Real Estate License and my
3 broker's license and practiced some real estate work.
4 Q: And when did you become a lobbyist?
5 A: I became a lobbyist a year after I got out of the General
6 Assembly. By law, by ethics laws, we are not allowed to be a
7 lobbyist for one year after you serve your last year in the
8 General Assembly. So I joined a firm, but I didn't file as a
9 lobbyist until 2003.
10 Q: Mr. Kelley, you ever been arrested?
11 A: I have not.
12 Q: Have you ever brought a lawsuit in your life?
13 A: I have not.
14 Q: This is the first time?
15 A: Yes, sir.
16 Q: What, when were you elected to the House of
17 Representatives?
18 A: In 2000, I'm sorry, in 1992.
19 Q: Okay. How long did you serve?
20 A: I served ten years.
21 Q: Until 2002?
22 A: Yes, sir.
23 Q: And what committees did you serve on when you were in the
24 House?
25 A: I started on an Education Committee. My second term in

1 the General Assembly, I stayed on the Education Committee, but
2 was elected, proudly elected, to the Ethics Committee as
3 Secretary to the Ethics Committee in the House, which that's
4 voted on by all the members of the House, they vote on the
5 Ethics Committee, so being one of the members there selected
6 by your colleagues is quite an honor. After that, I served --
7 after two terms, I served -- then moved to Ways and Means
8 Committee, which I was sub-committee Chairman on the Executive
9 Budget Sub-Committee; also was on Rules Committee for six
10 years, the last two years of that as Chairman of Rules
11 Committee.

12 Q: Were you, did you say you were Chairman of the Ethics
13 Committee, too?

14 A: I was, I'm sorry, I was not Chairman; I was Secretary on
15 the Ethics Committee.

16 Q: Secretary, okay.

17 A: Chairman of Rules Committee.

18 Q: Well, did you retire from the legislature by your own
19 decision or did the voters retire you?

20 A: No, fortunately my voters didn't retire me. I retired
21 after ten years.

22 Q: Okay. What was your reasons for leaving the legislature
23 as a representative?

24 A: I think part of it was to get back to my family, spend
25 more time, have more time with my family. The longer I served

1 in the General Assembly, the more I was involved with, doing
2 the budget and that seemed from what they told me was a part-
3 time job from January to June became a full-time job around
4 the calendar meeting with sub-committees and agencies and then
5 to, to establish the budget and was taking an awful lot of
6 time from my wife and my children. So I wanted to do that.
7 The other reason was basically to get out of the public eye.
8 I had been in it for ten years, you know, I used to tell
9 people that we weighed our mail, we didn't count it, because
10 of all the mail we got and the responses you have to do that,
11 the functions you have to go to and the constant time that you
12 have to speak on different issues, both locally and, and, and
13 in Columbia. So, I decided after ten years -- four years in
14 the military, ten years in General Assembly that I had given
15 enough service and I was gonna step back a little bit.

16 Q: When was it you decided to become a lobbyist?

17 A: I looked at it shortly before I got out.

18 Q: And with regards to becoming a lobbyist, in carrying out
19 your duties as a lobbyist, is it required that you call press
20 conferences and get in the public life?

21 A: Oh absolutely not. That would probably be one of the
22 worse things you do as a lobbyist. You know but certainly the
23 public perception is, is not a benefit to a lobbyist, but
24 being thrust out in the public is not a benefit to a lobbyist,
25 being working behind the scenes. I view a lobbyist as a

1 conduit between the clients and the General Assembly to
2 educate one side and the other side as to the issues and
3 concerns that both sides have and that's probably the major
4 focus that we do as a lobbyist and that is best done by
5 keeping your head behind the scenes letting the politicians
6 speak for themselves and talk for themselves and letting our
7 clients use their professional staff to talk to them.

8 Q: Have any of your clients informed you they did not want
9 you to be in the public?

10 A: Yes, one in particular that I can bring up is Coastal
11 Carolina University and President DeCenzo, I work directly for
12 has said that they have a, a group of people at Coastal
13 Carolina that do their public speaking for them, that I was --
14 and I would let my clients know that one of my things I would
15 not do is do public speaking.

16 Q: Let me ask you if you can remember your customers, your
17 clients in 2009?

18 A: I can tell you that some of that you heard up here,
19 Coastal Carolina University, Horry County Schools, Grand
20 Strand Business Alliance here; in 2009, it would've been
21 Alltel, Progress Energy, Waste Management, and, and 2009 I'm
22 not sure if Greenville Hospital System was on there,
23 GlaxoSmithKline are some of the clients that I had.

24 Q: Do you know how many you had in 2009 and the beginning of
25 2010?

1 A: In 2009, I had twelve clients and that's just not me,
2 that's, that's Kelley, McCain and Smith Owens, which is the
3 firm that, that I'm a partner in.

4 Q: What's the name of it again?

5 A: The name of it is Kelley, McCain and Smith Owens. Smith
6 Owens is Angela Smith Owens. It's two names, no hyphen.

7 Q: Okay.

8 A: As she says.

9 Q: And the, the middle?

10 A: That was Will McCain, who at one time was Governor
11 Beasley's Chief of Staff.

12 Q: And do all three of you engage in lobbyist activities?

13 A: Unfortunately, we did until October of last year when Will
14 McCain passed away with melanoma.

15 Q: All right. So, they're just two of you now?

16 A: That's correct.

17 Q: Do you have, did you gain any clients between January the
18 1st of 2010 up to the point in time when Mr. Wren started
19 reading, writing his articles?

20 A: In 2009, I had -- we had McCain and myself, we had twelve
21 clients that I was registered to lobby for. In 2010, we had
22 thirteen clients that I was registered to lobby for.

23 Q: Okay.

24 A: Now, we have ten clients that I'm registered to lobby for.
25 So we have lost clients.

1 Q: You had thirteen then and you have ten now?

2 A: Yes, in 2010. And clients basically come on one-year
3 contracts. Usually the contracts will start sometime in
4 November, December or January of the year and they run one
5 year and that's to get ready for the General Assembly, which
6 comes in in January. Their session is January through June,
7 or the first part of June, and so we just try to get clients,
8 you know, to sign up in November so that we can work with them
9 preparing for the General Assembly when it comes in and then
10 dealing with them through the year and then wrapping up. So,
11 yeah, they're basically on a yearly contract. These articles
12 coming out in May, those contracts in 2010 would've held until
13 the end of 2010.

14 Q: Now, Mr. Wren reported in I don't know how many articles
15 that you were the Chamber, bracket, his words, lobbyist. Tell
16 the Jury whether you're the Chamber lobbyist?

17 A: I will glad to tell you that I am not the Chamber
18 lobbyist. I have never been a lobbyist for the Chamber. I
19 have never had a contract to be a lobbyist for the Chamber of
20 Commerce, the Myrtle Beach Area Chamber of Commerce, ever.

21 Q: You are a lobbyist for the Greater ---

22 A: Grand Strand Business Alliance, which was at one time when
23 I first started with them, they were the Grand Strand Business
24 Association; they're now called the Grand Strand Business
25 Alliance.

1 Q: Does Mr. Wren know that?

2 A: I don't know if Mr. Wren knew it, but it certainly was
3 easy enough to find out.

4 Q: Tell the Jury how easy it is to find out for an
5 investigative reporter?

6 A: Very -- and you know for an investigative reporter or
7 anybody and many people do do it. You go to South Carolina
8 Ethics Commission online and it directs you to tell you
9 lobbyist or lobbyist's principals and you can look up
10 lobbyist, you can look up the lobbyist principal. You can see
11 who the principal has lobbying for them or who the lobbyist
12 lobbies for as principals. And for those who might not know,
13 the lobbyist is actually the person that goes back and forth;
14 the lobbyist principal is the, the agency or company that
15 hired you to do the work.

16 Q: When this case started, did The Sun News want to get
17 subpoenas for all your records?

18 A: They did.

19 Q: They subpoena all your records for the Horry County School
20 District?

21 A: Well, I know they subpoenaed all my Horry County School
22 District, Coastal Carolina, and many of my other clients.

23 Q: We got about 1500, 1600 pages of your documents at the
24 school district, right?

25 A: Horry County School District gave them what they asked

1 for, I guess.

2 Q: Did you object to any of it?

3 A: No, sir.

4 Q: So, if you were a lobbyist for the Chamber of Commerce,

5 you would have to register with the Ethics Commission?

6 A: I'd have to register with the Ethics Commission as a

7 lobbyist for the Myrtle Beach Area Chamber of Commerce. They

8 would have to register as a lobbyist's principal.

9 Q: So it's a two, two-way street?

10 A: That's correct.

11 Q: The principal has to register and you have to register?

12 A: That is correct.

13 Q: And that's a matter of public record?

14 A: Absolutely.

15 Q: Would it be easy today for anyone sitting there with The

16 Sun News to do is go online, if they've got any knowledge of

17 computers, and get that information?

18 A: It certainly would. And that's, you know, one -- when we

19 passed the Ethics Laws that was one of the big things that we

20 talked about was that transparency, that people knew who the

21 lobbyist were, who the lobbyist's principals were so they knew

22 who was working for whom.

23 Q: Now let's change courses here and let's talk about the

24 2000 -- excuse me -- was it Jan, June, I may have my dates

25 wrong. It was in June of 2009?

- 1 A: The luncheon?
- 2 Q: The luncheon?
- 3 A: Yes, sir.
- 4 Q: Do you remember what the date was?
- 5 A: I don't exactly. I want to say it was like June 10th,
- 6 something like that.
- 7 Q: Do you remember the day of the week?
- 8 A: I certainly remember the day of the week; it was a
- 9 Saturday.
- 10 Q: Okay. Tell the Jury how you found out about the meeting?
- 11 A: I got a phone call.
- 12 Q: From whom?
- 13 A: I got -- my phone call was from my friend who is the CEO
- 14 of the Myrtle Beach Area Chamber of Commerce, there's no
- 15 secret about that. Brad Dean called me and told me. I had
- 16 known for a long time that Brad -- Gresham Barrett. Gresham
- 17 and I served in the South Carolina House together. So,
- 18 Gresham and I have been friends since he came into South
- 19 Carolina. He then moved on to Congress where he served in
- 20 Congress before he made his run for, for Governor in South
- 21 Carolina. So, he told me that a friend of mine was coming
- 22 into town, would I like to join them for lunch and I said
- 23 sure. I hadn't seen Gresham in a while; it would be great to
- 24 catch up.
- 25 Q: Okay. At that time, did you know anything about the

1 subject of David Wren's deposition, excuse me, his
2 investigation or ---

3 A: No, sir.

4 Q: --- what was going on behind the scenes?

5 A: No, sir. No offense, but I never paid a whole lot of
6 attention to what they were doing in The Sun News.

7 Q: Okay. Did, did you go to the -- did you accept the
8 invitation?

9 A: I sure did.

10 Q: All right. Did you know what the meeting was about other
11 than sitting down and eat lunch?

12 A: No, I had no idea.

13 Q: Did you know that Brad Dean had campaign contributions or
14 that he was going to give campaign contributions before he
15 went to the luncheon?

16 A: I did not, but it really wouldn't have mattered.

17 Q: Okay. You would have gone anyway?

18 A: I certainly would.

19 Q: All right.

20 A: Maybe I need, Mr. Stevens, just let you know and let them
21 know, in Columbia, we go to a lot of functions usually after a
22 day of session or something they'll be fund,raisers going on
23 for different members of the House and the Senate and that.
24 In South Carolina, it is not against the law for a lobbyist to
25 go to these functions. It is against the law for a lobbyist

1 to facilitate in handing, collecting, distributing funds or
2 anything of value to a member. We go to those. We can -- in
3 fact, we even get notices for informational purposes. We can
4 take those notices and we can pass them on to our clients to
5 let them know for informational purposes as long as we're not
6 in the, basically the trail of the funding as far as
7 collecting and distributing the funding to candidates. So,
8 yes, I would have went to the luncheon.

9 Q: Did you know that Brad Dean was gonna hand him, Gresham
10 Barrett, any campaign donations?

11 A: I did not.

12 Q: Okay. Did you know where the campaign donations came
13 from?

14 A: I did not, still don't.

15 Q: Okay. Did you have anything to do with this investigation
16 that Mr. Wren was reporting?

17 A: No, nor would I.

18 Q: Is there anything, do you know anything about these LLCs
19 that, that Jay Bender's talking about?

20 A: The only thing that I know about them is because of my
21 name being mentioned in the paper, reading the articles and
22 knowing what they said about them, but other than that, I know
23 nothing else about these LLCs.

24 Q: Okay. You didn't have anything to do with any of these
25 people that ran the LLCs?

1 A: No, sir.

2 Q: All right. This is just part of what they have written
3 and reported?

4 A: That's my understanding.

5 Q: Do you know why he drug you into this thing?

6 A: I haven't the faintest idea, no.

7 Q: Did you, did you -- when you found out Mr. Barrett,
8 Gresham Barrett, was gonna be there, did you call him or did
9 you just go and meet him?

10 A: You know, I think I might've mentioned to him or we might
11 have had a text the day before said see you at lunch and
12 looking forward to it.

13 Q: Then let's see, it was you, Gresham Barrett and Brad Dean;
14 was anybody else there?

15 A: Drea Byars was there, who was the Finance Director for
16 Gresham Garrett or Gresham Barrett.

17 Q: Did you know Drea Byars before you got there?

18 A: I have. I've known Drea for a while because she, she
19 works with campaigns and she lives in the Columbia area.

20 Q: Okay. She works with campaigns?

21 A: That's correct, sir.

22 Q: More than one?

23 A: Yes, sir.

24 Q: Okay. All right. Now tell the Jury where you were
25 sitting, where was everybody sitting?

1 A: We were at a table, just a regular open table, not in a
2 booth or anything, but at an open table and Brad Dean was on
3 my left side, I would be in the middle, Gresham Barrett would
4 be on my right and Drea Byars would be between Gresham and
5 Brad Dean.

6 Q: On the other side of the table?

7 A: On the other side.

8 Q: Okay. Now you're between Gresham Barrett and Brad Dean.
9 Did you have anything to do -- did he had you an envelope and
10 get you to hand it to Gresham Barrett?

11 A: No, that's one thing I think we're all very clear that we
12 wouldn't -- I certainly wouldn't do it to hurt my career and
13 certainly wouldn't do it to hurt the career of somebody that I
14 truly thought would be the Governor for the State of South
15 Carolina. Why would I jeopardize that?

16 Q: Now, can you tell the Jury where the funds were? Did you
17 see any funds? Did you see what was there?

18 A: I did not. I seen an envelope.

19 Q: Just an envelope?

20 A: Yes, sir.

21 Q: Okay. Did -- and you did not touch the envelope?

22 A: No, sir.

23 Q: Did you know the envelope contained contributions?

24 A: I had a pretty good assumption that it contained
25 contributions, sir, sure.

1 Q: After the contributions were given to Mr. Barrett, what
2 did he do with them?

3 A: Mr. Dean handed the envelope to Mr. Barrett, he looked at
4 it, thanked Mr. Dean and handed the envelope to Drea Byars,
5 who put it in her purse.

6 Q: You didn't look in the envelope, did you?

7 A: No, I didn't look in the envelope. I would've had to
8 touch the envelope to look in the envelope. I kinda -- well,
9 that's a story for another day, but no, I did not look in the
10 envelope. I did not touch the envelope.

11 Q: How long did the luncheon last?

12 A: About an hour, an hour and a half, someplace in there.

13 Q: Okay. What did y'all talk about?

14 A: Well, the campaign donations were given to Congressman
15 Barrett right at first and then we talked. We sat down and
16 talked about families, about, you know, Mr. Dean and his
17 family and his children and Mr. Barrett and his family, his
18 children, my family and that and just kinda caught up as
19 friends and Drea was in the, in the conversation. They talked
20 about different campaigns and stuff going on and that, but it
21 was just general conversation.

22 Q: What did you do -- you said an hour and a half, what did
23 you do when you finished after that hour and a half?

24 A: I went home.

25 Q: Okay. And you left Mr. Barrett?

- 1 A: Yes, sir.
- 2 Q: You left Brad Dean?
- 3 A: Yes, sir.
- 4 Q: Left Drea Byars?
- 5 A: Yes.
- 6 Q: Did you have anything to do after that day with the
- 7 campaign -- they'd talked about these LLCs and what they claim
- 8 was money shoveled up under this LLC and back out through the
- 9 Chamber of Commerce?
- 10 A: I never had anything to do with it before, during or
- 11 after.
- 12 Q: All right. And on all of these articles, David Wren
- 13 always puts your name in brackets, Chamber lobbyist?
- 14 A: I don't know if he did it on all of them, but I know I
- 15 seen it on some.
- 16 Q: Okay. And do you know why he did that?
- 17 A: I guess we're gonna hear from Mr. Wren why he did that.
- 18 Q: Yeah.
- 19 A: I don't know.
- 20 Q: Okay. Now, did anyone other than the four people come to
- 21 the table that day?
- 22 A: Yes, I have to admit somebody else did; a waitress.
- 23 Q: Who?
- 24 A: The waitress.
- 25 Q: Okay. The waitress, okay. Anybody else?

1 A: Not to my knowledge.

2 Q: Okay. Now, it has -- as a legislator who handled the
3 passing of the Ethics Bill, were you familiar with it?

4 A: Oh, certainly.

5 Q: All right.

6 A: Don't ask me to quote it because I forget how many, eighty
7 pages, ninety pages.

8 Q: We'll try to narrow it down. Okay. Your Honor, we could
9 have the screen come down so we can -- now, we have a --
10 sections of the Ethics Bill here. I believe that's Section 2-
11 17-80(a) that deal with the acts prohibited by public
12 officials and lobbyists?

13 A: Right, that's the Code of Law now after, of course after a
14 bill is passed, it becomes part of the Code of Law.

15 Q: Okay. And you're familiar with what the legislative
16 history was behind the passing of the act?

17 A: Yeah, I think anybody that was around back then probably
18 remembers Operation Lost Trust that brought this act about.

19 Q: Okay. And it says the lobbyist or the person acting on
20 behalf of lobbyist -- keep going -- shall not offer, solicit,
21 facilitate, provide to or on behalf of any member of the
22 General Assembly, the Governor, Lieutenant Governor or any
23 other statewide constitutional officer, any public official of
24 any state agency who engaged in and covered agency actions or
25 any of their employees contributions as defined in that

1 section.

2 A: That is correct.

3 Q: All right. Now, a public official is defined as any
4 elected or appointed official of the State?

5 A: Except for -- I think we'll get to some -- including
6 candidates, certainly including candidates for those statewide
7 offices.

8 Q: All right. Now, when this lawsuit was first brought, did
9 The Sun News and Mr. Wren claim that Gresham Barrett wasn't,
10 wasn't a public official within that definition?

11 A: My recollection of that was Mr. Bender saying he didn't
12 know how the law was violated because Gresham Barrett wasn't a
13 statewide officer. Therefore, basically, I could've gave him
14 all the campaigns I wanted to and it wouldn't have been
15 illegal. Evidently, Mr. Bender, didn't read far enough down
16 through the law to find out the section that deals with the
17 candidate.

18 Q: Okay. I'll back up and show what the candidate is.
19 Candidate means a person who seeks nomination for election,
20 for election to a state or local office or authorizes or
21 knowingly prevents the complexion of disbursements of money
22 for the promotion of his candidacy or election. Back up,
23 Natalie, to the one before that if you would. We've got
24 another that deals with, public official includes candidates
25 as I understand it?

1 A: Public official includes candidate by that section of the
2 code.

3 Q: And candidates would include candidates for the office of
4 Governor?

5 A: Yes.

6 Q: Even if they're in the Congress?

7 A: Yes, because it wouldn't make much sense to be able to
8 freely give to somebody that wasn't a statewide office holder,
9 yet restricting the statewide officer holder, office holder,
10 from receiving campaign contributions.

11 Q: Okay. All right. So we know what contribution means,
12 money, that's what they've been talking about in the articles.
13 We know what candidate means. Go ahead. Now the penalties
14 for violation of this chapter, do you remember when you passed
15 that?

16 A: I do.

17 Q: All right. Go ahead. A lobbyist or lobbyist's principal
18 who willfully violates the provisions of this chapter is
19 guilty of a misdemeanor and upon conviction must be fined not
20 more than \$2,500 or imprisoned for not more than one year, or
21 both. The penalty, in addition, any lobbyist or any
22 lobbyist's principal convicted of or pleading guilty or nolo
23 contendere to a misdemeanor under the provisions of this
24 section is barred from acting as a lobbyist or a lobbyist
25 principal for a period of three years from the date of

- 1 conviction. What does that do to a lobbyist?
- 2 A: Well, we purposely put that -- and you got to remember
3 when did this, I was in the House of Representatives, so I
4 really wasn't thinking it from the side of the lobbyist, but I
5 was thinking about from the side of, of how do we clean up
6 this State and how do we make the image of this State better
7 after Operation Lost Trust. And we said that, you know,
8 fining a lobbyist or, or, you know, threat of possibly a year
9 in prison as a misdemeanor didn't have quite enough teeth.
10 But we knew that barring a lobbyist from being able to lobby
11 for three years virtually ruins a lobbyist. They would be
12 done.
- 13 Q: Okay. Is this, is this a serious thing for a lobbyist to
14 be accused of this?
- 15 A: Unless you're ready for a big career change, I think it's
16 very serious.
- 17 Q: Okay. All right. Can you collect campaign donations for
18 a candidate as a lobbyist?
- 19 A: No, sir.
- 20 Q: Can you supervise bringing in campaign donations for a
21 candidate?
- 22 A: No, sir.
- 23 Q: Can you facilitate obtaining campaign donations for a
24 candidate?
- 25 A: No, sir.

1 Q: Can you facilitate setting up a meeting to give campaign
2 donations to a candidate?

3 A: No, sir.

4 Q: Can you handle campaign donations for a candidate?

5 A: I cannot.

6 Q: Can you handle the envelope containing campaign donations
7 for a candidate?

8 A: I cannot.

9 Q: Now, let's go to the articles. Your Honor, we move to
10 introduce Exhibits One through Nine at this time, which are
11 the articles and the editorials?

12 THE COURT: Mr. Bender?

13 MR. BENDER: No objection as to One through Nine, Your
14 Honor.

15 THE COURT: All right. One through Nine are admitted
16 without objection and are so numbered. Do you have them
17 numbered, Ms. Richardson?

18 COURT REPORTER: I think Mr. Stevens numbered them.

19 MR. STEVENS: Yeah, I numbered them for you.

20 THE COURT: Let -- let's -- if we introduce them, let's
21 get them numbered properly before they get out of Ms.
22 Richardson's hands. There's no telling what you lawyers may
23 do with them.

24 MR. STEVENS: I had yellow stickies on all but two.

25 THE COURT: Let's, let's get Ms. Richardson the stickers

1 so she'll know what her exhibits are. Let's just get Kay's
2 initials on one set or the other so she'll know which are
3 hers.

4 MR. STEVENS: Okay. We've got extra sets. We'll just
5 let her keep them, One through Nine.

6 THE COURT: Just as long as we keep them straight. Since
7 we do have the extra sets floating around, let's try to keep
8 up with which ones have been introduced. Certainly, I would
9 appreciate a copy. Thank you very much.

10 PLAINTIFF'S EXHIBITS ONE THROUGH NINE

11 ADMITTED INTO EVIDENCE

12 THE COURT: Okay. Mr. Stevens, you may proceed.

13 BY MR. STEVENS:

14 Q: I have exhibits for you, Mr. Kelley. What I want you to
15 do is, Can you identify Exhibit Number One?

16 A: Exhibit Number One is the article that was written on
17 Friday, I think it was May 21st.

18 Q: I believe that's correct.

19 A: Of 2010.

20 Q: You can put that one up. I've already done that. One
21 through Nine is in evidence. Okay. That news, news article
22 has a portion -- and it talks about Dean handing over an
23 envelope with \$84,000. Now, the story here is about what?

24 A: The story here is, you know, is about Brad Dean handing
25 over \$84,000 to Gresham Barrett, a candidate for Governor.

- 1 Q: Okay. Now, does he mention Mark Kelley in here?
- 2 A: Yes, he does.
- 3 Q: He said, Mark Kelley a lobbyist for the Chamber?
- 4 A: For the Chamber of Commerce also attended the meeting
- 5 according to Barrett.
- 6 Q: According to Barrett. Okay. Now, that first clause, is
- 7 there anything false about that?
- 8 A: To which -- the first, Mark Kelley, a lobbyist for the
- 9 Chamber of Commerce?
- 10 Q: Yes.
- 11 A: Yes, I've never been a lobbyist for the Chamber of
- 12 Commerce.
- 13 Q: And it goes on and it says, There are strict rules that
- 14 prevent lobbyist from facilitating campaign donations for
- 15 statewide candidates. Do you know what was important about
- 16 the story other than you were a lobbyist?
- 17 A: I was kinda glad that they put that in there since they
- 18 mentioned me even though they got it wrong that I didn't lobby
- 19 for the Chamber, but I was kinda glad that it said, you know,
- 20 that it said what a lobbyist can't do.
- 21 Q: Okay. And it says, However, a spokesman for the South
- 22 Carolina Ethics, Ethics Commission says it does not appear any
- 23 laws were violated in this case?
- 24 A: That's correct.
- 25 Q: All right. Cathy Hazelwood as I understand it?

1 A: That's correct.

2 Q: And it says just being in the same room is not a
3 violation, it happens all the time said Cathy Hazelwood, the
4 Commission's General Counsel. He, bracket, Kelley, is not
5 supposed to touch the envelope or hand over the envelope. Do
6 you know why David Wren would be calling the Ethics attorney
7 and asking them what about you -- about you doing that stuff
8 for?

9 A: No, I wondered that.

10 Q: Did he call you up and ask you if you had anything to do
11 with LLCs?

12 A: No, he did not. I mean, he claimed and it could've
13 happened that he made a phone call to me, but if you can
14 remember, this article was almost a year after the luncheon.
15 If he'd made a phone call to me, the call would have just said
16 possibly, I'm David Wren and have run an article or running a
17 story can you call me. I have not known him to ask to lay out
18 what he's gonna ask when he leaves a phone message and I don't
19 return his phone calls.

20 Q: Why don't you?

21 A: Because in the past, he's never quite got it right. He
22 takes it out of context. He uses snippets. He does that part
23 and doesn't, doesn't portray the whole story; so, I just quit
24 talking to him.

25 Q: Did you tell him that?

1 A: Huh?

2 Q: Did you tell him?

3 A: I told him, I told him that in a previous, a previous time
4 that don't call me because I won't return your phone call and
5 I won't talk to you.

6 Q: Because of your past experience with him?

7 A: That's correct.

8 Q: Okay. Now did -- is there anything about that article --
9 are you telling the Jury anything about that first article
10 that's defamatory or libelous to you?

11 A: Not defamatory or libelous. The only thing that, that I
12 would say in that story that's incorrect is where he claims
13 that I'm a lobbyist for the Chamber.

14 Q: Okay. Now what he's investigating as I understand all
15 this investigative reporting he's doing, was trying to follow
16 the trail of campaign contributions through LLCs you had
17 nothing to do with?

18 A: I had nothing to do with them.

19 Q: Okay. Do, do you know anybody in the LLCs?

20 A: I do not.

21 Q: Do you know what the names of the LLCs are?

22 A: I do not. And let me retract that because I understand
23 there was many LLCs. For me to hear and just say a blanket
24 statement that I don't know anybody in the LLCs, I don't know
25 of anybody -- I couldn't tell you who owned what LLC or was

1 part of any LLC, but if you went through the whole list of
2 LLCs and put all the names of the people that were in those
3 LLCs, I might know them.

4 Q: That's what I'm saying, you, you, from sitting here today,
5 you don't know the names of the LLCs?

6 A: No, sir.

7 Q: You don't know the principals in the LLCs?

8 A: No, sir.

9 Q: You don't know what they did with their money if they had
10 any?

11 A: No.

12 Q: You didn't have anything to do with it?

13 A: No, sir.

14 Q: Now, that was on a Friday. Now, on Sunday did you get
15 their article?

16 A: I did.

17 Q: Did that upset you?

18 A: It did.

19 Q: All right. It says, Bad debt adds to donor misery. Are
20 you a donor?

21 A: No, sir.

22 Q: Now, it's a pretty big article here. What in this article
23 relates to you?

24 A: There's a paragraph in this article or sentence, long
25 sentence in this article that, that says, Dean along with

1 Chamber lobbyist, Mark Kelley, delivered about \$84,000 of
2 these campaign contributions to Barrett in June. Those
3 contributions included \$3500 cashier check from Green City
4 Partners.

5 Q: All right. What is false about that statement?

6 A: Well, first of all, I take you back to the Chamber
7 lobbyist again. I'm not the Chamber lobbyist. And Brad Dean
8 along with Chamber lobbyist, Mark Kelley, delivered about
9 \$84,000, so that tells me two people delivered that \$84,000,
10 me being one of them, and that would be illegal.

11 Q: Well, you heard the day that Wren testified in his
12 deposition, didn't you?

13 A: I did.

14 Q: Tell the Jury what he says is what he meant?

15 A: Well, it's funny in his deposition, but he never made it
16 clear in his articles. In his deposition, he said that along
17 with just meant I was there. So Brad Dean, Mark Kelley, just
18 being there, delivered is what he's trying to say that says.
19 I can't read it any other way than Brad Dean and Mark Kelley
20 delivered \$84,000 of these contributions to Gresham Barrett.

21 Q: Do you remember what he said when I asked him or I think
22 he volunteered it, that if had meant that, to accuse you, what
23 would he have used?

24 A: Yes. He said I would have put and.

25 Q: Brad Dean and Chamber lobbyist, Mark Kelley. All right.

- 1 Did you look up the word and in the dictionary?
- 2 A: I did.
- 3 Q: And what did ---
- 4 A: And more than one dictionary.
- 5 Q: Okay. What does it say?
- 6 A: Well, one of the first things any dictionary almost --
- 7 well the dictionary's I've looked in, let's put it that way --
- 8 the first thing is it's a conjunction and the first thing it
- 9 says as a definition of it is along with.
- 10 Q: Along with.
- 11 A: Or together with.
- 12 Q: Did you look it up in Thesaurus?
- 13 A: I did.
- 14 Q: And what does it say?
- 15 A: The first thing Thesaurus says along with.
- 16 Q: And?
- 17 A: And.
- 18 Q: Does it say together with, also?
- 19 A: It does but it says along with, I think, first.
- 20 Q: Okay. Remember when I asked Mr. Wren in his deposition
- 21 what -- don't you think it would be a little bit more clear if
- 22 you said Brad Dean handed the campaign donations to Gresham
- 23 Barrett; period; Mark Kelley was just sitting there at the
- 24 table? Remember when I asked him that?
- 25 A: Yes, I certainly do.

1 Q: What did he say?
2 A: No.
3 Q: He said it wasn't clearer?
4 A: It wasn't clearer.
5 Q: So, you're telling the Jury that they, they accused you of
6 a crime?
7 A: I can't read it any other way.
8 Q: Now, I believe that Exhibit Three and Exhibit Four is
9 essentially the same article. Exhibit Three is the one they
10 pasted online or posted online, excuse me. And this was
11 posted on 5/24 the day before the newspaper article came out
12 on 5/25; is that correct?
13 A: That's what it looks like to me.
14 Q: Okay. The, the, now this is the one dealing with BOOST,
15 right?
16 A: Yes, sir.
17 Q: Okay. Now, when he said Kelley, we got -- that Robert
18 Kelley?
19 A: Yes, to my knowledge, there was a gentleman named Robert
20 Kelley that was supposedly the head of this, this organization
21 that was called BOOST.
22 Q: Do you know Robert Kelley?
23 A: I do not.
24 Q: Okay. It says, In the past, the Chamber -- they got it in
25 quotes -- In the past, the Chamber has denied any involvement

1 in this scandal, but now Brad Dean admits he set up the lunch
2 -- with parenthesis -- Chamber, again, lobbyist, Mark Kelley.
3 Is setting up the lunch with the Chamber lobbyist, Mark
4 Kelley, a crime?

5 A: Yes, sir, if I were to set up the lunch that would've been
6 helping to facilitate.

7 Q: Okay.

8 A: Correct.

9 Q: And then he goes on further and he says, and he handed Mr.
10 Barrett the envelope full of checks. Do you know who he's
11 talking ---

12 A: It made me a little nervous since lobbyist Mark Kelley is
13 right before and he handed Mr. Barrett the envelope full of
14 checks.

15 Q: Okay. And he said, it said, Robert Kelley, who was -- is
16 not related to the lobbyist. Have you ever talked to Robert
17 Kelley?

18 A: No.

19 Q: You know if Robert Kelley was in the meeting?

20 A: He certainly wasn't in the meeting. I don't know where he
21 would've got that information from.

22 Q: Do you know if this quote is, is correct?

23 A: I haven't the faintest idea; don't know how he would've
24 got that.

25 Q: I guess they will hopefully put Mr. Kelley on the ---

1 A: I hope so.

2 Q: Okay. Now, do you remember the following Sunday -- did
3 you read the editorial?

4 A: Yes, sir, I did.

5 Q: Did that upset you?

6 A: Yes, sir.

7 Q: And the editorial is entitled Absence of Evidence, right?

8 A: Yes, sir, that's what it said.

9 Q: And they, they're talking about these LLCs again, right?

10 A: That's correct.

11 Q: And where the campaign donations were going and what
12 you're telling us, you had nothing to do with it?

13 A: Absolutely nothing to do with it.

14 Q: All right. And then they talk about political money
15 laundering 101?

16 A: They're the wordsmiths.

17 Q: They're the wordsmiths. They talk about -- other words
18 they use, darkest accusations, and this affair, and this
19 kickback and inexplicably. Then they get to Mark Kelley
20 again, don't they?

21 A: Yeah.

22 Q: Now, absence of evidence, as we now know based on David
23 Wren's reporting it was Myrtle Beach Area Chamber of Commerce
24 President Brad Dean who handed, excuse me, the person who
25 handed the \$84,000 in checks to Barrett with lobbyist Mark

1 Kelley sitting by his side. Well, finally they got it right,
2 right?

3 A: I was glad to see that part.

4 Q: Yeah. But they didn't stop there; they went further,
5 right?

6 A: They did.

7 Q: All right. Now read this to the Jury and tell, tell the
8 Jury what it's saying there?

9 A: In parenthesis it said, if Kelley handed the money over,
10 the transaction would have been explicitly illegal effectively
11 forcing Barrett to say Kelley had no involvement in pinioning
12 the donations on Dean no matter what the unprovable truth is.

13 Q: What are they saying?

14 A: I haven't the faintest idea other than they think that
15 they got a truth that they can't prove that says that I did
16 it.

17 Q: Now, okay. So, they entitled the article Absence of
18 Evidence and then they say well Brad Dean did give him the
19 campaign donations. They didn't -- wasn't satisfied with
20 that, they had to put that parenthetical phrase in there that
21 said, if he had -- if Kelley had handed the money over, the
22 transaction would have been explicitly illegal effectively
23 forcing Barrett to say Kelley had no involvement in pinioning
24 -- what do they mean by pinioning?

25 A: Putting it on Mr. Dean; sticking it on Mr. Dean; making

1 Mr. Dean the guy that to take basically I guess the fall.

2 Q: Okay.

3 A: Because they had the unprovable truth.

4 Q: No matter what the unprovable truth was. In other words,
5 what they're saying is they're liars. We know the truth. We
6 know Mark Kelley did it. Is that what he's saying?

7 A: That's what he's saying. That's what I interpreted it to
8 say.

9 Q: Okay. Now, we've got some more articles. Can you tell
10 the jury again, other than going to this luncheon for that one
11 day that was almost a year before, did you have any connection
12 with anything that was going on with his reporting or the
13 source of his reporting or the subject to his reporting?

14 A: No, I wasn't a member of the Chamber; I don't do lobbying
15 work for the Chamber; I didn't have anything to do with the
16 Chamber; I didn't have anything to do with the LLCs; I didn't
17 have anything to do with cashier's checks. In fact, if I
18 would've known that there was cashier's checks, I might have
19 said something to somebody because I would have told them that
20 that looked kind of funny and you might -- you shouldn't have
21 done that, but I had no idea and had no knowledge of it until
22 I seen it in the paper.

23 Q: Okay. You didn't facilitate that or you didn't organize
24 it and you didn't ---

25 A: No, sir.

1 Q: Okay. Now, they continue on in another online July the
2 15th and July the 15th, one online and one in the newspaper,
3 and they continue to talk about Mark Kelley, the Chamber's
4 lobbyist also attended the meeting. Did David Wren report
5 anything other than you going to this one particular meeting?

6 A: Before that we had the luncheon, you know, he ran three
7 articles and an editorial in May.

8 Q: Uh-huh (affirmative response).

9 A: And here we come in July again and he brings me back into
10 this picture.

11 Q: Okay. And then here again on Exhibit Number Eight, now it
12 says something about FBI probes. Have you heard anything
13 about any indictments or anything about a probe by the FBI?

14 A: The only thing I had heard at that time was the FBI might
15 have been looking into something and I think I see that in the
16 paper.

17 Q: That would have been in 2010?

18 A: That would have been in 2010.

19 Q: All right. Has any charge been brought that you know of?

20 A: No.

21 Q: Did the FBI call you?

22 A: No.

23 Q: Did it have anything to do with all of this?

24 A: No.

25 Q: Okay.

1 A: Now, I do have to tell -- I do want the Jury to know that
2 the IRS did look into our KMSO and ask us for our records and
3 they looked at all that and that was over two years ago and
4 nothings ever come of it.

5 Q: You voluntarily gave them everything?

6 A: We voluntarily gave them everything.

7 Q: All right. Now, we have another one here on August the
8 8th. I don't know -- read it but, but, but, okay. Email sent
9 to members of Gresham Barrett's Gubernatorial Campaign staff
10 last fall. The emails do not make clear why Barrett's staff
11 thought Kelley would be familiar with contributions. Who was
12 asking?

13 A: David Wren was asking.

14 Q: David Wren. Could not figure what the issue would be with
15 the donations. Okay. Try Mark Kelley our Horry expert,
16 Tompkins wrote in the email suggesting that these two could
17 answer questions about the donations. Kelley is a former
18 legislator who is now Chamber lobbyist -- Chamber again.

19 A: Here we go again.

20 Q: Okay. How did you feel when you looked at these, these,
21 articles?

22 A: I didn't know why they kept bringing me into this, why --
23 I understand where Tompkins would say something, check with
24 Mark Kelley our Horry expert. Most of these campaign
25 consultants and people that work on campaigns live in the

1 Columbia area. I have lived since 1972 in the Horry County
2 area here when I wasn't away on tour. I've lived here that
3 long. I kinda know Horry County; so, they kind of lean on me
4 when it comes to Horry County, Horry County issues, the feel
5 of Horry County, stuff like that. So, I understand why they
6 would say check with Horry County's expert, but nobody ever
7 checked with me. And if they would have checked with me, the
8 only thing that I could have told them is I have no idea what
9 they're talking about.

10 Q: Okay. And he says your -- Barrett's one of your political
11 allies?

12 A: Well, that's glad -- I'm glad to know that because I was
13 just a lowly House Member in South Carolina and Gresham
14 Barrett went on to be a Congressman. He went on as a run for
15 Governor and now he's all of a sudden my political ally. That
16 was interesting.

17 Q: Now, Exhibit Nine is the article that was written that's
18 been in -- Dean had repeatedly said the Chamber did not raise
19 money for political candidates. Were you a part of any of
20 this debate?

21 A: No.

22 Q: Other than going to that luncheon, that's all you did,
23 nothing else?

24 A: As far as this whole issue goes, that was it.

25 Q: Okay. I go to November. Now the campaign faced

1 foreclosures and they're talking about money laundering and --
2 let's see, money laundering and tax fraud, criminal
3 conspiracy, all that. And then he starts Barrett accepted the
4 money last year during a luncheon with Chamber President Brad
5 Dean and Mark Kelley, the Chamber's lobbyist, again.

6 A: In November.

7 Q: In November. Has Mr. Wren stopped writing about you?

8 A: He stopped writing about me about the time that you served
9 them with the lawsuit.

10 Q: Okay. Now, excuse me, Your Honor. When you looked up the
11 word, along with, is this what you found?

12 A: Yeah, I looked up the word and.

13 Q: Oh, and.

14 A: Because Mr. Wren said that the word that he would have
15 used if he wanted to say that I was handing campaign donations
16 would have been the word and. So, it just didn't make any
17 sense to me because I know he's used along with in some
18 articles that he's had long before this that we've found that
19 meant somebody got indicted with somebody else but it said
20 along with so I looked up and, and it was funny that in the
21 dictionary and is a conjunction and one of the ways to explain
22 it is along or together with.

23 Q: Now, the first sheet you got there, where did you get that
24 from?

25 A: Dictionary.com.

1 Q: Okay. Is that a free dictionary?
2 A: It is.
3 Q: All right. What is the next one?
4 A: English -- World English Dictionary.
5 Q: And what does it say about and?
6 A: It's a conjunction. The first thing it says about it on
7 line number one there, along with.
8 Q: Okay. What's the next one?
9 A: Collins English Dictionary.
10 Q: What does it say?
11 A: It says the number one thing is along with.
12 Q: Along with. And then you got what?
13 A: And then the Thesaurus.com.
14 Q: That's a synonym?
15 A: That's a synonym.
16 Q: What's a synonym?
17 A: A synonym is -- can be used in place of another word.
18 Q: Okay. What's the first thing it says on synonyms for and?
19 A: A synonym for and, the first thing is along with.
20 MR. STEVENS: Okay. We'd move to introduce this, Your
21 Honor.
22 MR. BENDER: No objection, Your Honor.
23 THE COURT: Without objection and that will be
24 Plaintiff's ---
25 COURT REPORTER: Ten.

PLAINTIFF'S EXHIBIT NUMBER TEN

ADMITTED INTO EVIDENCE

MR. STEVENS: May I hand it to the Jury?

THE COURT: You may publish. Mr. Stevens, are we to the point we can bring the lights up. I don't think it does much good to publish it to them in the dark?

MR. STEVENS: Yeah, I think we're through, Judge.

THE COURT: I thought you had seen it, Mr. ---

MR. STEVENS: Excuse me, just one minute.

MR. BENDER: I had took the witnesses word for what he testified.

THE COURT: All right.

MR. BENDER: I'd just like to see a copy of it.

THE COURT: All right.

BY MR. STEVENS:

Q: Now, during the pendency of this trial, did you serve requests for production of documents on Mr. Wren?

A: We did.

Q: And did -- one of the things you asked for was his emails?

A: All of his emails that had in any way related to this case.

Q: All right. And did he produce some of those emails?

A: He produced some. There's gaps, but we have some.

Q: There are gaps?

A: Yes, sir.

1 Q: Okay. I want to direct your attention first of all to ---
2 (REPORTER'S NOTE: Mr. Stevens confers with Court Reporter
3 regarding exhibit numbers.)

4 THE COURT: Bobby, let's take them out for a few minutes,
5 please and let them refresh themselves until we decide what
6 we're gonna do.

7 (REPORTER'S NOTE: Jury exits courtroom. 4:58 P.M. The
8 following takes place outside the presence of the Jury.)

9 BY THE COURT:

10 THE COURT: Let's find out where we are now. You said
11 something about legislators coming in today?

12 MR. STEVENS: I beg your pardon?

13 THE COURT: You said something about some legislators
14 coming in today.

15 MR. STEVENS: No tomorrow.

16 MS. STEVENS-GRAZIANI: Tomorrow.

17 MR. STEVENS: Tomorrow morning.

18 MR. BENDER: I thought it -- I thought it was today but
19 he said in the morning, sir.

20 THE COURT: Okay. Well, it's 5 o'clock.

21 MR. STEVENS: You want to break now and get ready for ---

22 THE COURT: Well, it looks like you've got to reform some
23 exhibits. Let's go ahead and break and be back in here at --
24 I'd like for the attorneys to be here by 9:00.

25 MR. STEVENS: Okay.

1 THE COURT: I'm here by 9:00. We'll bring the Jury back
2 in at 9:30, but I always like to have a little bit of time
3 just in case. Okay.

4 Bring them back in. I'm gonna release them for the
5 evening. Okay?

6 THE COURT: Mr. Kelley, you can step down. Thank you.
7 I'm gonna release the Jury.

8 All right. Let's take care of that in just a minute.
9 Let me get this Jury out.

10 (REPORTER'S NOTE: Jury returns to courtroom. 5:02 P.M.)

11 THE COURT: Ladies and gentlemen, it's a little after
12 5:00 and I know you all need to get home. So I'm gonna let
13 you go. We're gonna continue Mr. Kelley's testimony tomorrow
14 and, of course, we have cross examination tomorrow. Let me
15 remind you of my previous instruction. Please do not discuss
16 this case with anyone. Don't discuss it among yourselves. I
17 know how hard it is when you get home with your wife, the
18 husband, the boyfriend, girlfriend, says what did you do
19 today. Just tell them, you just can't talk about it yet and
20 you can tell them everything about it when we finish this
21 case, but let's don't talk about it now. Don't let anyone
22 approach you. Don't listen to any news reports of any kind
23 about the case. That would be inappropriate. Don't
24 electronically seek out any information about it and for
25 goodness sake, do not discuss it on any social media of any

1 type. I know a lot of folks like to do that Facebook thing
2 and talk about what they been doing. Please don't talk about
3 any witness or any attorney or anything about the case and/or
4 about me. Let's just talk about it period. It would be
5 improper for you to do so. Don't do any investigation on your
6 own. Go have a nice evening and forget about this case until
7 tomorrow. Mr. Ropp's gonna show you how to get in the
8 courtroom tomorrow, the courthouse. I've asked the attorneys
9 to be here about 9:00 o'clock. I always do that just in case
10 that we need to, to take care of some matter outside the
11 presence of the Jury, something they may think about. I'll
12 ask y'all to come back about 9:30.

13 Mr. Ropp, what you gone have for this Jury?

14 THE COURT: Ms. Galton, what do you want; you want
15 biscuits or do you want doughnuts; what would you like your
16 jury in the morning?

17 JUROR 150: Biscuits.

18 THE COURT: Biscuits. You have biscuits for them, okay.

19 MR. ROPP: We'll have biscuits, Your Honor.

20 THE COURT: Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom. 5:05 P.M.)

22 THE COURT: All right, gentlemen, let's continue to do
23 whatever we need to do to make sure that Ms. Richardson's got
24 everything straight so far. And I look forward to seeing you
25 all back in the morning.

1 MR. STEVENS: 9:00 o'clock?

2 THE COURT: About 9:00 o'clock. Okay. Thank you.

3 (RECESS - 5:05 P.M.)

4 *****OFF THE RECORD*****

5 (END OF DAY ONE.)

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1 (MAY 6, 2014)

2 (On the Record - 9:38 A.M.)

3 BY THE COURT:

4 THE COURT: They Jury has had a little snack this morning
5 and they're ready to come in. Is that correct?

6 BAILIFF: Yes, sir.

7 THE COURT: If you would, bring them in.

8 (REPORTER'S NOTE: Jury enters courtroom. 9:38 A.M.)

9 THE COURT: Good morning. I see we have all of our
10 jurors and our alternates. Ms. Galton has done an excellent
11 job rallying them this morning.

12 Did you have time for your biscuits this morning? I just
13 wanted to make sure that Mr. Ropp was doing what Ms. Galton
14 told him to do yesterday.

15 We're ready to proceed with the testimony in this trial.
16 I want to tell you that we're going to do something that's a
17 little unusual and out of keeping with our usual traditions
18 here in the Court of Common Pleas and that is we're going to
19 break a witness' testimony. You may've heard on yesterday
20 when I was reading to you a list of potential witnesses that
21 there were some familiar names and those were some of our
22 members of the General Assembly. And they will be testifying
23 today. Of course, the General Assembly is still in session
24 and they will meet later today for the week of session and we
25 wanted to have those two witnesses available this morning so

1 that we could get their testimony in and allow them to get
2 back on to Columbia. So, what we're going to do is put up
3 their testimony and then we will bring the Plaintiff, Mr.
4 Kelley, back to the stand and we'll complete his testimony.

5 Mr. Stevens, are you ready to proceed?

6 MR. STEVENS: Yes, Your Honor.

7 THE COURT: Very well.

8 MR. STEVENS: We'd call Representative Alan Clemmons.

9 ALAN CLEMMONS, HAVING BEEN DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK: Have a seat, please, sir. State your name for
12 the Court, please, sir.

13 MR. CLEMMONS: My name is Alan Clemmons.

14 DIRECT EXAMINATION OF ALAN CLEMMONS BY MR. STEVENS:

15 Q: Representative Clemmons, how -- where do you live?

16 A: I live in Myrtle Beach, corner of 17th Avenue South and
17 Highway 15.

18 Q: Okay. Are you a native of Horry County?

19 A: I am, born and raised in Myrtle Beach.

20 Q: So, you've lived here how many years?

21 A: Are you asking how long I am?

22 Q: Yeah.

23 A: Okay. I'm fifty-five years old.

24 Q: I asked one fellow had he lived here all his life and he
25 said not yet. Now, you're in the House of Representatives.

- 1 When were you elected?
- 2 A: I was elected in 2002 and began serving in 2003.
- 3 Q: Okay. Did you take Mark Kelley's place?
- 4 A: I did. He was a member of House, District 107, before I
- 5 was elected.
- 6 Q: Okay. And you've known Mark Kelley for quite a while?
- 7 A: I have, probably close to twenty years.
- 8 Q: How was his reputation before 2010 in and around Myrtle
- 9 Beach?
- 10 A: Had an excellent reputation. I, I remember well when he
- 11 came -- when he approached me when he was thinking about
- 12 retiring. I had unsuccessfully run for the State Senate and
- 13 he contacted me, invited me to lunch and told me that if I, if
- 14 I wanted to run for his House Seat that he would endorse me
- 15 for it and those of us from Myrtle Beach knew what that meant.
- 16 That if Mark Kelley endorsed you, that, that, would, the
- 17 election was pretty much assured. So, his reputation was
- 18 excellent.
- 19 Q: Prior to 2010, had you heard anything bad about him?
- 20 A: No, never.
- 21 Q: In the House of Representatives, you've been there since
- 22 2002 for about twelve years now, right?
- 23 A: Yes, sir.
- 24 Q: And are you, do you serve on any committees?
- 25 A: I do. I'm the Chair for the Rules Committee and I -- the

1 entire twelve years, I've served on the Judiciary Committee,
2 where I chair the Ethics and Election Law Sub-Committee.
3 Q: Was the Ethics Law already passed when you took office?
4 A: Yes, sir.
5 Q: Okay. Has it been amended at any time while you've been
6 there?
7 A: We're in the process of amending it now, but I don't, I
8 don't recall any amendments during that time frame until now.
9 Q: Now, do you recall when Mark Kelley became a lobbyist?
10 A: I do.
11 Q: Did he talk to you about doing that?
12 A: He did.
13 Q: As I understand, he has to wait a year before he begins?
14 A: That's correct.
15 Q: Did you know his company, KSMO?
16 A: I, I did know his company. I knew his partners who were
17 already lobbyists.
18 Q: Okay. I believe the testimony is that one of his partners
19 died?
20 A: Will McCain, wonderful man.
21 Q: Has that company enjoyed good reputation among
22 Representatives and Senators and State Senators?
23 A: Yes.
24 Q: Is it important to have a good reputation as a lobbyist to
25 be dealing with legislators?

1 A: As important as it is to have a good reputation as a
2 legislator, it's even more important if you're gonna be a
3 successful lobbyist to have a good reputation. Lobbyist, the
4 entire lobbying trade is built upon respect that members of
5 the legislature have for the individual who is proposing an
6 idea. Without, without that respect, without that reputation,
7 you don't get a whole lot of attention.

8 Q: And did Mark Kelley enjoy that type of reputation before
9 2010?

10 A: He did.

11 Q: Okay. Now, just general without getting into much detail,
12 could you tell the Jury what a lobbyist does; how do they
13 interact with a legislator?

14 A: A lobbyist -- well, the first thing I'll say is lobbyist
15 are, their stock and trade, again being their reputation.
16 They, they, they mingle with members of the legislature, they
17 get to know members of the legislature, they, they are
18 advocates for the issue that they are currently working on.
19 I've always said that a good, a good lobbyist not only
20 presents his side of the coin, but he also lets you know what
21 the other side of the coin is, what those who are opposed to
22 his position would have you, would say regarding the issue
23 that he's supporting. Mark Kelley has always been good about
24 that.

25 Q: He tells both sides of the story?

1 A: Both sides, yeah.

2 Q: And would it be fair to say that a lobbyist also educates
3 the legislator?

4 A: Absolutely. And many times, when you're looking for
5 information on an issue, the lobby is where you will go to try
6 to find that information.

7 Q: Okay. Like you've got some issue and you're trying to
8 hold down the budget and then when you look over the budget,
9 you look at what the school district needs and maybe what
10 Coastal Carolina needs and you think maybe it's too much
11 money; do you then call the lobbyist and ask him questions
12 about that?

13 A: No, we probably don't call them. We probably walk out
14 into the lobby and talk to them right there because the lobby
15 -- where the legislators are, the lobbyist are nearby because
16 they understand that they need to be close by to provide
17 information whenever the issue arises.

18 Q: Now, let's get -- direct our attention to 2010. Were you
19 aware who was running for Governor in 2010?

20 A: I was.

21 Q: And tell the Jury who was running?

22 A: I was supporting Gresham Barrett. Nikki Haley was running
23 and I'm a supporter of Nikki Haley's now.

24 Q: Okay.

25 A: We had Henry McMaster was running for Governor.

1 Q: He was Attorney General at that time?

2 A: He was the Attorney General at that time, correct, and had
3 previously been the Republican Party Chair when I, when I got
4 involved in politics.

5 Q: There was a fourth, I believe, Andrew Bauer?

6 A: That's right. He was Lieutenant Governor at the time.

7 Q: And ---

8 A: Andre, excuse me, Andre Bauer.

9 Q: Andre Bauer. Andre Bauer. And did you know who Mark
10 Kelley -- if he was supporting Gresham Barrett?

11 A: I would've been shocked if he did not. He and Gresham
12 served in the legislature together and were very close
13 friends.

14 Q: Now, there was a series of articles that came out in May
15 of 2010; do you recall reading those articles?

16 A: The articles in The Sun News, yes.

17 Q: Okay. I'd like to call up the article of May 23rd. Now,
18 we've been talking -- you haven't been in here, but we've been
19 talking about this particular language, being along -- Chamber
20 lobbyist, Mark Kelley delivered about \$84,000 of those
21 contributions to Barrett in June. Now reading that, if you
22 read that the first time you had read it, would you tell me
23 whether -- how many people delivered money to Gresham Barrett?

24 A: As I read it now and as I read it then, two people.

25 Q: Two people. And who were those two people?

1 A: Dean and Kelley. Brad Dean and Mark Kelley.

2 Q: As a Representative at that time, did you know that that
3 was a crime?

4 A: Yes, I did.

5 Q: Okay. Did that particular language, would it hurt a
6 lobbyist's reputation?

7 A: Absolutely.

8 Q: Okay. What happens when a legislator sees something like
9 this in the newspaper?

10 A: He goes into damage control mode. The first phone call to
11 make is to the person -- well, if it were me, it would be to
12 the person that wrote the article to make sure they understood
13 the facts that if indeed I were -- I did not deliver that
14 \$84,000, I want a retraction. But then I'd probably call my
15 closest campaign supporters and seek advice from them and I
16 would follow that up with talking to my paid campaign advisors
17 to see what I need to do to try to right the wrong that's been
18 done.

19 Q: Okay. Let me ask you this. As a legislator and this
20 coming out in the news, would you or not be -- want to be seen
21 with Mark Kelley in public with this on him out in the public?

22 A: Absolutely not.

23 Q: Tell the Jury why?

24 A: Politicians stock and trade, like a lobbyist, is his
25 reputation. And in politics, perception is reality and if you

1 are perceived, if there's somebody that has, has committed a
2 crime, an ethics crime, particularly when it involves a
3 gubernatorial candidate where the media is fully focused and
4 you, you don't want to be seen as a part of any of that and
5 you don't want your constituents to think that you had
6 anything to do with it, so, or your fellow House Members,
7 legislators. Again your reputation is all you have in
8 building relationships and to get bills passed and get things
9 done that are important to you as a legislator and important
10 to your constituents and if you don't have that reputation,
11 then you can kiss goodbye being able to get things done in
12 Columbia.

13 Q: How did this statement affect the effectiveness as a
14 lobbyist of Mark Kelley?

15 A: It, it would directly affect it. I know for a fact, I had
16 legislators approach me in the Chamber in very hushed tones,
17 what's going on with Mark Kelley, what, what's this all about?
18 So, it was on everybody's radar screen.

19 Q: Okay. In your eyes, did this damage Mark Kelley's
20 reputation?

21 A: Yes.

22 Q: As a lobbyist?

23 A: Yes.

24 Q: Personally?

25 A: Yes.

1 Q: You said you had been approached by legislators. How
2 about your constituency, were you approached by any of your
3 supporters?

4 A: I did. I had ---

5 MR. BENDER: I would object to hearsay of what the
6 supporters said.

7 MR. STEVENS: Your Honor, we would show that the, the
8 statement, if there is any such statement, we're not gonna
9 introduce what people said, but just the general feeling and
10 it's to show the present mental state of the persons making
11 the statement.

12 THE COURT: I'll allow it.

13 MR. STEVENS: Okay.

14 A: I did have constituents talk to me about questions that
15 they raised in The Sun News. You know, my constituents had
16 been Mark Kelley's constituents, so they, they knew him better
17 than they knew me. He'd been there for ten years and I had
18 been there for some time less.

19 BY MR. STEVENS:

20 Q: And did that, based upon what they told you, from their
21 conversations with you, was the -- Mr. Kelley's reputation
22 both personally and as a lobbyist damaged in their eyes?

23 A: In my view, from what they told me, yes.

24 Q: Okay. Were you also privy to the other articles that came
25 out later?

1 A: I was.

2 Q: If we could see the May 25th quote. Okay. If you would,
3 read that,

4 A: In the past, the Chamber has denied any involvement in
5 this scandal. But now Brad Dean admits he set up the lunch
6 with Chamber lobbyist, Mark Kelley, and handed Mr. Barrett the
7 envelope full of checks said Robert Kelley, who is not related
8 to the lobbyist.

9 Q: Do you know if that is a correct quote by Robert Kelley?

10 A: I do not know.

11 Q: Have you had an opportunity to talk to Robert Kelley?

12 A: I don't think I know who Robert Kelley is.

13 Q: Now, reading that particular sentence or quote and having
14 already read the other quote from May the 23rd, what is that
15 quote telling you?

16 A: That Mr. Dean and Mr. Kelley gave Mr. Barrett an envelope
17 full of checks.

18 Q: All right. Does that particular statement in this article
19 from two days after the May the 23rd -- I think it would be
20 Tuesday -- would that damage Mr. Kelley's reputation both
21 personally and as a lobbyist?

22 A: Yes, it would. It's a cumulative effect.

23 Q: Okay. Now, let's go to the May the 30th editorial. Do
24 you remember reading this editorial entitled Absence of
25 Evidence?

1 A: I remember it. I haven't read it since that time, but I
2 do remember it.

3 Q: What was your reaction when you read that particular
4 editorial?

5 A: I found it rather shocking. Knowing Mark Kelley as I do,
6 I found it rather shocking. I found it shocking that The Sun
7 News would, would admit that they have no evidence, but in the
8 end, they've already indicted Mr. Kelley.

9 Q: Okay. Let's go to the language. Now in the beginning of
10 it, it's talking about political money laundering 101. That's
11 a kind of an expression. What do they mean by that? What do
12 you understand it to mean?

13 A: Well, political Monday, money laundering 101 -- first of
14 all, there are laws that are very detailed on what kind of
15 contributions you can accept, who can they, who they can be
16 accepted from, the, the total that can be accepted from any
17 one individual or entity. There are very specific laws on
18 what a politician, in this case a gubernatorial candidate, is
19 allowed to receive, to take for his campaign. And when you
20 talk about political money laundering, you're talking about
21 breaking the law to channel money from one source into
22 multiple sources to make it look legal, when in fact it's
23 illegal.

24 Q: That's also a federal crime, isn't it?

25 A: It's a state and federal crime; that's correct.

1 Q: Now, the article began with these descriptive words,
2 darkest accusation, this affair, kickback, inexplicably. In,
3 in looking at that, is, is -- are those types of phrases
4 accurately reporting the news?

5 A: In my opinion, no.

6 Q: Okay. Let's go to the next. If you would read that out
7 and look that, look at that and tell me what you understood
8 that to mean.

9 A: That phrase as we know based on David Wren's reporting?

10 Q: Uh-huh (affirmative response).

11 A: It, it, it tells me that the editorial is drawing its
12 basis of knowledge from the reporting by their reporter, David
13 Wren.

14 Q: Okay. What if I were to tell you that the editorial
15 witness, her deposition was taken and she said that she didn't
16 read any of Mr. Wren's emails, only the articles. What, what
17 in your understanding would be -- would that be with regards
18 to whether it's accurately or properly investigated and
19 reported?

20 A: Well, it would seem to me that if, if the author of the
21 editorial says that her basis of knowledge is David Wren's
22 reporting and she only reviewed a portion of that background
23 of the reporting, then she only has a partial amount of the
24 knowledge on which to report or editorialize.

25 Q: What if I were to tell you that we had subpoenaed David

1 Wren's, all of his written notes, a pretty thick pack and you
2 can't hardly read it, but I asked him in his deposition would
3 he review it and point out on any page where he mentioned Mark
4 Kelley and all of his notes, and he said none, nothing's in
5 there related to Mark Kelley. Would that be good
6 investigative reporting in your opinion?

7 A: In this case, where Mark Kelley's name appears multiple
8 times as one of the parties that gave checks, gave an envelope
9 full of checks to the Governor, then I would say that is not
10 good reporting.

11 Q: Okay. All right. Now, if you go on a little further,
12 beginning, it was Myrtle Beach Area Chamber, finish that up
13 for the Jury?

14 A: Certainly. It was Myrtle Beach Area Chamber of Commerce
15 President, Brad Dean, who personally handed the \$84,000 in
16 checks to Barrett with lobbyist Mark Kelley sitting by his
17 side.

18 Q: Now, let me stop you right there. Is anything wrong with,
19 with the statement up to that point?

20 A: Anything wrong with it?

21 Q: Yeah.

22 A: No, sir.

23 Q: All right.

24 A: That I see.

25 Q: All right. Now what's wrong with the rest of it?

1 A: Let me read it.

2 Q: Okay.

3 A: If Kelley handed the money over, the transaction would
4 have been explicitly illegal effectively forcing Barrett to
5 say Kelley had no involvement in pinioning the donations on
6 Dean no matter what the unprovable truth is.

7 Q: What did you understand that to mean?

8 A: I remember scratching my head when I read that. That last
9 phrase, no matter what the unprovable truth is. To me, The
10 Sun News was saying we know that Mark Kelley really gave him
11 the money, but we can't prove it.

12 Q: Thus their title, Absence of Evidence?

13 A: I think so, yes.

14 Q: If you don't have evidence about a crime, do you accuse
15 somebody of that crime?

16 A: I certainly don't.

17 Q: Would, would a Solicitor, who was, has the duty of
18 prosecuting crimes bring an action or bring a charge against
19 Mark Kelley when the person who is accusing of it says no
20 matter what the unprovable -- if they read that?

21 A: Absolutely not.

22 Q: Well, you're an attorney, right?

23 A: I am.

24 Q: Okay. And you have been involved in criminal
25 representation of, of in criminal cases, right?

1 A: I've represented Defendants and I've prosecuted criminals.
2 Q: You're familiar with what is necessary to swear out a
3 warrant?
4 A: I am.
5 Q: All right. If The Sun News went up to a magistrate and
6 gave them this background, would a warrant be sworn out for
7 Mark Kelley?
8 A: Absolutely not.
9 Q: Okay. Did this particular article affect Mark Kelley or
10 affect Mark Kelley's reputation both personally and as a
11 lobbyist in his business or profession?
12 A: I know for a fact that at least this article cumulatively
13 with all the other articles did, yes.
14 Q: Okay. Now, The Sun News didn't quit after that, did they?
15 A: No.
16 Q: They kept, they kept going?
17 A: Yes.
18 Q: Okay. And I think we've introduced some July articles and
19 I'm not gonna go into those and August and in November and I
20 believe right on into the next year?
21 A: Yes, sir.
22 Q: Do know why they kept on continuing to bring Mark Kelley
23 into this picture?
24 A: I could only guess that the sensationalism of it would
25 boost readership.

1 Q: Okay. Now, is that the business of a newspaper to be
2 sensational or to report the news?

3 A: I've always believed the newspaper was for reporting the
4 news.

5 Q: Okay. Now Mr. Clemmons, as an attorney, do you have
6 clients who look for lobbyists to help them in legislation
7 they're supporting?

8 A: As an attorney, no.

9 Q: Okay. Do you know of anyone who, did anyone ask you about
10 Mark Kelley, about hiring him?

11 A: Yes, they did.

12 Q: Who?

13 A: Well, there were several inquiries and discussions I had
14 with folks that were looking for lobbyists but I can only
15 remember one in particular where I can remember who it was.

16 Q: And who was that?

17 A: That was a group called the American Resort Developers
18 Association.

19 Q: Okay.

20 A: And that's an organization out of Orlando, Florida. They
21 represent timeshare developers.

22 Q: Okay. Did they approach you about hiring Mark Kelley?

23 A: They did. They were going through a, a difficult
24 legislative issue or had a difficult legislative issue to deal
25 with. Actually it was a Supreme Court issue. The Supreme

1 Court had at that time raised an issue that directly affected
2 the way that timeshare developers did business with regards,
3 and this does, this does go -- in my profession, I'm a real
4 estate attorney. The Supreme Court opinions made it clear
5 that the Supreme Court was of the opinion that as far as
6 closing real estate transactions of any nature, including
7 timeshare transactions, that an attorney had to be present; a
8 South Carolina attorney had to be present at the time of
9 closing. That was contrary to the way that timeshare
10 developers across the country to business. They have their
11 clients sign the documents whenever they agree to purchase and
12 then send the documents to the attorney to finalize the
13 transaction. So, they saw that as undoing their model of
14 doing business and they were looking for lobbyists. And they
15 approached me because I had dealt with some legislation
16 involving timeshare and I represent some timeshare developers
17 in my, as part of my practice. And the name Mark Kelley came
18 up and I shared with them everything that was going on and
19 told them that in my opinion, as a lobbyist Mark Kelley was
20 toxic at that time because of everything that had been in The
21 Sun News.

22 Q: Thank you. That's all I have. Oh, one other question.
23 Do you know whether they hired him?

24 A: No, they did not.

25 Q: Okay.

1 Q: Thank you very much. I have no other questions. Enjoy
2 your trip to Columbia.

3 A: Thank you.

4 MR. STEVENS: Just a few, Your Honor.

5 REDIRECT EXAMINATION OF ALAN CLEMMONS BY MR. STEVENS:

6 Q: Now, when we keep hearing about these LLCs, if you wanted
7 to find out who the members of the LLCs, isn't it easy to call
8 the Secretary of State and ask for the Articles of
9 Organization?

10 A: You can and some -- and those Articles of Organization
11 sometimes will reveal -- it'll reveal at least the organizer.

12 Q: Okay. And sometimes they tell who they are and what
13 interest they hold in the LLC?

14 A: Sometimes they do.

15 Q: Okay. Now, let me ask you this. To the best of your
16 knowledge, did Mark Kelley have anything to do with the LLCs?

17 A: No.

18 Q: Did he have anything to do with anything to do with
19 campaign donations coming from the LLCs?

20 A: No.

21 Q: Did he even know anything about it?

22 A: I don't believe he did.

23 Q: Okay. So far as you know, Mr. Wren drug him into this?

24 A: I'm sorry.

25 MR. BENDER: I object to the leading, Your Honor.

1 MR. STEVENS: Okay. I withdraw that question. I
2 withdraw that.

3 BY MR. STEVENS:

4 Q: Let me ask you this, In the political world, there are
5 people who for want of a better word, hedge their bets in
6 giving campaign donations, don't they?

7 A: That's correct.

8 Q: Tell the Jury what I'm talking about.

9 A: There are those, especially business people, who will make
10 contributions to both sides of the coin. If, if I'm being
11 opposed by a Democrat running for public office, some business
12 people will give to me and give to my Democrat opponent, in
13 the event that my opponent beats me, so they will have a
14 friend going into the legislature and not be perceived as an
15 enemy.

16 Q: Do those contributors sometimes decide to make the
17 donation through one of their businesses?

18 A: Many times.

19 Q: Is there anything illegal about that?

20 A: Absolutely not. Absolutely nothing. In fact, if I -- I
21 know an individual who, who owns several businesses and he, I
22 think he owns four businesses, and it's not unusual for him to
23 give, to write a check out of his and his wife's personal
24 account for a \$1,000 and a check for a \$1,000 out of each of
25 his corporations, which are legal entities so that, in affect,

1 you receive \$5,000 in contributions legally from that one
2 individual and each of his legal four entities. That is
3 completely legal under Ethics Law.

4 Q: Let me ask you this so the Jury will know, individuals are
5 limited to how much they can give, am I right?

6 A: That's correct.

7 Q: And how much is that?

8 A: \$1,000.

9 Q: All right. Now, if I wanted to ---

10 A: I'm sorry, in a campaign cycle.

11 Q: Okay. In a campaign cycle?

12 A: Yes.

13 Q: If wanted to donate to your campaign, but I wanted to give
14 you more than \$1,000, is there a different way I could do it
15 through my business?

16 A: Yes.

17 Q: Tell the Jury about that?

18 A: Okay. If you have an LLC or a corporation; LLCs are
19 pretty much corporations, it's just a different kind of
20 corporation. So, if you're a lawyer --

21 Q: Uh-huh (affirmative response). I hope so.

22 A: And you have, you have an LLC or an LLP or a partnership
23 or some business that, that runs your legal practice. So, if
24 you wanted to give me \$2,000 in contributions, you could write
25 a check out of your personal -- in fact, I would appreciate it

1 if you'd do that today -- you could write a check out of your
2 personal checkbook for \$1,000.

3 Q: Okay.

4 A: And then you could ask your bookkeeper to write a check
5 out of the firm checkbook for \$1,000. Both of those checks
6 are completely legal even though you had control over both
7 checkbooks.

8 Q: Doesn't a business have a higher -- aren't they entitled
9 to give more money than 1,000?

10 A: No, I think 1,000 is the limit for even a business.

11 Q: All right. So, if I wanted to give you more than a
12 thousand, I could give my wife a \$1,000 and let her give it to
13 you, right?

14 A: Your wife can give 1,000; you can give 1,000; each of your
15 adult children can give 1,000.

16 Q: Of course, I'd have to trust my wife to give you the
17 money, but I could do that?

18 A: Yes, sir. Your funds are shared funds; so, yes, you can
19 do that.

20 Q: Now, are there also people who just don't want their name
21 in the public; they just want to protect their privacy and
22 they don't want their name because this goes into a list and
23 it goes to central filing in the State, doesn't it?

24 A: It does.

25 Q: And if anybody wants to see who donated to so and so they

1 can call that up online and just see whoever's donated?

2 A: That's correct. Every contribution is recorded in a
3 database in Columbia at the Ethics Commission. Additionally,
4 whenever that is recorded, every, every person that is in
5 public office or desires to run for public office looks at
6 that database and they use the names and addresses in that
7 database to make up their own mailing lists to solicit
8 contributions.

9 Q: Okay. Now, Mr. Bender has been beating around the bush
10 with this email. Let's get it out in the open here. Let me
11 ask you this. If a lobbyist like Mark Kelley -- is it illegal
12 for him to support Gresham Barrett?

13 A: Not at all.

14 Q: Can he go to campaign raisers himself?

15 A: He can appear, yes.

16 Q: Okay. He can go and mingle around?

17 A: He can.

18 Q: He can go out in public and he can say please vote for
19 Gresham Barrett?

20 A: He can. He can even be in the room when checks are handed
21 to him.

22 Q: Okay. As long as he just doesn't touch it?

23 A: As long as he's not involved in that check, yes.

24 Q: Okay. That's what, actually what Cathy Hazelwood said to
25 Mr. Wren. It's legal as long as he doesn't touch it; isn't

1 that what she said?

2 A: Yes, sir.

3 Q: Okay. So, would it be okay for a lobbyist like Mark
4 Kelley who's supporting Gresham Barrett to get an email from
5 Luke Byars -- you know Luke Byars?

6 A: I do know Luke Byars.

7 Q: Who is he?

8 A: He is, he is a paid campaign consultant/fundraiser/finance
9 guy.

10 Q: Okay. Suppose this email talks about a straw poll that
11 showed that at that time in April, I believe the 25th, that
12 Gresham Barrett was in first place with 37 percent; Henry
13 McMaster was in second place with 30. -- 34.2 and Nikki Haley
14 was in third place with 18.4 percent and Andrew, Andre Bauer
15 was in fourth place at 10.4 percent. If Mark Kelley got this
16 and ---

17 A: And I'm sorry, those percentages are percentages of funds
18 raised?

19 Q: No, straw poll.

20 A: Straw poll; thank you.

21 Q: The straw poll. Where they were if an election was held
22 then?

23 A: Right.

24 Q: Based upon the poll. And in this particular email, the
25 purpose of the email is it starts out with, Sorry to bother

1 you on a Sunday ---

2 MR. BENDER: I object to ---

3 MR. STEVENS: I move to introduce it.

4 THE COURT: Has anyone authenticated it?

5 MR. STEVENS: I'll authenticate it.

6 THE COURT: Okay. We'll let you authenticate it and then
7 we'll hear from counsel.

8 BY MR. STEVENS:

9 Q: Let me let you look at this email and ask you if your
10 address is on that email?

11 A: I see quite a few addresses. Yes, my clemmons1@aol.com
12 address is on there.

13 Q: Does that forward to you from Mark Kelley a email that he
14 received from Luke Byars?

15 A: Yes, it was sent originally to Luke Byars on April 25th
16 and then was forwarded that same day by Mark Kelley to me and
17 others.

18 Q: Okay. What is Mark ---

19 MR. STEVENS: We'd move to introduce it, Your Honor.

20 MR. BENDER: I'm not sure he's authenticated it, but I
21 have no objection.

22 THE COURT: All right. Without objection it's introduced
23 as ---

24 COURT REPORTER: It's Plaintiff's Exhibit Number
25 Seventeen.

1 MR. STEVENS: Seventeen.

2 THE COURT: Seventeen.

3 PLAINTIFF'S EXHIBIT NUMBER SEVENTEEN

4 ADMITTED INTO EVIDENCE

5 BY MR. STEVENS:

6 Q: All right. This email, if you would, read the -- you said
7 it was to a whole lot of people, we won't go into that -- but
8 read what Mark Kelley is saying to the people he addresses.

9 A: Okay. His, his comment was for all that have supported
10 and those that still can and want to this is great news.

11 Q: What was the purpose of his email there that you
12 understood?

13 A: To show that Gresham Barrett was, was in the lead.

14 Q: Okay.

15 A: He was taking up ground.

16 Q: Did you understand the email to be soliciting campaign
17 donations?

18 A: No.

19 Q: There is, there is a full email by Luke Byars. Read it to
20 the Jury?

21 A: Dear Friends, Sorry to bother you on a Sunday but I had
22 some great news that just couldn't wait. Gresham took first
23 place in the South Carolina Republican Party Straw Poll held
24 at its annual Silver Elephant Dinner in Columbia last night.
25 The full results are provided below, but here's the big take

1 away from Saturday night's win. With just forty-four days
2 left until the primary, our campaign has seized the momentum
3 and we're not letting go of it. That's all bold and
4 underlined. Then it says Republicans from every corner of the
5 State are beginning to realize what you and I have known for
6 quite some time. Gresham is the one candidate with the
7 conservative credentials, character and plan to lead an
8 economic turnaround in South Carolina. As we head into the
9 home stretch, we need your help now more than ever. So today
10 I'm asking you to do two things that will make a big
11 difference: One, volunteer; get involved with our campaign.
12 We've got plenty of work that needs to be done from making
13 phone calls to putting up signs to stuffing envelopes. We
14 could really use your help. Click here to get involved or
15 call 803-255-8095. Two, contribute, whether it's \$10, \$50 or
16 \$100, whatever you can give today will go a long way. Thank
17 you for everything you do. Sincerely, Luke Byars, Campaign
18 Manager, Barrett for Governor. P.S. Here are the full straw
19 poll results from last night's Silver Elephant Dinner: First
20 place, Gresham Barrett, 37 percent; second place, Henry
21 McMaster, 34.2 percent; third place, Nikki Haley, 13.4
22 percent; fourth place, Andre Bauer, 10.4 percent. P.S. for
23 more about last night's straw poll click here to read the Post
24 and Courier's coverage.
25 Q: Thank you. Anything illegal about that email?

1 A: Not ---

2 MR. BENDER: I would object to this witness' ---

3 BY MR. STEVENS:

4 Q: To your understanding of the Ethics Law, is there anything
5 illegal in forwarding an email from Mr. Byars?

6 A: From my understanding of the Ethics Law, no, there is
7 nothing illegal about forwarding that email, particularly when
8 he's pointing out the good news.

9 Q: Okay.

10 A: Of the straw poll.

11 Q: May I hand it to the Jury?

12 THE COURT: Any objection to publication?

13 MR. BENDER: I'll be happy to show my blowup so they can
14 all see it at one time.

15 THE COURT: You may publish.

16 BY MR. STEVENS:

17 Q: Now, just so I understand, let, let's say I wanted to give
18 a campaign donation, but I did not want the public to know and
19 I donate to that particular candidate, could I put money into
20 my professional corporation and let the professional
21 corporation donate the money?

22 A: You can, yes.

23 Q: Does, does the public have a right to know that I do that?

24 A: There is no requirement under the law for that disclosure.

25 Q: So, the debate that was going on is people just want -- we

1 want to know who is donating?

2 A: That's correct.

3 Q: All right.

4 A: That's correct.

5 Q: So, if I gave it on Stevens Law Firm, it would be very
6 simple to go look in the Secretary of State, to see who owned
7 Stevens Law Firm, right?

8 A: That's correct.

9 MR. STEVENS: That's all I have, Your Honor.

10 MR. BENDER: Briefly, Your Honor.

11 RECROSS EXAMINATION OF ALAN CLEMMONS BY MR. BENDER:

12 Q: Now, can you see this? This is that email.

13 A: I, I can but not real well.

14 Q: I can get a little closer to you.

15 A: If you want me to read from it, it needs to get closer
16 because my glasses aren't powerful enough.

17 Q: All right. Well, let's take a look at this. In fact,
18 Luke Byars is taking the opportunity of that straw poll to
19 solicit campaign contributions, isn't he?

20 A: And well I think he's doing two -- three things actually.
21 He is, he's building the fact and getting the word out,
22 Gresham is in first place. That's important, important. You
23 don't want to be a person at the bottom of that straw poll
24 list. So he's, he's building throughout the political world
25 in South Carolina awareness that Gresham is in first place.

1 You do that so you can build upon that momentum.

2 The second thing he's doing is he's asking for
3 volunteers. Don't overlook how important getting volunteers
4 involved in a political race is. It's key. You get people to
5 get volunteer, they get excited because you're in first place
6 and you're gonna be the winner so it appears. So I'm gonna go
7 knock on doors. I'm gonna go do whatever it takes to help if
8 it's passing out bumper stickers, get involved in the
9 campaign.

10 And then thirdly, make a contribution.

11 Q: So among these other things, it's a solicitation for the
12 political class to make a campaign contribution to Gresham
13 Barrett?

14 A: Or to volunteer to get involved.

15 Q: To give a contribution or get involved?

16 A: Yes. You said the political class, I'm not sure, I'm not
17 sure who all it went to.

18 Q: I thought you said that you want the political class to
19 hear this because it's good news because that's where the
20 money is gonna come from?

21 A: You want voters to know it; you want people to know it
22 that, that you can build that momentum with.

23 Q: And no matter how you slice it, that is a solicitation to
24 give money to Gresham Barrett?

25 A: That is Luke Byars. Luke Byars is asking for

1 contributions; that's absolutely correct.

2 Q: And somebody whose email is Repmkelley@aol.com sent that
3 to that list at the top?

4 A: Repmkelley, and I know for a fact that's Mark Kelley's
5 email address.

6 Q: And on April 25th, 2010, Mark Kelley was a registered
7 lobbyist, was he not?

8 A: Yes, he would've been.

9 Q: And that is a solicitation for a campaign contribution for
10 Gresham Barrett, isn't it?

11 A: It is Luke Byars' letter soliciting contributions.

12 Q: It was forwarded by Mark Kelley?

13 A: And he's specifically referring, you know -- do, do you
14 want me to respond as to how I perceived the email, how I
15 received it and what I perceived about it.

16 Q: I want you to read the last line.

17 A: Contribute whether it's, whether it's \$10, \$50 or \$100,
18 whatever you can give today will go a long way.

19 Q: Thank you. I have nothing else, Your Honor.

20 REDIRECT EXAMINATION OF ALAN CLEMMONS BY MR. STEVENS:

21 Q: You wanted to tell him something how you perceived it.
22 How did you perceive it?

23 A: I perceived that Mark was talking about the good news of
24 the straw poll results. I remember the email and I did not
25 remember there was a solicitation in it for contributions, but

1 I remember the straw poll results. That was a big, big, deal
2 for the Gresham campaign at that time.

3 Q: In his language, he didn't solicit anybody, did he?

4 A: No, he did not.

5 Q: Okay. That's all I have.

6 THE COURT: You may step down. Thank you.

7 A: Thank you, Your Honor.

8 MS. STEVENS-GRAZIANI: The Plaintiff calls Nelson
9 Hardwick.

10 CLERK: Please raise your right hand and place your left
11 hand on the Bible.

12 NELSON HARDWICK, HAVING BEEN SWORN
13 TESTIFIES AS FOLLOWS:

14 CLERK: Have a seat please, sir. State your name for the
15 Court, please, sir.

16 MR. HARDWICK: Nelson Hardwick.

17 DIRECT EXAMINATION OF NELSON HARDWICK BY MS. STEVENS-GRAZIANI:

18 Q: Representative Hardwick, could you tell the Jury where
19 you're from?

20 A: Yes, I love telling people where I'm from. I'm from UCLA;
21 upper Conway/lower Aynor. I'm a graduate of Aynor High
22 School.

23 Q: And tell the Jury what, what do you do for your
24 occupation?

25 A: I'm an engineer and I have several real estate

- 1 partnerships I'm involved with.
- 2 Q: And are you a member of the House of Representatives?
- 3 A: Yes, but I don't do that for a living. I do that as a
- 4 public service.
- 5 Q: Okay. And when did you become a member?
- 6 A: I ran in 2004 and I became a member in 2005.
- 7 Q: Okay. And, and what area do you represent?
- 8 A: Surfside, Deerfield Plantation, and the greater Burgess
- 9 area; basically south of 544 to the Georgetown County line.
- 10 Q: And how many -- in 2002 you said?
- 11 A: 2004 election and 2005 I become a member of the House.
- 12 Q: You're a member of the House of Representatives for nine,
- 13 ten years?
- 14 A: I'm completing my tenth year.
- 15 Q: And while you've been a member of the House of
- 16 Representatives, have you served on any committees?
- 17 A: Yes, ma'am.
- 18 Q: What committees?
- 19 A: House Agriculture, Natural Resources and Environmental
- 20 Affairs.
- 21 Q: Have you chaired any of those committees?
- 22 A: I'm currently chair of that committee.
- 23 Q: Do you know Mark Kelley?
- 24 A: Yes, ma'am.
- 25 Q: And how do you know Mark Kelley?

1 A: I met Mark Kelley when I got involved in politics in
2 Surfside Beach.

3 Q: When was that?

4 A: A long, long time ago. He was a House member. I was
5 trying, I was helping a guy named Terry B. Cooper when he ran
6 for Horry County Council and, you know, being involved with
7 it, that's the first time I got involved more than just
8 voting.

9 Q: How would you characterize Mark Kelley's reputation?

10 A: He was the go-to guy if you wanted to get elected in Horry
11 County, especially -- in fact we made a trip from Surfside
12 Beach up to meet with Mr. Kelley and other people that he
13 associated with and that sort of thing to ---

14 Q: To ---

15 A: Well, just to get to know the politics and that sort of
16 thing. A lot of people that, a lot of people that associated
17 with Mark and that sort of thing were involved in politics
18 throughout Horry County and Terry was running for a County
19 Council seat, which we needed to meet all the people that were
20 involved in politics in Horry County.

21 Q: So, he was well-known?

22 A: Yes, he was.

23 Q: And how was he -- would you say that his reputation was
24 good or would you say his reputation has been questionable?

25 A: No, not at all.

1 Q: Are you familiar with the articles that we've -- or you've
2 been sitting in the courtroom this morning, correct?

3 A: Yes, ma'am.

4 Q: And are you familiar with the articles that were reported
5 and that we've brought up on the projector screen?

6 A: Yes, ma'am.

7 Q: Did you read all of the articles?

8 A: Yes, when they were -- I'm a -- I subscribe to The Sun
9 News. I read them when they happened and ---

10 Q: What did you perceive the articles to say about Mark
11 Kelley?

12 A: Today?

13 Q: When you read them.

14 A: Oh, when I read them I was just surprised.

15 Q: Why?

16 A: Surprised but -- having, having been in the legislature
17 and knowing, you know, all the rules and regulations you have
18 to abide by and that sort of thing, when it said that he was
19 passing out checks, I -- it was just a surprise.

20 Q: So, the sentence that says Dean along with Chamber
21 lobbyist Mark Kelley delivered \$84,000 in campaign
22 contributions to Barrett in June, how many people did you
23 perceive delivered campaign contributions?

24 A: Those two guys.

25 Q: Not one, but two people?

1 A: Yes.

2 Q: Did you read the quote by Robert Kelley in the article
3 that talks about the BOOST, the BOOST rally or the meeting
4 that BOOST held?

5 A: I'm sure I did. I read it today.

6 Q: Can I pull -- Ms. Sandra, can you pull that down again?
7 Do you recall reading this article that's titled Donations
8 Tied to Myrtle Beach Chamber Blasted, BOOST Calls for Return
9 of Politicians \$225,000?

10 A: Yes.

11 Q: And did you read this quote by Robert Kelley that says, In
12 the past, the Chamber has denied any involvement in this
13 scandal, but now Brad Dean admits he set up the lunch with
14 Chamber lobbyist, Mark Kelley, and he handed Mr. Barrett the
15 envelope full of checks?

16 A: Yeah. Yes, ma'am.

17 Q: According to that quote, how many people set up the
18 meeting or how many people set up the lunch according -- how
19 do you interpret it? How many people set up the lunch?

20 A: Dean and Kelley set up the lunch.

21 Q: Did you read the editorial titled Absence of Evidence?

22 A: I'm sure I did.

23 Q: And -- excuse me. Do you know what the editorial said
24 about Mark Kelley and how it portrayed his involvement in the
25 lunch?

- 1 A: Yes.
- 2 Q: Did they have any proof?
- 3 A: It didn't appear ---
- 4 Q: According to the editorial?
- 5 A: Well, it -- if they'd had, the headlines would've read, we
6 got proof; that says absence of evidence that we're presenting
7 what we think happened, I guess.
- 8 Q: If you read the, the part that's in parenthesis that says
9 if Kelley handed over the money -- if Kelley handed over the
10 money, the transaction would have been inexplicitly illegal,
11 effectively forcing Barrett to say Kelley had no involvement
12 in pinioning the donations on Dean, no matter, no matter what
13 the unprovable truth is. What are you saying -- what do you
14 interpret the unprovable truth is in that parenthesis?
- 15 A: That Kelley gave him the money.
- 16 Q: Ms. Sandra, I don't need that any more. Thank you.
- 17 Did you -- did this, these articles have any effect in
18 your relationship with Mark Kelley professional, well as a
19 Representative?
- 20 A: No, like I say, when I met Kelley, I got to know him. We
21 became friends in the election of Mr. Cooper and when I ran,
22 you know, I sought his advice as many people do and that sort
23 of thing, about who to meet and so -- I've always had a pretty
24 good relationship with Mark.
- 25 Q: Well, after these articles, were you nervous in any way

1 about being around in the political setting being affiliated
2 with Mark Kelley?

3 A: I, I'm not because if I'm your friend today, I'm gonna be
4 your friend tomorrow. But I know it did make other people
5 uncomfortable.

6 Q: Were you told by other people that it made them
7 uncomfortable?

8 MR. BENDER: Your Honor, I object.

9 MS. STEVENS-GRAZIANI: I withdraw.

10 BY MS. STEVENS-GRAZIANI:

11 Q: Did you, did the article, in your eyes, damage Mark
12 Kelley's reputation?

13 A: Again, I mean, if the article didn't, all the blogs and
14 all the other crap that came with it, you know, that The Sun
15 News and over the internet and that sort of thing, I felt
16 like, I felt like it did.

17 Q: Just one second. I think I'm finished. Okay. That's all
18 I have.

19 THE COURT: Mr. Bender?

20 MR. BENDER: If it please the Court, Your Honor.

21 CROSS EXAMINATION OF NELSON HARDWICK BY MR. BENDER:

22 Q: I was see whether it was afternoon -- good morning. I'm
23 Jay Bender. I represent David Wren and The Sun News. What
24 committees do you have in the House?

25 A: As I said before Agricultural, Natural Resources and

1 Environmental Affairs.

2 Q: Does Mark Kelley ever lobby with respect to legislation
3 before your committees?

4 A: He does mostly, I think, education and budgeting, but he
5 very seldom, occasionally he may, but he, if he's spoken more
6 than -- I won't say he's never spoken before my committee, but
7 he, you know, he's involved in issues there, as all of us are,
8 with environmental permits and beach renourishment and things
9 that nature which falls under our purview.

10 Q: And he's still a lobbyist?

11 A: Yes, last I heard.

12 Q: We've been talking about campaign contributions that were
13 questioned by a group called BOOST because many of the
14 contributions came in the form of cashier checks drawn on real
15 estate limited liability companies; is that correct?

16 A: Yes.

17 Q: Did you receive any of those checks?

18 A: Yes, I did.

19 Q: How much?

20 A: I think it was twenty-two checks.

21 Q: You got twenty-two checks drawn on real estate LLCs?

22 A: Yes, sir.

23 Q: And they were cashier checks?

24 A: As far as I know a lot of them were.

25 Q: And who handed them to you?

1 A: I got them from personal -- the way I came about the
2 checks was I have a business partner, Hinson, he has, he's a
3 business partner with, with several other people and that sort
4 of thing and I'd asked that we get some help with raising some
5 campaign money and that sort of thing. So I was, you know, I
6 was expecting some checks from Shep Guyton. I had met him as
7 he was a partner with Mr. Hinson. We were involved with an
8 issue that was important to, to the, you know, some real
9 estate committees and that sort of thing and some
10 environmental problems with regulation and that sort of thing
11 on wetlands and other deals. So, in talking with Keith and
12 Mr. Guyton, they agreed to raise some money for my campaign,
13 hold a political event for me. And so I had got a call from
14 him, Mr. Guyton, and he said that he'd be in, he was up in
15 Myrtle Beach at a restaurant. I was at another event and then
16 I had got there, he had left and, according to Brad Dean, he
17 had left them in his care and I got them from Brad Dean.

18 Q: Brad Dean and Shep Guyton have a connection?

19 A: I don't, I don't know what the connection was. I just
20 know they were both there. I know both of them very well.
21 Shep had left and he left the checks in his care.

22 Q: And these cashier's checks drawn on LLCs, do you know who
23 put up the money for those checks?

24 A: No, sir.

25 Q: Now, are you a member of the Chamber of Commerce?

1 A: No, sir.

2 Q: In your business, does the Chamber of Commerce have a
3 negative reputation?

4 A: In my business, like I sat, I'm in the engineering
5 business. Most of the people I meet as, as in the business
6 community, many of them do and some do and some don't know who
7 the Chamber is.

8 Q: Would it harm a person's reputation to be associated with
9 the Greater Myrtle Beach Chamber of Commerce?

10 A: I, I know that after this event and all the things that
11 were -- as a legislator, I know after all this information
12 came out in The Sun News that a lot of the people on my
13 committee and the people I know in the House wanted to shy
14 away from Myrtle Beach issues because, you know, the Chamber
15 represented, you know, it's an advocate for the business
16 community of Myrtle Beach, whether it be beach renourishment
17 or wildlife or anything else.

18 Q: Did it strike you as strange that the President of the
19 Chamber of Commerce sitting next to a lobbyist with a
20 candidate for Governor on the other side of the lobbyist pass
21 an envelope containing many of these cashier checks drawn on
22 these LLCs; does that strike you as strange?

23 A: I don't know that I understand.

24 Q: Well, is that how politics is done in South Carolina that
25 the President of a Chamber of Commerce in the company of a

1 lobbyist can give an envelope with \$84,000 in campaign
2 contributions to a candidate for Governor and nobody knows
3 where the money came from on those LLC checks?

4 A: I, I mean, I don't know what you're trying to say, strike.
5 I've handled checks before and not know, and you know, moved
6 money around with between my partners and different things on
7 real estate deals and I didn't know. All I was interested in
8 when they cash a check were they good at the bank. So I, I
9 mean, I don't have an opinion about your question. I'm
10 missing something somewhere.

11 Q: You've made no effort when you got these cashier checks to
12 look behind the check to see who put the money in?

13 A: I, I -- in reviewing and looking at the names, they seemed
14 like title, title companies. Companies that were in the
15 development business. I don't remember the list right now,
16 but they seemed to be legitimate names that people would have
17 in this area and would have some interest in supporting the
18 legislative -- you know, our Delegation in Horry County.

19 Q: So, I guess the answer is no, you did not look behind the
20 checks to find out where the money came from.

21 A: Huh-uh (negative response).

22 Q: Nothing further. Excuse me, Your Honor. Let me show you
23 Plaintiff's Exhibit Seventeen. That's the one I had blown up
24 a minute ago. Take a look there and see if your name is on
25 here to receive this email from Mark Kelley. While you're

- 1 looking at that, I'm gonna go get my big picture back.
- 2 A: Yes, sir; it is.
- 3 Q: All right. Were you a supporter of Gresham Barrett?
- 4 A: Yes, sir; I was.
- 5 Q: There are some other names on there you might know, if
- 6 you'll take a look at it. What's your business partner's
- 7 name?
- 8 A: The one I mentioned in my testimony earlier?
- 9 Q: Yes.
- 10 A: Keith Hinson.
- 11 Q: Is Keith Hinson's name on there?
- 12 A: Not on any name I've ever used to contact him.
- 13 Q: Who's Charles Hinson?
- 14 A: Keith's brother.
- 15 Q: What business does he have?
- 16 A: He's a -- basically a real estate agent.
- 17 Q: Was he supporting Gresham Barrett?
- 18 A: I couldn't -- I don't know that he and I ever had a
- 19 conversation.
- 20 Q: Are you in business with anybody else who's on the list?
- 21 A: Doug Wendel and I are stockholders in the Coastal Carolina
- 22 National Bank.
- 23 Q: And the last line on this page is a request for political
- 24 contributions?
- 25 A: I guess it appears that Mr. Byars is asking people to

1 contribute.

2 Q: And Mr. Byars didn't send that to you, did he?

3 A: I don't know. I don't know him well enough to know
4 whether or not -- I mean, I don't recall him ever sending me
5 an email.

6 Q: And let's look up at the top. Whose email address is
7 that?

8 A: That's Mark Kelley's.

9 Q: So, this message is being forwarded to you by Mark Kelley?

10 A: That's correct.

11 Q: Not from Luke Byars?

12 A: That's right.

13 Q: And it's asking specifically for money for a campaign;
14 that's what that last line says, isn't it?

15 A: Oh, absolutely, but I, I get forwarded emails to me every
16 day and people believe in what it said or they don't believe
17 in what's being said on there. If -- when I write something
18 to somebody, I, I do the asking. If I forward something, it's
19 for information, not to try to ---

20 Q: Well, what did Mark Kelley put up here?

21 A: Where? Oh, you're talking about all who have supported
22 ---

23 Q: All that -- I think it should be who, but for all that
24 have supported; is that a request?

25 A: You think it ought to be who?

1 Q: All who have, but that's all right -- and that can still
2 can and want to. So, is that a request to support Gresham
3 Barrett?

4 A: No, the great news is that Gresham Barrett was the winner
5 of the straw poll.

6 Q: And those that want to still can and want to; is that a
7 request to get involved in Gresham Barrett's activities?

8 A: I'd think so, to get involved.

9 Q: And one of the ways to get involved is send money if
10 you're in politics?

11 A: That's correct. I give people a chance every day.

12 Q: To give you money?

13 A: No, to get involved in my campaign; no, sir.

14 Q: Sure. I understand.

15 A: No, I ask for people to vote for me and those that can't,
16 I ask them to give me money.

17 Q: I understand.

18 A: And everybody on this list I think probably could vote.

19 Q: Thank you. Nothing further, Your Honor.

20 REDIRECT EXAMINATION OF NELSON HARDWICK BY MS. STEVENS-

21 GRAZIANI:

22 Q: Can I support you in your campaign without giving you
23 money?

24 A: Absolutely.

25 Q: No further questions.

1 RECROSS EXAMINATION OF NELSON HARDWICK BY MR. BENDER:

2 Q: But you'd like to get the money, wouldn't you?

3 A: No, sir, I need votes worse. If it don't, you don't get
4 elected by getting the most money; you get elected by who gets
5 the most votes.

6 Q: I think that's a good ---

7 A: That's why I appreciate Mr. Dean. He and his wife are
8 constituents of mine and they love me, I hope for me.

9 Q: And they give you money?

10 A: No, sir, I need the vote.

11 Q: I said but they give you money, also?

12 A: His wife has given me some contributions, yes.

13 Q: Thank you.

14 THE COURT: Thank you, Representative Kelley [sic].

15 All right. Gentlemen, no one has asked, but I will --
16 may they be excused, Mr. Stevens?

17 MR. STEVENS: Yes, we would ask -- I apologize.

18 THE COURT: All right. Mr. Clemmons and Mr. Kelley, you
19 are excused from your subpoenas -- I mean, Mr. Hardwick.

20 MR. HARDWICK: I've been called much worse, Your Honor.

21 THE COURT: All right. It's -- I promised this Jury that
22 we wouldn't sit more than about what it takes for preaching
23 and it's been about that much time. So, why don't we take a
24 little break and you ladies and gentlemen can return to your
25 jury room. Bobby, make sure that they're comfortable and have

1 anything that they need. All right.

2 BAILIFF: Yes, sir.

3 (REPORTER'S NOTE: Jury exits courtroom. 11:11 A.M.)

4 (RECESS - 11:11 A.M.)

5 *****OFF THE RECORD*****

6 (On the Record - 11:26 A.M.)

7 THE COURT: Are we ready?

8 MR. STEVENS: Yes, sir.

9 THE COURT: Where's my Bailiff?

10 (REPORTER'S NOTE: Jury enters courtroom. 11:28 A.M.)

11 THE COURT: All right. We have all our jurors and our
12 alternates back.

13 Mr. Stevens, you may proceed.

14 MS. STEVENS-GRAZIANI: The Plaintiff calls Drea Byars.

15 CLERK: Please raise your right hand and place your left
16 hand on the Bible.

17 DREA BYARS, HAVING BEEN SWORN

18 TESTIFIES AS FOLLOWS:

19 CLERK: Have a seat please, ma'am. State your name for
20 the Court please, ma'am.

21 MS. BYARS: Drea Byars.

22 DIRECT EXAMINATION OF DREA BYARS BY MS. STEVENS-GRAZIANI:

23 Q: Ms. Byars, what do you do for a living?

24 A: I'm a fund raiser.

25 Q: In 2009, did you work for Gresham Barrett?

- 1 A: I did.
- 2 Q: And in what capacity?
- 3 A: I was his Finance Director.
- 4 Q: And did you attend a lunch in June for -- at Sid and Roy's
- 5 with Gresham Barrett, Brad Dean and Mark Kelley?
- 6 A: Yes, in June of ---
- 7 Q: 2009?
- 8 A: Yeah, his campaign, yes.
- 9 Q: And was anyone else there at the lunch at the table?
- 10 A: No, there was just four of us.
- 11 Q: And how many chairs were at the table?
- 12 A: Four chairs.
- 13 Q: So, was it small four-top?
- 14 A: Yes.
- 15 Q: Okay. And can you tell me who was sitting across from
- 16 you?
- 17 A: Mark Kelley.
- 18 Q: And who was to your right?
- 19 A: Brad Dean.
- 20 Q: And who was to your left?
- 21 A: Congressman Barrett.
- 22 Q: Did you witness any campaign contributions being delivered
- 23 at that lunch?
- 24 A: An envelope with campaign contributions, yes.
- 25 Q: Can you describe for the Jury about that delivery, that

1 transpired?

2 A: Sure. There was an event later on that day, that evening,
3 that was in Murrells Inlet and Brad couldn't come or, you
4 know, they couldn't -- some of the folks couldn't come and so
5 he had an envelope and passed the envelope to the Congressman
6 saying, sorry-can't-come kind of thing, you know, during the
7 conversation and here's some checks and, you know, we've
8 collected this money.

9 Q: Did Mark Kelley deliver ---

10 A: No.

11 Q: --- money? Did he touch the money?

12 A: No, he did not.

13 Q: Did he know that the money was being transferred?

14 A: Well, I mean, he could see, but I don't -- yeah, I mean
15 ---

16 Q: Before that, do you know if he had any knowledge of that
17 money being transferred?

18 A: No, I don't think he did.

19 Q: When you were invited to go, did you know that there was
20 gonna be money delivered at that lunch?

21 A: I kind of -- yeah, I guess, I mean, I don't know if --
22 yeah, I knew there was gonna be money delivered at that lunch
23 or there should be money delivered at that lunch.

24 Q: And how did you know?

25 A: Just because I was asked to go and pick up the Congressman

1 and take him down later and that they were having -- he was
2 having lunch and he was meeting with Brad Dean and some folks
3 couldn't attend the meeting -- I mean, couldn't attend the
4 later event so that there would be contributions.

5 Q: Okay.. Well, did -- did you know who was gonna be there
6 before you went?

7 A: I knew that the Congressman would be there and I didn't
8 even know that Mark Kelley was gonna be there and I didn't
9 know -- no, I mean, I knew that the Congressman would be there
10 and I was picking him up and Brad Dean would be there, but I
11 wasn't certain that Mark Kelley would even be there.

12 Q: I don't have any further questions.

13 CROSS EXAMINATION OF DREA BYARS BY MR. BENDER:

14 Q: Ms. Byars, we met this morning. I'm Jay Bender ---

15 A: Uh-huh (affirmative response).

16 Q: --- and I represent David Wren ---

17 A: Uh-huh (affirmative response).

18 Q: --- and The Sun News in this case. You were the Finance
19 Director of the campaign?

20 A: That's right.

21 Q: When you show up, money is gonna change hands, right?

22 A: Right.

23 Q: That's what you're hoping for?

24 A: You hope for.

25 Q: And there was an envelope that was passed by Brad Dean to

- 1 Gresham Barrett?
- 2 A: Correct.
- 3 Q: And in that envelope there were campaign contributions?
- 4 A: Correct.
- 5 Q: About \$84,000 give or take?
- 6 A: Correct.
- 7 Q: Were any of those contributions on cashier's checks?
- 8 A: Well, I didn't know that -- we didn't know that before,
- 9 but, yes.
- 10 Q: When you opened the envelope -- you opened the envelope
- 11 sometime in ---
- 12 A: Right, right, right.
- 13 Q: And you saw these cashier's checks?
- 14 A: Uh-huh (affirmative response).
- 15 Q: On one bank drawn on the accounts of limited liability
- 16 companies?
- 17 A: Correct.
- 18 Q: And at some point after that June 2009 lunch, there got to
- 19 be a dispute about the source of money that bought those
- 20 checks, right?
- 21 A: Correct.
- 22 Q: And the Gresham Barrett campaign was interested in finding
- 23 out why there was a controversy, wasn't it?
- 24 A: Yes.
- 25 Q: Because you wanted to make sure that there wasn't anything

1 funny about that money?

2 A: Correct.

3 Q: Were you able to go behind the names on those checks to
4 find out who made those contributions?

5 A: We had someone on the campaign that did compliance. I
6 didn't do -- I mean, somebody else handled that.

7 Q: The campaign was concerned enough to look into these
8 contributions?

9 A: Right, afterwards, yes.

10 Q: Because it became a controversy?

11 A: Right. Right because, right.

12 Q: And the controversy seemed to involve the Greater Myrtle
13 Beach Area Chamber of Commerce?

14 A: Correct.

15 Q: And the possible role the Chamber of Commerce had in
16 raising money for political candidates?

17 A: Correct.

18 Q: And it was the President of the Chamber of Commerce, Brad
19 Dean, who handed this envelope to Gresham Barrett?

20 A: That's correct.

21 Q: With Mark Kelley sitting at the same table?

22 A: Right.

23 Q: I have no further questions.

24 REDIRECT EXAMINATION OF DREA BYARS BY MS. STEVENS-GRAZIANI:

25 Q: Do you know when the campaign contributions became a

1 controversy?

2 A: It was after, I mean -- after, you know, it might even
3 have been after the campaign. I mean, it was like later on in
4 the campaign.

5 Q: Do you know if they came in controversy before David
6 Wren's article or The Sun News article about the contribution?

7 A: Not that I'm aware of.

8 Q: Okay. No further questions.

9 MR. BENDER: I have nothing further, Your Honor.

10 THE COURT: You may step down. Thank you very much.

11 MR. STEVENS: May this witness be excused, Your Honor?

12 THE COURT: Without objection, she's excused. You're
13 released from your subpoena, ma'am.

14 MR. STEVENS: Your Honor, we would call Gresham Barrett.

15 CLERK: Please raise your right hand and place your left
16 hand on the Bible.

17 JAMES GRESHAM BARRETT, HAVING BEEN
18 SWORN TESTIFIES AS FOLLOWS:

19 CLERK: Have a seat please, sir. State your name for the
20 Court please, sir.

21 MR. BARRETT: James Gresham Barrett.

22 DIRECT EXAMINATION OF JAMES GRESHAM BARRETT BY MR. STEVENS:

23 Q: Mr. Barrett, have -- does Ms. Byars work for you now?

24 A: No, sir.

25 Q: Okay. Tell the Jury a little bit about yourself.

1 A: Okay. How far do you want me to go back out, sir?

2 Q: Not back as far as you were kicking the slats out the
3 crib, but give me a little bit -- give the Jury a little bit
4 about your background, your education and your political
5 service to the people of South Carolina.

6 A: Yes, sir. I was born and raised in a little town called
7 Westminster, South Carolina, which is up in Oconee County. I
8 graduated Westminster High School in 1979. I attended the
9 Citadel and graduated with military honors in 1983. I served
10 with the United States Army First Calvary Division, Fort Hood
11 Texas from '83 to '87. I married my high school sweetheart,
12 Natalie, and we have three children. I came back to South
13 Carolina in late '87, mid '87 to run my father's business. I
14 was elected to the State House in 1996 where I served three
15 terms for six years. I was elected to the United States
16 Congress in 2002 where I served eight years or four terms. I
17 am currently working for New Spring Church based out of
18 Anderson, South Carolina, which -- they're based out of
19 Anderson, South Carolina.

20 Q: What do you do?

21 A: I'm the Stewardship Director.

22 Q: The what?

23 A: The Stewardship Director; yes, sir.

24 Q: Have you gotten out of politics?

25 A: Yes, sir.

- 1 Q: Are you going ---
- 2 A: I've never been so blessed to be out of politics.
- 3 Q: Now, as I understand from, from the dates, you started in
- 4 '96 in the House of Representatives?
- 5 A: That's correct; yes, sir.
- 6 Q: Mark Kelley was already there?
- 7 A: Yes, sir; that's correct.
- 8 Q: And did you know Mark Kelley before that?
- 9 A: No, sir; I did not.
- 10 Q: Did you become friends while you were there?
- 11 A: Very much so. Mark was a confidante.
- 12 Q: Okay. And, and I believe you and he served for six years.
- 13 You went on to get elected Congressman and Mark got out of
- 14 politics a little bit earlier?
- 15 A: I believe that -- I believe that is correct, yes, sir.
- 16 Q: And did he talk to you about becoming a lobbyist?
- 17 A: He may or may not have; I'm not sure.
- 18 Q: Now, you decided I guess in 2009 to run for Governor of
- 19 South Carolina?
- 20 A: That's correct.
- 21 Q: Okay. And your political opponents were Nikki Haley ---
- 22 A: Henry McMaster and Andre Bauer.
- 23 Q: At any time during the period of time that you were
- 24 politicking, did Mark Kelley give you campaign contributions?
- 25 A: Absolutely not.

1 Q: Okay. Did he call or organize campaign contribution
2 meetings or dinners or anything of that sort?

3 A: Absolutely not.

4 Q: Tell the Jury what your understanding was of what Mark
5 Kelley did for the luncheon on June 2009?

6 A: As far as I know he didn't do anything. We were informed
7 that there would be a luncheon. Ms. Byars and I went down.

8 Q: Who informed you?

9 A: I would assume somebody on my campaign.

10 Q: Okay. Did you issue an email to your campaign staff
11 saying I'm gonna be down in Myrtle Beach at such and such a
12 date?

13 A: Probably so. I mean, we were in constant contact of, you
14 know, where my location was and stuff like that.

15 Q: Did you know that Mark Kelley was gonna be there?

16 A: No, sir.

17 Q: Okay. You saw him when you got there?

18 A: I did.

19 Q: Okay. And during that meeting, did any campaign
20 contributions get passed to you?

21 A: Yes, sir.

22 Q: Who passed them to you?

23 A: Brad Dean.

24 Q: Did Mark Kelley have anything to do with it?

25 A: Absolutely not.

1 Q: Did he indicate by any conversation, he had or he know
2 what was in the envelope?

3 A: Absolutely not.

4 Q: Okay. Did y'all talk about campaigns or did you talk
5 about personal business or what did you talk about?

6 A: Mark Kelley's a personal friend of mine and we talked
7 about old times. It was great to see him. It was the first
8 time I'd seen him in a long time.

9 Q: Okay. Other than that particular meeting, did you hear
10 from Mark Kelley any after that?

11 A: Not to my memory, sir, no.

12 Q: Okay. But he wasn't involved in your campaign?

13 A: No, sir.

14 Q: Okay. Now, I believe that we've introduced a document of
15 Luke Byars. It's an email from Luke Byars. I think it went
16 to a lot of people about the straw poll; you remember that?

17 A: Vaguely, yes, sir.

18 Q: Here it is. I'll let you look at that.

19 A: I didn't bring my glasses.

20 Q: Now, who is Luke Byars?

21 A: Luke was my campaign chairman or campaign manager.

22 Q: Okay.

23 A: Yes, sir.

24 Q: Is he related to Drea?

25 A: That's her husband, yes, sir.

1 Q: Okay. Were both of them working for you at that time?

2 A: Yes, sir; that's correct.

3 Q: And this email is -- what was the purpose of the email;
4 let me let you read it over?

5 A: Okay. Okay. It says, Dear Friends -- and I assume
6 friends, like you said, it went out to a lot of people --
7 Sorry to bother you on a Sunday, but I have great news that
8 just couldn't wait. Gresham took first place in the South
9 Carolina Republican Primary, Republican Party Straw Poll held
10 at the Annual Silver Elephant Dinner in Columbia last night.
11 The full results are provided below. Here's the big takeaway
12 from Saturday night's win. With just forty-four days left in
13 the primary, our campaign has seized the momentum and we're
14 not letting go of it. Republicans from every corner of the
15 state are beginning to realize what you and I have known for
16 quite some time. Gresham is the one candidate with
17 conservative credentials, character and a plan to lead
18 economic turnaround in South Carolina. As we head into the
19 home stretch, we need your help now more than ever. So, today
20 I'm asking you to do two things to make a big difference.
21 Number one, volunteer, get involved in our campaign. We've
22 got plenty of work that needs to be done from making phone
23 calls to putting up signs to stuffing envelopes. We could
24 really use your help. Click here if you want to get involved
25 and there is a phone number.

- 1 Q: Okay.
- 2 A: Number two, contribute, whether it's ten, fifty or a
3 hundred, whatever you can give today will go a long way.
4 Thank you for everything you do. Sincerely, Luke Byars,
5 Campaign Manager, Barrett for Governor. P.S. Here are the
6 straw poll results from the Silver Elephant Dinner. First
7 place, Barrett with 37; second place, McMaster with 34.2;
8 third place, Nikki Halley, 18.4; fourth place, Andre Bauer,
9 10.4. P.S.S. For more about last night's straw poll click
10 here.
- 11 Q: Now, that particular email went out to how many people?
- 12 A: I have no idea, but I would assume probably maybe
13 Republican Primary supporters, kind of, it's a list probably
14 called F1.
- 15 Q: But you have a, you have a -- you develop lists during the
16 campaign?
- 17 A: Absolutely.
- 18 Q: So, how many people would you say you would have on those
19 lists?
- 20 A: I have absolutely no idea. We used campaigns probably
21 from the last four or five Republican primaries. So it would
22 be thousands of people.
- 23 Q: Thousands?
- 24 A: Thousands of people.
- 25 Q: Okay. Now, there's also a email at the top where Mark

1 Kelley is forwarding this to several people. You see that at
2 the top?

3 A: Yes, sir; I do.

4 Q: Do you see anywhere in there where Mark Kelley is
5 soliciting campaign donations for you?

6 A: No, sir.

7 Q: Well, what do you understand that email is doing?

8 A: Basically just putting out the results of the straw poll,
9 I guess.

10 Q: Now if -- you've read the articles, am I, am I correct?

11 A: Yes, sir.

12 Q: I'm not gonna go back through them again. We've been over
13 them till we're tired of them. But I wanted to talk to you
14 about the first one where it says Brad Dean along with Chamber
15 lobbyist, Mark Kelley, delivered \$84,000 in contributions,
16 donations to Gresham Barrett in June. When you read that,
17 what did you understand -- understand it to mean?

18 A: Well, first -- first of all, I took it very personally
19 because the way I read it is along meant they both handed me
20 the envelope.

21 Q: And that accused you of what?

22 A: Illegal campaign contributions.

23 Q: Did it accuse Mark Kelley of anything?

24 A: I would -- yes, absolutely. I mean, along, it had the two
25 of them down, along -- we were all implicated I would say.

1 Q: All right. Did you read the next article in -- the 25th
2 of May, it was a quote by Robert Kelley?

3 A: Refresh my memory, Counselor, please?

4 Q: I'm gonna quote it.

5 A: Yes, sir.

6 Q: In the past, the Chamber has denied any involvement in
7 this scandal. But, now, Brad Dean admits he set up the lunch
8 with Chamber lobbyist -- and Chamber is in brackets --
9 lobbyist, Mark Kelley, and he handed, he handed Mr. Barrett
10 the envelope full of checks. What did you understand that to
11 mean?

12 A: Well, when you're talking about scandal, you know, it
13 sounds to me like there's improprieties.

14 Q: Okay. What did you understand when he said Brad Dean
15 admits he set up the lunch with Chamber lobbyist, Mark Kelley,
16 and he handed the money to Gresham Barrett?

17 A: As far as -- I'm not tracking with you, Counselor.

18 Q: In other words, when you read that, do you know who he's
19 talking about? Who set up the meeting? Brad Dean admits he
20 set up the, the lunch with Chamber lobbyist, Mark Kelley?

21 A: It sounds, it absolutely sounds to me like the pair of
22 them set the meeting up.

23 Q: All right. Is that illegal?

24 A: Yes, sir.

25 Q: All right. And he says, and he handed Mr. Barrett the

1 envelope full of checks. Do you who he modifies?
2 A: No, sir, it could've -- it could have been -- according to
3 that article, it could've been either one.
4 Q: Okay. And if Mark Kelley delivered the campaign funds to
5 you, would that be illegal?
6 A: Absolutely.
7 Q: Illegal on his part and your part?
8 A: Absolutely; yes, sir.
9 Q: Do you remember the article -- excuse me -- not article,
10 but editorial on May 30th of Absence of Evidence?
11 A: I remember taking a look at that, yes, sir.
12 Q: Let me direct your attention to the paragraph here and
13 direct your attention -- read the first part to yourself and
14 then when you get to the parenthesis, read it and tell me and
15 the Jury how you understood -- what you understood the writer
16 is trying to tell the public?
17 A: This part right here, Counselor, please?
18 Q: Start here beginning, as we now know ---
19 A: Okay.
20 Q: And read down to where the parenthesis starts.
21 A: Okay. As we know based on David Wren's reporting, it was
22 Myrtle Beach Area Chamber President, Brad Dean, who personally
23 handed the 84,000 in checks to Barrett with lobbyist, Mark
24 Kelley, sitting by his side, in quotation marks or, excuse me,
25 in parenthesis, if Kelley handed over the money, the

1 transaction would have been inexplicitly illegal effectively
2 forcing Barrett to say Kelley had no involvement in
3 petitioning the donations on Dean no matter what the
4 unprovable truth is.

5 Q: And I believe it said pinioning, doesn't it?

6 A: Yes, sir, that's correct, pinioning.

7 Q: Pinioning means to grab somebody and hold his arms and ---

8 MR. BENDER: I would object, Your Honor.

9 Q: Is that your understanding ---

10 A: Yes, sir.

11 Q: --- of pinioning?

12 THE COURT: Mr. -- excuse me, Mr. Stevens -- your
13 objection was?

14 MR. BENDER: Hearsay -- not hearsay, Your Honor, leading.

15 THE COURT: All right.

16 BY MR. STEVENS:

17 Q: But you understand pinioning?

18 A: Yes, sir.

19 Q: Tell the Jury what your understanding of the word
20 pinioning means?

21 THE COURT: Very well.

22 A: To grab and hold on.

23 Q: Did anybody force you to say that Brad Dean handed you the
24 envelope?

25 A: No, sir.

1 Q: And what do you understand The Sun News is meaning by
2 saying what's in parenthesis?

3 A: What, what it appears to me is what he was saying is that
4 it looks like Brad Dean gave to me, but unfortunately nobody
5 was there to corroborate so it could have been Mark Kelley. I
6 mean, that's the way I'm reading that right there.

7 Q: Okay. No matter what the unprovable truth?

8 A: Absolute. I mean, that's what it says, the unprovable
9 truth right there.

10 Q: You're saying that they're forcing you to say this?

11 A: Well, what it's saying is, to me, that I'm lying.

12 Q: That you're lying?

13 A: Yes, sir.

14 Q: Were you lying?

15 A: No, sir.

16 Q: Let me ask you this, Did -- do you know who Justin Stokes
17 is?

18 A: Yes, sir.

19 Q: Tell them, tell the Jury about Justin Stokes?

20 A: Justin Stokes was a young man that was recommended to me
21 to come work on my campaign and he seemed like an awful fine
22 young man and we certainly hired him because we were kind of
23 in a lurch at that time. We needed somebody with campaign
24 experience so we put him on our campaign.

25 Q: Did he become the Deputy Campaign Manager for you?

1 A: Yes, sir, he did.

2 Q: And what, if anything, happened to Justin Stokes during
3 this campaign?

4 A: From what he told me and our campaign staff that he had a
5 mental breakdown, not just one but two. And the second time,
6 he resigned and, when he left, we found that he had gone
7 months without properly posting things as far as campaign
8 volunteers, getting back with people. I mean, we just -- we
9 had mess on our hands.

10 Q: Did you know that or discover that he had taken some
11 emails from your campaign?

12 A: When I read about it, yes, sir.

13 Q: And where did he take those emails from your campaign to?

14 A: According to the paper, he took them to The Sun News.

15 Q: Okay. Did, did he also contact a fellow by the name of
16 Tim Pearson?

17 A: Yes, sir.

18 Q: Who is -- tell the Jury who Tim Pearson is?

19 A: Tim Pearson, at the time, was running the Haley Campaign.

20 Q: Nikki Haley's campaign?

21 A: Yes, sir, and then was later Governor Haley's Chief of
22 Staff.

23 Q: And did you discover anything about what Justin Stokes did
24 with the email, emails taken from your campaign headquarters?

25 A: As far as I know, items that were supposed to be for the

1 campaign, he shared with Mr. Pearson.

2 Q: With Mr. Pearson, who was -- was this a pretty hotly
3 contested election?

4 A: It was my entire life, sir.

5 Q: Okay. Was there some mud throwing in that election?

6 A: Certainly.

7 Q: Okay. You were apparently leading the, the, in, in the
8 polls; am I correct, before these articles came out?

9 A: Yes, sir.

10 Q: And what happened after; where did you go in the polls
11 afterwards?

12 A: Well, I'm working for a church now; so, I'm not a
13 Governor.

14 Q: Okay. It would be fair to say it went down?

15 A: Yes, sir.

16 Q: Okay. Now, when you read these three articles, did, how
17 did you take them when you read them?

18 A: Well, first of all, you take them very personally. I'm a
19 graduate of the Citadel. I served in the United States Army
20 and I take honor and integrity very seriously.

21 Q: Do you want to protect your reputation?

22 A: Absolutely.

23 Q: Did Mark Kelley want to protect his reputation?

24 A: As much or more, yes, sir.

25 Q: Before the May 2010 articles and thereafter, what was Mark

- 1 Kelley's reputation?
- 2 A: Stellar.
- 3 Q: Both personally and in his occupation?
- 4 A: Absolutely.
- 5 Q: After the articles, what happened to his reputation?
- 6 A: Well, I would assume it's kinda like mine; it was
- 7 impugned.
- 8 Q: Okay. Would a, a legislator reading that kind of material
- 9 try to avoid dealing with a lobbyist with that being written
- 10 about him?
- 11 A: There's a lot of them that would, yes, sir.
- 12 Q: Excuse me just one moment, please. Did you observe Mark
- 13 Kelley in his occupation as a lobbyist before all this came
- 14 out?
- 15 A: Yes, sir. Yes, sir.
- 16 Q: How was, can you tell me -- tell the Jury how efficient he
- 17 was?
- 18 A: Mark, while he was serving in the legislature, while I
- 19 served with him and even afterwards, had a -- was a, an
- 20 outstanding lobbyists and beyond reproach whether it's while
- 21 he was a member of the House or even afterwards.
- 22 Q: Is it important for a lobbyist to maintain their
- 23 reputation?
- 24 A: It's imperative.
- 25 Q: Things like this written about a lobbyist, what is the

1 natural tendency of a legislator to do with, with regards to
2 associating with that lobbyist?

3 A: Well, not only, not only the legislators would shun him or
4 turn away from him, potential clients would also.

5 Q: Thank you. Answer any questions that Mr. Bender has for
6 you.

7 A: Yes, sir.

8 THE COURT: Mr. Bender.

9 CROSS EXAMINATION OF JAMES GRESHAM BARRETT BY MR. BENDER:

10 Q: Thank you. It's hard to get here from Westminster, isn't
11 it?

12 A: Yes, sir, it is, a long way.

13 Q: What was your major at the Citadel?

14 A: Business Administrations.

15 Q: Not English?

16 A: No, sir.

17 Q: Let's took a look at these articles. Do you know who
18 Cathy Hazelwood is?

19 A: Yes, sir, I do.

20 Q: She's the General Counsel of the South Carolina Ethics
21 Commission?

22 A: Yes, sir.

23 Q: And if she were to say that in her view, you're sitting at
24 a table with Mark Kelley and Brad Dean and where an envelope
25 with \$84,000 in it was handed to you was not illegal, would

1 you take that to the bank?

2 A: Yes, sir.

3 Q: And when you got to the restaurant, was Brad Dean there?

4 A: I, I think so. I'm not sure.

5 Q: And was Mark Kelley there?

6 A: I can't remember if Mark was there or came there later.

7 Q: And you had nothing to do with getting Mark Kelley to the
8 restaurant?

9 A: No, sir.

10 Q: And the meeting was arranged with Brad Dean and your
11 campaign?

12 A: That's correct.

13 Q: So if Mark Kelley's been invited, he's been invited by
14 Brad Dean?

15 A: Yes, sir.

16 Q: The guy who gave you the envelope with the money in it?

17 A: Yes, sir.

18 Q: And did you look in that envelope?

19 A: No, sir; I did not.

20 Q: Just handed it to Drea?

21 A: Yes, sir.

22 Q: Now later it turned out that there were challenges to
23 contributions made by or delivered by Brad Dean, correct?

24 A: Yes, sir.

25 Q: And there was a citizens group that was charging that

1 these campaigns, these campaign contributions looked like they
2 came from the Chamber of Commerce using Chamber of Commerce
3 money, right?

4 A: I believe that's the way the article -- or the way it was
5 presented, yes, sir.

6 Q: That was a charge made by this group called BOOST, wasn't
7 it?

8 A: Yes, sir.

9 Q: And there is interest in the public in campaign
10 contributions, isn't there?

11 A: Absolutely.

12 Q: And the public generally wants to know where the money
13 comes from going to its candidates, right?

14 A: Yes, sir.

15 Q: And the charge was these contributions were made on
16 cashier's checks drawn on accounts of limited liability
17 companies that did not appear to be have, did not appear to
18 have assets; is that how you understood the charge?

19 A: Yes, sir.

20 Q: Would that have prompted the public's interest in getting
21 to the bottom of this issue?

22 A: Absolutely.

23 Q: Thank you. I have no other questions.

24 THE COURT: Mr. Stevens?

25 REDIRECT EXAMINATION OF JAMES GRESHAM BARRETT BY MR. STEVENS:

1 Q: Do you have any perception as to why Mr. David Wren quotes
2 Cathy Hazelwood?

3 A: Well, it sounds to me like he's trying to legitimize his
4 articles. And, and, Counselor, if I may, you know, it's one
5 thing for Ms. Hazelwood to say something because she, you
6 know, was very succinct in what she did, but the way The Sun
7 News put it was not the way Ms. Hazelwood put it.

8 Q: Okay. And Mr. Bender has been asking witnesses about why
9 did Cathy Hazelwood ask that question, but let, let's get to
10 the point here. Cathy -- the article that he's talking about
11 is the May 21st article, am I correct?

12 A: That is correct, sir. That is correct, sir.

13 Q: That's before Mr. Wren said Brad Dean along with Mark
14 Kelley, Chamber lobbyist, Mark Kelley, delivered \$84,000 in
15 campaign contributions to Gresham Barrett in June?

16 A: Yes, sir.

17 Q: All right. So, he also pointed out in that June -- May
18 21st article that if Mark Kelley had touched the envelope, it
19 would have been illegal; is that correct?

20 A: Yes, I believe that's correct, yes, sir.

21 Q: Okay. Now, are you familiar with this organization BOOST?

22 A: No, sir.

23 Q: Do you know whether that organization still exists?

24 A: No, sir.

25 Q: You know whether that organization was organized simply

1 for the purpose of this campaign?

2 A: No, sir.

3 Q: Okay. Thank you very much.

4 MR. BENDER: Nothing further, Your Honor.

5 THE COURT: You may step down. Thank you, sir.

6 MR. STEVENS: May Mr. Barrett be excused?

7 MR. BENDER: No objection.

8 THE COURT: Without objection, you're released from your
9 subpoena. Thank you, sir.

10 MR. STEVENS: Plaintiff would call Cathy Hazelwood.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible?

13 CATHY LYNN HAZELWOOD; HAVING BEEN
14 SWORN TESTIFIES AS FOLLOWS:

15 CLERK: Have a seat, please, ma'am. State your name for
16 the Court, please, ma'am.

17 MS. HAZELWOOD: Cathy Lynn Hazelwood.

18 DIRECT EXAMINATION OF CATHY LYNN HAZELWOOD BY MR. STEVENS:

19 Q: Ms. Hazelwood, tell the Jury what you do?

20 A: I am General Counsel and Deputy Director for the State
21 Ethics Commission.

22 Q: How long have you been in that position?

23 A: Fifteen years.

24 Q: Okay. And at, in that position, tell the Jury what your
25 duties are and what you oversee?

1 A: The State Ethics Commission has four areas of the law. We
2 regulate lobbying and we have the Rules of Conduct for Public
3 Officials, Public Employees and Public Members, Campaign
4 Finance Law, Campaign Contributions and Annual Financial
5 Disclosure and as such, as the attorney for the agency, I
6 prosecute, administratively prosecute violations of the Ethics
7 Act, I provide advice to the Commission, I provide advice to
8 the public if someone wants to run for office and they have
9 questions about their campaign, a council member wants to know
10 if they should vote in a matter, they would call in the office
11 or email me and I'd answer questions in that way and I do
12 represent the Commission on occasion in court.

13 Q: Okay. As a -- in your position, did you have an
14 opportunity to talk with David Wren?

15 A: I did.

16 Q: And tell the Jury what Mr. Wren asked you.

17 A: Mr. Wren asked the question about a luncheon in which
18 contributions were made to Gresham Barrett from the Chamber of
19 Commerce, a representative of the Chamber of Commerce and a
20 lobbyist had been at the restaurant at the table when the
21 contribution was made. He wanted to know if the presence of
22 the lobbyist was a violation of the Ethics Act and I said it
23 was not.

24 Q: You told him ---

25 A: It was my opinion it was not a violation of the Ethics

1 Act.

2 Q: Did he say anything about Mr. Kelley handing or touching
3 the envelope containing the campaign contributions?

4 A: I have no recollection, anything about touching an
5 envelope.

6 Q: Okay. There's a quote in the newspaper on May the 21st
7 where he is quoting you as saying that it would be illegal for
8 Mr. Kelley to have touched the envelope; did you say that?

9 A: It would be. It's my opinion that if he touched the
10 envelope as in handing the envelope to the candidate, then
11 that would be facilitating a campaign contribution.

12 Q: Okay. Did -- as the attorney, did you ask him, well do
13 you have any evidence like this?

14 A: No.

15 Q: You didn't. Did, did David Wren make a complaint about
16 Mark Kelley?

17 A: I can neither confirm nor deny the existence of a
18 complaint. This matter happened in 2010. So, you could --
19 what I can tell you is all the 2010 cases have been resolved.
20 So, you're not gonna find Mr. Kelley's name under the
21 complaints resolved issue.

22 Q: Okay. You're under a duty as the attorney to say exactly
23 what you told me just then?

24 A: Yes, sir.

25 Q: You can neither confirm nor disaffirm that ---

1 A: That is correct.

2 Q: But you're saying that there, all the complaints, if
3 whatever complaints are filed have been resolved and there's
4 nothing against Mr. Kelley?

5 A: That's correct.

6 Q: Okay. That's all I have. Thank you.

7 THE COURT: Mr. Bender.

8 MR. BENDER: Thank you, Your Honor.

9 CROSS EXAMINATION OF CATHY LYNN HAZELWOOD BY MR. BENDER:

10 Q: Ms. Hazelwood, thank you very much for coming. As I
11 recall, your deposition was taken in this case and you were
12 asked about your comments in each of these articles where you
13 said it would've been illegal for Mark Kelley to have touched
14 the envelope, but being the same room was not a problem?

15 A: Correct.

16 Q: Were you accurately quoted?

17 A: I was.

18 Q: And when you were asked about whether any of these
19 contributions made on cashier's checks to the Gresham Barrett
20 campaign were problematical and you were quoted as saying it
21 did not appear there was anything illegal?

22 A: Correct.

23 Q: And you were accurately quoted there?

24 A: Yes, sir.

25 Q: Now, if a lobbyist sends a request to someone asking

1 directly or indirectly for a campaign contribution, would that
2 be a violation of the law?

3 A: I believe it would be. I believe that's facilitating or
4 soliciting. I mean it's outright soliciting a campaign
5 contribution.

6 Q: Let me show you a document. I'll get you one that you can
7 read directly without having to look at this board. It's
8 Plaintiff's Exhibit Seventeen. Take a minute and take a look
9 at that if you would.

10 A: I've read it.

11 Q: All right. Does that email in its entirety contain a
12 solicitation for campaign contributions?

13 A: It does.

14 Q: And if that were forwarded by a registered lobbyist, would
15 that be a solicitation for campaign funds?

16 A: It appears to me that it would be.

17 Q: Would that have been lawful?

18 A: I don't believe it would be.

19 Q: Thank you very much. Nothing further.

20 REDIRECT EXAMINATION OF CATHY LYNN HAZELWOOD BY MR. STEVENS:

21 Q: The email asking for campaign contributions is from Luke
22 Byars; correct?

23 A: That is correct.

24 Q: And the email from Mark Kelley is to people and he is
25 telling them about the straw poll, correct?

1 A: That's what the email does.

2 Q: Right. If the purpose of the email to tell them about the
3 straw poll, saying the straw poll is good news; do you see
4 that as a solicitation?

5 A: No.

6 Q: Okay. Thank you. That's all.

7 RECROSS EXAMINATION OF CATHY LYNN HAZELWOOD BY MR. BENDER:

8 Q: The solicitation for funds is in the included email that
9 was forwarded by the lobbyist?

10 A: Yes.

11 Q: And in your view that would be illegal?

12 A: Yes.

13 Q: Thank you.

14 THE COURT: All right. You may step down.

15 A: Thank you.

16 MR. BENDER: I have no objection if the witness is
17 excused, Your Honor.

18 THE COURT: You need this witness further?

19 MR. BENDER: No.

20 THE COURT: You may be excused from your subpoena. Thank
21 you, ma'am.

22 BY THE COURT:

23 THE COURT: All right. What we're gonna do is I'm gonna
24 let this Jury go to lunch. It's 12:15. Let's be back about
25 1:30. Okay.

1 (REPORTER'S NOTE: Jury exits courtroom. 12:13 P.M.)

2 THE COURT: All right. Gentlemen, we'll be at ease until
3 1:30. I have some minor settlements that I intend to do in
4 the courtroom. I actually believe that you can leave your
5 things there. I don't think you need to clear your tables.
6 They won't take me that long to do and I think the attorneys
7 can use the podium. Thank you.

8 MR. STEVENS: Judge, you said you wish us to clear the
9 table?

10 THE COURT: You need not. You need not. Your materials
11 will be fine there.

12 (RECESS - 12:14 P.M.)

13 *****OFF THE RECORD*****

14 (On the Record - 1:36 P.M.)

15 THE COURT: Please be seated.

16 Mr. Bender, we've got a note sent to me by the foreman
17 that she's having trouble hearing you.

18 MR. BENDER: Okay.

19 THE COURT: But if you would, you might need to speak up.

20 MR. BENDER: Thank you.

21 THE COURT: I just bring that to your attention.

22 MR. BENDER: I appreciate it.

23 THE COURT: We ready to go?

24 MR. BENDER: Yes, sir.

25 MR. STEVENS: Plaintiff's ready, Your Honor.

1 THE COURT: Very well, let's bring in the Jury.

2 Gentlemen, I am working on a draft of the charge. If you
3 will give me or give Drew your cards with some email address,
4 we'll shoot that over to you so you can look at it tonight and
5 we haven't put anything about the statutes in it yet. We know
6 we're gonna do some adding here and adding there, but give you
7 an opportunity to see how I'm formatting it and I welcome your
8 suggestions.

9 (REPORTER'S NOTE: Jury enters courtroom. 1:37 P.M.)

10 MS. STEVENS-GRAZIANI: Right now.

11 THE COURT: Yes, if you have one. Ms. Graziani, do you
12 have an email for Mr. ---

13 MS. STEVENS-GRAZIANI: His is the same except Jim instead
14 of mine.

15 THE COURT: Thank you, George.

16 MR. REDMOND: Can I give you two?

17 THE COURT: That's good. That's good. That's fine.

18 (REPORTER'S NOTE: Jury enters courtroom. 1:37 P.M.)

19 THE COURT: All right. I see that we have all our jurors
20 and our alternates back in the courtroom. I hope you had a
21 nice lunch and we're ready to go forward.

22 Mr. Stevens, I think you were gonna call Mr. Kelley back
23 or did you have someone else?

24 MR. STEVENS: I'm gonna get two more short witnesses.

25 THE COURT: Okay. Very well. We can do those. Thank

1 you.

2 MS. STEVENS-GRAZIANI: The Plaintiff calls George Hearn
3 to the stand.

4 THE COURT: Come around, Mr. Hearn.

5 CLERK: Please raise your right hand and place your left
6 hand on the Bible.

7 GEORGE M. HEARN, HAVING BEEN SWORN
8 TESTIFIES AS FOLLOWS:

9 CLERK: Have a seat please, sir. State your name for the
10 court please, sir.

11 MR. HEARN: George M. Hearn.

12 DIRECT EXAMINATION OF GEORGE M. HEARN BY MS. STEVENS-GRAZIANI:

13 Q: Good afternoon, Mr. Hearn.

14 A: Good afternoon.

15 Q: Can you tell the Jury what you do for a living?

16 A: Yes, I'm a lawyer. I practice here in Conway with my
17 brother, Pete.

18 Q: And were you ever a member of the House of
19 Representatives?

20 A: Yes, I served in the General Assembly for two terms
21 starting in 2008 and then again in 2010 finishing in 2012.

22 Q: So, were you serving in 2009?

23 A: Yes, I was.

24 Q: Were you campaigning in the year of 2009?

25 A: I was campaigning from the time I applied for the position

1 until the time I left the position.

2 Q: Okay. And while you were there, were you on any
3 committees?

4 A: Yes, I was on the Judiciary Committee.

5 Q: Tell me, do you know Mark Kelley?

6 A: Yes, I do.

7 Q: And how do you know Mark Kelley?

8 A: I've known Mr. Kelley for over twenty years. I knew him
9 when he had his restaurant. I knew him when he was a member
10 of the General Assembly. My law partner at the time, Morgan
11 Martin, served with Mr. Kelley and so I've known Mr. Kelley
12 for twenty-plus years.

13 Q: Okay. And how would you describe his professional
14 reputation?

15 A: He has an excellent reputation.

16 Q: And why would you say that?

17 A: Because I have been with Mr. Kelley on numerous occasions.
18 I know his reputation in the community. I know the work that
19 he has done both when he was a member of the General Assembly
20 and the work that he's done when he serves as a lobbyist and
21 in every respect, he has done an excellent job in each role he
22 has undertaken.

23 Q: How does a lobbyist -- what does a lobbyist need to do
24 their job well?

25 A: First, they have to have the ability to impart

1 information. They are representing a particular entity or
2 individual that is seeking to have something passed through
3 the General Assembly. A good lobbyist is one that will
4 provide insight to the members of the General Assembly about a
5 particular bill or a particular proposition advocating as he
6 or she thinks appropriate in terms of why this is a good bill
7 or not. A great lobbyist is one that you can count on and
8 depend on so that if he or she tells you something, you can
9 accept it without wondering why they are telling you this and
10 Mr. Kelley, when he was a lobbyist, I assume he still is,
11 certainly met that criteria.

12 Q: So they -- you have to trust that the information they
13 give you is correct?

14 A: You have to trust the information, you also have to trust
15 the individual.

16 Q: Okay. So, Mr. Kelley was an effective lobbyist?

17 A: Extremely so.

18 Q: Do you know, how would you describe Mr. Kelley's personal
19 reputation?

20 A: Mr. Kelley's personal reputation is like his professional
21 reputation, it's excellent. He's a very bright, affable
22 individual. He has a lovely wife. He has a wonderful family.
23 He is somebody that I have been to social gatherings on, that
24 have nothing to do with the General Assembly, and I've always
25 considered him and I think he's known in the community as

1 being a really fine man.

2 Q: Have you been to any social gatherings that had to do with
3 the General Assembly where Mark Kelley was present?

4 A: Yes.

5 Q: Do you know if any funds were given at those -- what do we
6 call them, those, functions?

7 A: In the General Assembly when you're serving in the General
8 Assembly, there are a number of opportunities that you are
9 given in the evening to meet with different groups, the
10 Funeral Home Directors, the Real Estate Lobby, various
11 technical schools, the colleges all have opportunities for
12 invitations to the members of the General Assembly to go and
13 to meet with as a legislator, you go and you meet,
14 particularly if you have constituents, they want to be able to
15 talk face to face to the person that's representing them. And
16 so there are three or four of those in any given night while
17 you're there. I'm sure I saw Mr. Kelley at a number of those.
18 None of those were campaign -- they weren't an effort to get
19 contributions; they were an opportunity to interact with the
20 people that you are representing. And I tried to attend as
21 many of them as I could and especially when there was a local
22 group here and I knew that there were individuals that were
23 counting on me to help them as I was felt obligated to do as
24 their representative.

25 Q: Do you, do you know or is it common for there to be

1 campaign contributions given at any of those meetings?

2 A: The meetings I'm talking about, the functions, I don't
3 know whether campaign contributions are given then or not. I
4 don't know that there's anything inappropriate about it, just
5 that typically when I was campaigning, I would write letters
6 and ask for contributions or I would have a fundraiser
7 established and that's where the bulk of my contributions came
8 through.

9 Q: Was there any problem with a lobbyist being present at any
10 of those?

11 A: No. No, certainly not.

12 Q: Were you familiar with the articles that came out in the
13 paper in 2010 regarding campaign contributions?

14 A: Yes, there were a number of articles and I think I read
15 all of them at one time or another.

16 Q: I hand you what's labeled as Plaintiff's Exhibit One and
17 ask you to start reading -- well, first let me look at it.
18 Okay. In the article, does it mention Mark Kelley?

19 A: It does.

20 Q: Can you find where it says, where it starts to mention
21 Mark Kelley?

22 A: I see a highlighted underlined in the third paragraph on
23 this exhibit that says Mark Kelley, a lobbyist for the Chamber
24 of Commerce.

25 Q: Can you read starting there, was it two or three

1 paragraphs?

2 A: Certainly. Mark Kelley, a lobbyist for the Chamber of
3 Commerce, also attended that meeting according to Barrett.
4 Kelley did not return a telephone call Thursday. There are
5 strict rules that forbid lobbyist from facilitating campaign
6 donations for statewide candidates. However, a spokesman for
7 the South Carolina Ethics Commission says it does not appear
8 any laws were violated in this case. Just being in the same
9 room is not a violation. It happens all the time said Cathy
10 Hazelwood, the Commission on General Counsel. He, Kelley, is
11 not supposed to touch the envelope or hand over the envelope.
12 The campaign contributions -- do you want me to go on?

13 Q: That's fine. From what you just read, isn't it true that
14 it was reported that Kelley is not supposed to touch the
15 envelope or hand the envelope over?

16 A: That is correct.

17 Q: So, in essence that means he's not supposed to deliver the
18 campaign contributions?

19 A: That is correct.

20 Q: Now, I'm gonna hand you Exhibit Number Two and ask you to
21 tell the Jury what date that exhibit or what date that article
22 was published; can you tell?

23 A: I'm afraid the date is obscured at the top. I can just
24 see what page it's on; it's a carryover.

25 Q: Okay. Well, there's a section in that article that's

1 circled?

2 A: That's correct.

3 Q: Can you read it -- you can read it ---

4 A: Dean along with Chamber lobbyist, Mark Kelley, delivered
5 about 84,000 of those contributions to Barrett in June. Those
6 contributions included a \$3500 cashier's check from Garden
7 City Partners.

8 Q: Now, what do you interpret from that sentence or those two
9 sentences?

10 A: I didn't interpret anything. It says that Mr. Kelley and
11 Mr. Dean delivered 8400 -- \$84,000 in contributions to
12 Barrett.

13 Q: So how many people delivered it?

14 A: According to this article, two.

15 Q: I'm gonna hand you Exhibit Number Four and ask you to --
16 you can read out loud between the highlighted portion of that
17 article.

18 A: All right. In the past, the Chambers denied any
19 involvement in this scandal, but now Brad Dean admits that he
20 set up a lunch with Chamber lobbyist, Mark Kelley, and he
21 handed Mr. Barrett the envelope full of checks. He, Robert
22 Kelley, who is not related to the lobbyist -- oh, said Robert
23 Kelley, who is not related to the lobbyist.

24 Q: How many people does that say set up the meeting?

25 A: One, Mr. Dean.

1 Q: Okay. Are you sure?

2 A: It said, But now Brad Dean admits he set up a lunch with
3 lobbyist, Mark Kelley, and he handed Barrett the envelope full
4 of checks. So, I take that to mean that Brad had set up a
5 lunch with Mark Kelley and I assume with Mr. Barrett.

6 Q: Okay. And who is saying delivered the money?

7 A: Oh, Mr. Dean delivered, I mean -- yeah, Mr. Dean delivered
8 the money to the degree it says. Oh, he handed Mr. Barrett
9 the envelope full of checks. So, Mr. Dean is the one that
10 actually handed a check to Mr. Barrett.

11 Q: Okay. Do you know Robert Kelley?

12 A: I don't believe I do.

13 Q: Do you know if that quote is -- have you ever heard Robert
14 Kelley make any public speaking event?

15 A: I may have. I apologize. One thing I did learn when I
16 was in the General Assembly, I was not terribly good with
17 names, which is not a good thing for a politician. So, I may
18 well know Mr. Kelley but I don't recall anything about him
19 particularly.

20 Q: Did you ever attend any BOOST function?

21 A: BOOST?

22 Q: BOOST.

23 A: I don't believe I did. Although, in the course of
24 campaigning I attended a lot of functions that I wasn't sure
25 who was sponsoring them but I don't believe I ever attended

1 any BOOST function.

2 Q: Okay. I'm gonna hand you Exhibit Five and ask you what's
3 the title of that article?

4 A: Absence of Evidence.

5 Q: And, and it's an editorial, right?

6 A: It appears to be from May 30th, 2010.

7 Q: Do you remember reading that article?

8 A: Yes, I do.

9 Q: And what was your perception of that article; what was it
10 saying?

11 A: Well, the article, let me read it over again because it
12 was a while back. Give me one minute so that I can read it
13 and hopefully answer correctly. The article says present are
14 Brad Dean, who personally handed \$84,000 in checks to Barrett
15 with lobbyist, Mark Kelley, sitting there by his side. If
16 Kelley had handed the money over the transaction would've been
17 explicitly illegal. Effectively, forcing Barratt to say
18 Kelley had no involvement in pinioning -- I don't know what
19 that means, the donations on Dean no matter what the
20 unprovable truth is. As I read that article, it was a --
21 suggested to me it was somewhat disingenuous to the degree
22 that it's saying that there's an unprovable truth, but then if
23 you look at what the underlying alleged truth is, it would be
24 somehow to suggest that Mr. Kelley was involved in this
25 transaction when they're -- says he was not.

1 Q: Okay. Can you read that part again to yourself and tell
2 me what you think the word pinioning means. I know you said
3 you didn't know, but read it one more time and tell me if you
4 can decipher what pinioning might mean.

5 A: Say Kelley had no involvement in pinioning, I assume,
6 designating that the donations were by Mr. Dean.

7 Q: Do you know what pinioning means?

8 A: No, I do not.

9 Q: Okay. Now, after these articles, did -- was Mark Kelley's
10 reputation affected?

11 A: Well, certainly after the articles came into play, this
12 was the -- a topic of a lot of conversation both at the State
13 House and in the places that I went. As to whether or not it
14 had an impact on his reputation, he could probably better
15 answer to that than I can, but if I am accused of a crime
16 falsely, as an attorney, it would certainly have an impact on
17 my reputation and I assume would have the reputation on anyone
18 else whose ability to perform his or her function is a direct
19 relationship to how much trust and the nature of their
20 reputation.

21 Q: How long -- you said there was talk going on about at the
22 State?

23 A: At the State House.

24 Q: How long did that happen -- how long did that last?

25 A: Well, there were a number of articles in The Sun News and

1 each time there was a new article, it brought back the, the
2 earlier article in which there was a statement that Mr. Dean
3 and Mr. Kelley together handed over the contributions. And so
4 each time another statement came out or each time there was
5 another report, it just re-brought up to the surface the
6 problems that were existing with the underlying initial
7 reporting.

8 Q: Okay. Just a second. Did David Wren ever call you and
9 ask you anything about the campaign contributions?

10 A: No, I don't believe I've ever met Mr. Wren. I know that
11 he is an active reporter, but I don't believe he ever called
12 me. I did get a call from someone at the State paper, but
13 that was the only call I got.

14 Q: Okay. That's all I have.

15 THE COURT: Mr. Bender.

16 MR. BENDER: May it please the Court.

17 CROSS EXAMINATION OF GEORGE M. HEARN BY MR. BENDER:

18 Q: George, I told you earlier that your wife had sent me a
19 list of questions to ask you while you were under oath. Are
20 you ready?

21 A: Only if I can have you put under oath and ask the same
22 questions your wife sent me.

23 Q: I think that's fair enough. Now you, what was your
24 undergraduate education?

25 A: I majored in Economics.

1 Q: Now, of course, you've got a law degree and you've been
2 practicing law in Horry County for a long time?

3 A: I have.

4 Q: Amazing how long it's been, right?

5 A: It is.

6 Q: Now, were here when Senator Bud Long from Horry County was
7 on trial in Operation Lost Trust?

8 A: Yes, I was.

9 Q: And as I recall, he was convicted of taking money from a
10 lobbyist and that set off ethics reform in the General
11 Assembly; he and others were convicted?

12 A: I know Mr. Long was initially convicted. I believe that
13 my former law partner, Tommy Brittain and I both went to the
14 Fourth Circuit and his conviction was overturned.

15 Q: Oh, good. Congratulations.

16 A: So Mr. Long was erroneously convicted, but I know that as
17 a result of that particular event apparently there were some
18 changes in the way ethics were handled.

19 Q: And when you went to the General Assembly, you had some
20 idea of what the constraints were on lobbyists and on
21 candidates with respect to campaign contributions; is that
22 correct?

23 A: Certainly, I had an understanding as to what I could and
24 couldn't do as a candidate with respect to campaign
25 contributions.

1 Q: And as I look at that law, it seems to me that the General
2 Assembly was suspicious of lobbyists and the sources of money
3 that lobbyists might have in the past have given to
4 candidates?

5 A: I don't know what the rationale was for the ethics reform.
6 I know that there's ethics reform being considered right now
7 in the General Assembly and certainly when I was there, I
8 suggested and signed on a number of bills promoting ethics
9 reform. I think there is always a concern when you're seeking
10 campaign contributions that there be full disclosure and that
11 if somebody provides me with a check that my constituents and
12 anyone else that wants to, can know what I got and when I got
13 it. But as to whether or not there was a particular concern
14 that exists anymore then than now, I don't know what these,
15 the social or the, the, the way lobbying was done back then or
16 how the members of the General Assembly what was or wasn't
17 allowed. I know when I got to the General Assembly in 2008, I
18 was told that the lobbyist could not even buy me a cup of
19 coffee and no one ever offered to buy me a cup of coffee.

20 Q: It worked.

21 A: It worked. It worked very well.

22 Q: And you talked about your constituents wanting to know how
23 much you got?

24 A: That's right.

25 Q: Did your constituents also want to know where the money

1 came from?

2 A: Certainly. And on the campaign report you have to say how
3 much did I get from an individual or entity and where is that
4 entity; give me the name of the company and the address all of
5 which has to be filed on the campaign report on a quarterly
6 basis.

7 Q: And as I understand the issue in the 2010 election cycle,
8 there were campaign contributions written on cashier's checks
9 at one bank in sequential order on accounts of limited
10 liability companies that seemed to have no assets.

11 A: I don't know whether the liability, limited liability
12 companies have assets or not. I know that I received some
13 sequentially numbered cashier's checks from various entities
14 that had their name, address and amount of the check all of
15 which I disclosed on my campaign report.

16 Q: Certainly. And there was no information other than the
17 name of that entity on the check?

18 A: The name of the entity or the individual. For instance,
19 there were individuals who gave me checks in that same cycle
20 and if I get a check from Joe Blow or Sue Smith, even if I
21 don't know them, as long as I report that it's Joe Blow or Sue
22 Smith that gave me the campaign contribution and give the
23 address, then anybody that wants to look it up can see who
24 that individual was or what company that was.

25 Q: And the design of that is to allow constituents to know

1 who is contributing to a campaign of someone seeking public
2 office?

3 A: That's correct.

4 Q: And in the 2010 election cycle, there were allegations
5 made that contributions may have come from the Chamber of
6 Commerce; is that correct?

7 A: That was what some of the reporting suggested.

8 Q: And that's what Robert Kelley and BOOST suggested also,
9 isn't it?

10 A: Again, I don't know Mr. Kelley and I don't know BOOST. So, I
11 don't know what they were suggesting, but I did during the
12 course of my two terms of service, there were an awful lot of
13 suggestions from individuals and groups that I didn't
14 necessarily agree with or pay attention to, but if BOOST or
15 Mr. Kelley made a suggestion and I'm sure it was aired and
16 obviously reported as I just read.

17 Q: And that's what democracy is about, isn't it?

18 A: Absolutely. Absolutely.

19 Q: I have no other questions.

20 REDIRECT EXAMINATION OF GEORGE M. HEARN BY MS. STEVENS-
21 GRAZIANI:

22 Q: You mentioned the cup of coffee rule.

23 A: Yes.

24 Q: Can you explain that?

25 A: Yes, it's actually it has -- when I went to the General

1 Assembly, we had a meeting. When you're a freshman and you go
2 to the General Assembly, they tell you because candidly I
3 wasn't sure what my roles were, what I could and couldn't do
4 and one of the first things they said is, lobbyist are an
5 important role. They will provide you with information but
6 you have to decide whether or not a particular lobbyist is
7 someone that you want to communicate with. One thing you
8 can't do is you cannot accept any favor or anything of value
9 from a lobbyist, including a cup of coffee. In fact, Mr.
10 Kelley one time pointed out to me that he would not be able to
11 provide me with a cup of coffee and I said I understood that.
12 And during the entire time I was serving in the General
13 Assembly no lobbyist ever offered me a cup of coffee or
14 anything else of value other than advice or opinions they had
15 regarding whatever issue they were concerned about.
16 Q: Would, would giving a ride somewhere be a favor?
17 A: Apparently, because there was one occasion in which Mr.
18 Hardwick and I were in Columbia and he did not have a car and
19 so I believe he asked me to give him a ride home and he said
20 he -- well, as it turned out, I believe Mr. Kelley joined us
21 because Mr. Kelley couldn't take me for a ride and bring me
22 back to Conway, but apparently, I was allowed to bring him
23 back to Conway and bring Mr. Hardwick back to Conway.
24 Q: Okay. No further questions.
25 MR. BENDER: Nothing further, Your Honor.

1 MR. STEVENS: Could we excuse Mr. Hearn?

2 MR. BENDER: No objection, Your Honor.

3 THE COURT: Certainly. You are excused and released from
4 your subpoena, Mr. Hearn.

5 MR. HEARN: Thank you.

6 THE COURT: Thank you very much.

7 COURT REPORTER: Ms. Graziani, can I have those exhibits
8 back, please? I'm sorry. Once they're marked I have to keep
9 them up here.

10 MS. STEVENS-GRAZIANI: I inherited it.

11 MR. STEVENS: I call David DeCenzo.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 DAVID ANTHONY DECENZO, HAVING BEEN
15 SWORN TESTIFIES AS FOLLOWS:

16 CLERK: Have a seat please. State your name for the
17 Court, please.

18 MR. DECENZO: David Anthony DeCenzo.

19 DIRECT EXAMINATION OF DAVID ANTHONY DECENZO BY MR. STEVENS:

20 Q: Do they refer to you as Doctor?

21 A: It depends on the time and it depends on the issue and it,
22 Dr. DeCenzo.

23 Q: Dr. DeCenzo, tell the Jury what you do.

24 A: I am President of Coastal Carolina University. I've been
25 President since May of 2007.

1 Q: Okay. Would you tell the Jury if you have any connection
2 with Mark Kelley?

3 A: Yes. Mr. Kelley is our legislative liaison, which said a
4 different way, he is one of my employees.

5 Q: Okay. Is his salary paid by Coastal Carolina?

6 A: Yes, it is.

7 Q: Okay. Is that state funds?

8 A: It is.

9 Q: Okay. And when was he hired?

10 A: I'm not exactly sure when he was hired. When I became
11 President, Mr. Kelley was already the legislative liaison and
12 I continued his contract.

13 Q: When, when did you start?

14 A: May 7th, 2007.

15 Q: Okay. So, he was already there then?

16 A: Yes, sir.

17 Q: And while he was there, did you review his personnel file
18 and see how he was paid?

19 A: Yes, sir.

20 Q: Okay. And have you, pursuant to a subpoena, produced to
21 Mr. Bender all the records dealing with Mark Kelley?

22 A: The University did comply with that, yes, sir.

23 MR. STEVENS: We would move to introduce Exhibit Number
24 Fourteen at this time.

25 THE COURT: Do you have that, Mr. Bender?

1 MR. BENDER: I have to look.

2 THE COURT: Show it to Mr. Bender please so he can
3 familiarize himself with it.

4 MR. BENDER: No objection, Your Honor.

5 THE COURT: All right. Without objection it's admitted
6 as Plaintiff's Fourteen.

7 PLAINTIFF'S EXHIBIT NUMBER FOURTEEN

8 ADMITTED INTO EVIDENCE

9 MR. STEVENS: For the purpose of the record, these
10 records go from March 29, 2009 to a date which would have been
11 effective -- would be effective June 30th, 2014.

12 BY MR. STEVENS:

13 Q: Generally, could you describe to the Jury what those
14 documents are?

15 A: These are documents that the University would provide.
16 Let me start with the top page.

17 Q: Okay.

18 A: Which was dated March 29th, 2006, this was the original
19 appointment of Mr. Kelley by my predecessor, signed on looks
20 like April 3rd, 2006, which again, appoints him to position of
21 legislative liaison at Coastal Carolina University, a twelve-
22 month appointment at a salary of \$70,000. The subsequent
23 pages are our annual salary statements that our Human
24 Resources sends out to all employees, which indicates what
25 their pay will be for the coming year and they're all pretty

1 much the same although we've changed the format of those
2 forms. But these are what are now called our personnel action
3 forms or PAF's.

4 Q: Well, let's go, we've already talked about the first page,
5 which is for the fiscal year, I would assume, 2006/2007?

6 A: That would be correct.

7 Q: All right. Now the next page is a statement of his
8 salary, Mark Kelley's salary, for the year beginning -- for
9 twelve months; am I right there?

10 A: That's correct and this second page is what his salary
11 would be for the 2006/2007 academic year.

12 Q: Did he get a raise that year?

13 A: Yes, he did.

14 Q: By how much?

15 A: He got a \$3500 merit increase.

16 Q: Merit increase. So, he went from 70,000 to 73,500?

17 A: That's correct.

18 Q: Okay. Let's go to the next year.

19 A: Next year, July 1, 2007, which would be the 2007/2008
20 academic year, Mr. Kelley's salary went from 73,500 to 75,705
21 with a merit increase of \$2,205.

22 Q: What is a merit increase?

23 A: A merit increase is an increase that an employee can
24 receive based on successful performance at your job duties.

25 Q: Was his performance successful?

1 A: His performance has always been successful; yes, sir.

2 Q: Now the next year?

3 A: Next year for the 2008/2009 his salary went from again the
4 base of 75,705, there was a general increase, which means that
5 year there was a -- in this case it would have been a one
6 percent increase that was granted. Usually, on a general
7 increase it is something that the General Assembly either
8 approves' or in this particular case, it may have been an
9 increase that the Board of Trustees authorized for each
10 employee.

11 Q: So, he went from 75,705 ---

12 A: From 75,705 to 76,462.

13 Q: And what about the next year?

14 A: The next year looks like the 2009/2010 year and his salary
15 had gone to \$83,875.

16 Q: Now, this, this one shows that the start date is 11/23/09,
17 11/22 -- excuse me -- 11/23/09 to 11/22/10?

18 A: Correct.

19 Q: And was that your fiscal year?

20 A: No, that wasn't the fiscal year. That was -- in that case
21 it's a calendar year.

22 Q: Okay. All right. Now, the next one shows a November the
23 23rd, 2010 to June the 30th, 2011; that's not a whole year;
24 why is that?

25 A: That would have been from the salary of the original that

1 the previous page ---

2 Q: Okay.

3 A: --- through 11/22 then 11/23 through June, which would've
4 ended the academic year and in this case his salary had been
5 reduced to 50,892.

6 Q: Okay. Was that because you were prorating it or because
7 of anything else?

8 A: It was probably along the lines of prorating it.

9 Q: All right. Now, the next one is the year 2011/2012. Did
10 he get an increase?

11 A: He basically his increase what the full amount would've
12 been for the calendar year. So, it was the, I guess it's
13 moved to 83,875. I don't know see where there was an increase
14 on this.

15 Q: Okay. And 2011 was the year after all these articles came
16 out? Do you recall the articles coming out?

17 A: Yes, sir, I do.

18 Q: Did when you read the articles, did it give you concern as
19 the University President of Coastal Carolina?

20 MR. BENDER: I object, Your Honor, leading.

21 THE COURT: Leading?

22 MR. BENDER: Yes.

23 MR. STEVENS: All I asked was did it give him any
24 concern.

25 THE COURT: I don't think that's leading. It doesn't

1 suggest the answer. I'm gonna go ahead and allow it. You may
2 answer.

3 A: Yes, sir, there was serious concern that I had that I
4 shared with Board of Trustees.

5 BY MR. STEVENS:

6 Q: And what was that concern?

7 A: The concern was that when you have a legislative liaison
8 or lobbyist, the credibility of that individual and the
9 integrity of that individual is paramount to their success.
10 And given what I had read, given what I had heard from some
11 questions that I had received from a number of different
12 people, the concern that I had was, could Mr. Kelley continue
13 to be effective?

14 Q: And what occurred with regards to his salary?

15 A: The salary, and let me go back to if permitted, Your
16 Honor, I guess one of the things for being here for opening
17 statements, one of the questions that I heard, at least that
18 was raised in my mind during Mr. Bender's opening statements
19 was the pay raise for Mr. Kelley. Let me explain that there
20 are two types of pay raises that we deal with in the
21 institution. One is a General Assembly granted pay increase
22 that applies to all employees, all state employees, with the
23 exception of the President. We won't get into that here.
24 The, the other is we do about every three or four years, we do
25 what we call a salary compression analysis for our faculty and

1 our staff and it's a retention issue. We don't want to lose
2 good employees and ultimately what we do is take a look at
3 where those employees' salaries are currently as they relate
4 to what we would consider to be peer institutions, comparable
5 institutions, institutions in the Southeast that might have an
6 interest of stealing some of our good employees. And so what
7 we do is as run this analysis, we come up with new salary
8 figures for each of those positions and that information then
9 is taken to the Board of Trustees for their approval and you
10 could have somebody that's a thousand or two under market or
11 we've had them as high as about \$40,000 under market and I go
12 to the Board of Trustees and say that for reasons of salary
13 compression that I need to adjust people's salaries again as a
14 means of keeping them in the University. What we do is we
15 typically divide it three times and pay it out over a three
16 year period so that over those three years, we increase their
17 base. Now that increase can be reduced, it can be lessened
18 based on performance, or at my discretion it could be zero. I
19 made a decision that, given the information that was
20 circulating about Mr. Kelley, that it would not be in my best
21 interest or the University's best interest to provide his
22 salary compression money until we had some closure to this
23 other issue that was out there and so I withheld the money.
24 Q: And that was, what, 18,000?
25 A: It was about \$18,000, yes, sir.

1 Q: And you withheld that until?

2 A: Until I guess about November, October or November of this
3 year.

4 Q: Okay.

5 A: Which would be the last sheet.

6 Q: So that would have been like three years?

7 A: Roughly, yes, sir.

8 Q: When the articles came out?

9 A: Yes, sir. It was the third payment of the salary
10 compression. During that time -- again, I have to go back to
11 Mr. Kelley's performance. We had come off the change of
12 legislation that allowed Coastal Carolina University to
13 participate in the penny sales tax that could be used for
14 building buildings for K-16. We had gone through and changed
15 the legislation to enable a comprehensive institution like
16 Coastal Carolina University to offer a Ph.D. Degree in Marine
17 Science and probably the other major element that directly
18 attributed to Mr. Kelley was the securing of funds from the
19 General Assembly to purchase a research vessel that's used
20 with our Marine Science program. When I looked at all of
21 those, out of the quieting nature of what was taking place, I
22 couldn't in good conscience, not reward Mr. Kelley's
23 performance and so I went ahead and authorized the full
24 compression salary relief.

25 Q: And did, he did -- are you telling the Jury that he did

1 this while his salary was frozen?

2 A: Yes.

3 Q: Okay. Did, did, did Mark complain about it?

4 A: Not to me.

5 Q: Okay. He just went about his business?

6 A: As far as I know because the results speak for themselves.

7 Q: Okay. What else did Mr. Kelley do or accomplish for the
8 University?

9 A: You know, Mark, Mark has simply been one of our best
10 assets in Columbia, you know, it's -- and if anybody's heard
11 me talk, we are the lowest funded state institution of all the
12 states, about 4.9 percent of our total budget comes from the
13 state and we are constantly trying to build a case, sadly
14 unsuccessfully, but constantly trying to build a case that
15 there needs to be parity in the system, that while none of us
16 are funded extremely well, the reality is, we're at the very
17 bottom as is Horry Georgetown Tech for our two specific
18 sectors. But Mark has just been chipping away, constantly
19 looking at of ways to educate our General Assembly on the
20 needs of Coastal. As many of you probably have read multiple
21 times, we continue to be attacked for the number of out-of-
22 state students that we have. Right now, we are about 50/50
23 in-state/out-of-state and usually every year there is a bill
24 or three that are pre-filed and/or filed during Assembly that
25 tries to limit our out-of-state enrollment, which would have

1 the net effect, quite frankly of either shutting us down or
2 requiring us to triple in-state tuition, which we simply could
3 not do. And so he is, he bird-dogs every bill that's out
4 there and when there are issues that come up that demand my
5 attention or attention of someone from my staff, he alerts us.
6 He will get us into Columbia and he just simply provides an
7 invaluable service for us.

8 Q: Being in the education field, do you have any knowledge of
9 what Mark is doing and his accomplishments for Horry County
10 School District?

11 A: What, what little that I do know is only from
12 conversations that I would have with, with the Superintendent.
13 And again, we both are just so pleased with, with what Mark
14 does in representing us in Columbia.

15 Q: Okay. Thank you so much. Answer any questions Mr. Bender
16 might have.

17 MR. BENDER: May it please the Court.

18 CROSS EXAMINATION OF DAVID DECENZO BY MR. BENDER:

19 Q: Dr. DeCenzo?

20 A: Yes, sir.

21 Q: You have commencement coming up, don't you?

22 A: We are graduating about 1200 of them on Saturday.

23 Q: Very good. Hopefully, we'll be through in time to get you
24 there.

25 A: I don't even think that's funny but go ahead.

1 Q: Well, you have been here the whole time, haven't you?

2 A: I have been subpoenaed as a witness. I was kind of on
3 the, on-call list, so, yes, sir, I have been here.

4 Q: Now, you've listed Mark Kelley's accomplishments during
5 the last three years that led to his \$15,625 raise. He got
6 the Marine Science program approved, got a boat for you and
7 other things and most successful in Columbia fighting your
8 battles?

9 A: That is correct.

10 Q: And as a consequence, if my arithmetic is right --
11 actually, I used the calculator -- he got an 18.6 percent pay
12 increase?

13 A: That's probably correct, but that would've put him where
14 peers in other institutions are that do this same position.

15 Q: Sure. And you did that because in the time following the
16 publications that bring us here, he had continued to be
17 successful in the Legislature fighting your battles?

18 A: He was successful, yes, sir.

19 Q: Let me show you Plaintiff's Exhibit Seventeen, Gresham
20 wins SCGOP Straw Poll. Are you the first recipient of that
21 email?

22 A: Yes, sir; I am.

23 Q: And who sent that to you?

24 A: It looks like it came from Mark Kelley.

25 Q: And Mark Kelley's email address is what?

1 A: Here it says it's Repmkelley@aol.com.

2 Q: It's been quite a few years since he was a representative?

3 A: About ten, yes, sir.

4 Q: Okay. No further questions.

5 MR. STEVENS: That's all we have. He can be excused.

6 THE COURT: Thank you, Dr. DeCenzo. Thank you, sir.

7 DR. DECENZO: Thank you.

8 THE COURT: You are excused. Any objection? You are
9 excused from your subpoenas. Thank you, sir, Dr. DeCenzo.

10 MR. STEVENS: We'd recall Mark Kelley.

11 THE COURT: All right. Mr. Kelley still remains under
12 oath.

13 MR. STEVENS: For the record, Your Honor, previously we
14 had introduced the definitions of and, and marked it Ten.

15 THE COURT: Yeah, sir.

16 MR. STEVENS: We'd like to correct the record and make it
17 Sixteen, Exhibit Sixteen.

18 THE COURT: Mr. Bender?

19 MR. BENDER: I have no objection.

20 THE COURT: Without objection.

21 PLAINTIFF'S EXHIBIT NUMBER SIXTEEN

22 ADMITTED INTO EVIDENCE

23 CONTINUED DIRECT EXAMINATION OF MARK KELLEY BY MR. STEVENS:

24 Q: I think before we broke, Mr. Kelley, I had asked you,

25 During the pendency of this lawsuit, did you, pursuant to the

1 Rules of Civil Procedure request that The Sun News and David
2 Wren produce all of his emails, electronic data?

3 A: You did.

4 Q: Okay. Did he produce them?

5 A: He produced -- at least he produced what we got.

6 MR. STEVENS: Okay. And we would now move, Your Honor,
7 Exhibits Ten, Eleven, Twelve, and Thirteen-A through Thirteen-
8 H.

9 MR. BENDER: I have an objection to Twelve, Your Honor.

10 THE COURT: All right. Let's send the Jury out and let
11 them take a little break.

12 MR. STEVENS: I'll withdraw Number Twelve, Your Honor.

13 THE COURT: All right. Number Twelve was withdrawn.

14 MR. STEVENS: I will take that up later.

15 THE COURT: All right. Very well.

16 MR. STEVENS: Do you have any objections to the others?

17 MR. BENDER: No, no objection.

18 THE COURT: No objection.

19 BY MR. STEVENS:

20 Q: Now ---

21 THE COURT: Let's make it clear. No objections, there's
22 objections made for what through Eleven?

23 MR. STEVENS: Number Twelve.

24 THE COURT: No, he objects to Number Twelve -- or you've
25 withdrawn Twelve?

1 MR. STEVENS: He objected to Number Twelve.

2 THE COURT: You've withdrawn Twelve?

3 MR. STEVENS: I've withdrawn Exhibit ---

4 THE COURT: What Exhibits are you moving at this present
5 time?

6 MR. STEVENS: Number Ten.

7 THE COURT: Ten.

8 MR. STEVENS: Eleven.

9 THE COURT: Eleven.

10 MR. STEVENS: And Thirteen-A through Thirteen-H.

11 THE COURT: Is that correct, Counsel?

12 MR. BENDER: Yes, sir.

13 THE COURT: No objection?

14 MR. BENDER: No, sir.

15 THE COURT: All right. They're admitted without
16 objection.

17 PLAINTIFF'S EXHIBIT NUMBERS TEN, ELEVEN, THIRTEEN A-H

18 ADMITTED INTO EVIDENCE

19 BY MR. STEVENS:

20 Q: Did you have an opportunity to read the emails?

21 A: I did.

22 Q: All right. During reading any of the emails from sources
23 other than David Wren, did anyone say anything about Mark
24 Kelley delivering campaign contributions to Gresham Barrett or
25 any candidate?

- 1 A: No, sir.
- 2 Q: All right. And those were emails from Tim Pearson?
- 3 A: Yes, sir.
- 4 Q: And Tim Pearson is?
- 5 A: At that time, he was the campaign manager for Nikki Haley.
- 6 Q: Justin Stokes?
- 7 A: Justin Stokes at that time had left the Barrett campaign
- 8 and was feeding emails to the Haley campaign.
- 9 Q: Okay. Tracy Edge?
- 10 A: Tracy Edge, who was working -- I don't know if he was a
- 11 paid worker, but he was certainly out front and vocal about
- 12 his support of Henry McMaster.
- 13 Q: Okay. Help me out here; I can't remember all of them.
- 14 A: I don't have them in front of me, I'm sorry.
- 15 Q: Okay. Give me one second.
- 16 A: We've been through an awful lot of papers.
- 17 Q: Vj@greshambarrett.com?
- 18 A: V.J. Boling, who was a campaign -- I think it was campaign
- 19 manager for Gresham Barrett campaign.
- 20 Q: Were these the emails that Justin Stokes gave to Tim
- 21 Pearson?
- 22 A: They would have been, yes.
- 23 Q: Okay.
- 24 A: You're referring to the Boling emails?
- 25 Q: Right.

1 A: Yes, sir.

2 Q: Okay. Up until May the 21st, the date of the first
3 article, was there any emails in Mr. Wren's package of emails
4 that said anything about Mark Kelley giving campaign
5 donations?

6 A: No, sir, not that we seen.

7 Q: How about setting up the meeting?

8 A: No, sir.

9 Q: How about campaigning or trying to raise funds for a
10 candidate?

11 A: No, sir.

12 Q: Now, on May the 23rd, do you recall seeing an email from
13 Mr. Wren to Justin Stokes?

14 A: I do. I can't tell you sitting here exactly what it said
15 at this moment, I don't have it in front of me.

16 Q: We're gonna find out what it said right now. Let's put it
17 up. Now, it's showing May the 23rd, we don't have the whole
18 thing up there yet. In the top, the top part of it identifies
19 Sun News articles and David Wren's name and it says to
20 Justinsc06@yahoo.com and also to Tcpearson@gmail.com and those
21 are the two people you just talked about while ago?

22 A: Yes, sir, I recognize those email addresses belonging to
23 those two.

24 Q: All right. Let's put the whole email up there. That was
25 May the 23rd. All right. I don't know whether everybody can

1 read it, but I'll get over here and for the record I'll read
2 it. It says, Justin and Tim, I wanted to pass along links to
3 a couple of articles that have been published in The Sun News
4 over the past few days and see if you can help me unravel this
5 mystery a little more. I keep hearing from several people
6 that Katon Dawson is a key player behind the Chamber of
7 Commerce donations to Barrett and others. I cannot figure out
8 why he would be involved though. Do either of you have any
9 insight into his involvement in this? Also everyone seems to
10 be bending over backwards to protect Mark Kelley regarding his
11 involvement in setting up the meeting and handing him the
12 money. Do you see that? You see that?

13 A: I do see it, yes, sir.

14 Q: He's accusing you there of setting up the meeting and
15 handing him the money.

16 MR. BENDER: I object, Your Honor.

17 THE COURT: What's your objection?

18 MR. BENDER: Mr. Stevens is testifying.

19 THE COURT: Mr. Stevens, I, I, I realize why this
20 objection is and I would allow you to ask Mr. Kelley ---

21 MR. STEVENS: Okay.

22 THE COURT: --- what his impression is, but ---

23 BY MR. STEVENS:

24 Q: What is your impression?

25 THE COURT: But you're not under oath here.

1 Q: What is your impression?

2 A: By reading Mark Kelley regarding his involvement in
3 setting up the meeting with Barrett and handing him the money,
4 it sounds an awful lot to me in my interpretation of that,
5 that people are bending over backwards to hide that I had
6 helped set up a meeting and handed money to Gresham Barrett,
7 which I never did.

8 Q: Who's making the statement that you're setting up the
9 meeting and handing him the money?

10 A: David Wren is saying that to Justin Stokes and Tim Pearson
11 in his email.

12 Q: Did they verify that in any way from any of the emails you
13 got from David Wren?

14 A: I didn't see that verified in any place.

15 Q: Okay. And he goes on to say I asked B.J. Boling if Kelley
16 had arranged the meeting and he quickly said, quote, no, that
17 would have been illegal, end quote. Did you see that?

18 A: I did see that.

19 Q: Okay. And then he said he had to check and see who did
20 arrange the meeting. A little while later he called back and
21 said it was Brad Dean. Is that who set up the meeting?

22 A: I would imagine Brad Dean set it up. Brad Dean is the one
23 that called me sometime later, maybe days later, I don't know
24 exactly when they set up the meeting, but who called me and
25 told me that Gresham was coming to town and would I like to

1 join them for lunch.

2 Q: Okay. And then he goes on and said, I'm trying to piece
3 together who raised all the money, how they were funneled
4 through the various LLCs, and why and why the Chamber picked
5 Barrett as the candidate they were going to endorse,
6 parenthesis, could it be anything beside the fact that Kelley
7 is the Chamber lobbyist and big supporter of Barrett? Do you
8 see that?

9 A: I do.

10 Q: Okay. Any help or insight you can give me would be
11 appreciated. Also, if there are any emails or documents that
12 show Dawson's involvement or Kelley's role in setting up the
13 Barrett meeting would be a great help. Do you see that?

14 A: I do see that.

15 Q: So, he's asked him twice -- let me -- right here where
16 he's saying setting up the meeting with Barrett and handing
17 him the money. Are both of those statements stating a crime?

18 A: If I would have done either one of those things they would
19 -- it would have been committing a crime, that's correct.

20 Q: Okay. Now he said here, making a statement as if he knew
21 you did that?

22 A: And you know, certainly we were looking through the
23 information we asked from them where when I read that, I went
24 back through to find anything that would see where he would
25 have ever thought that and we couldn't find anything. I

1 couldn't find anything to show where he got that information
2 that I would have involvement in setting up the meeting with
3 Barrett.

4 Q: You sat through his deposition. Did he say he had
5 anything when we took his deposition under oath?

6 A: No.

7 Q: He said, in fact, he didn't have anything?

8 A: He didn't have anything.

9 Q: And he says he wants emails to show -- and now let's get
10 by Dawson's involvement or Kelley's role in setting up the
11 Barrett meeting would be a great help; am I correct there?

12 A: I guess it would've been.

13 Q: All right. Now, let's talk a minute about the first
14 article where it said you were, you along -- Brad Dean along
15 with Chamber lobbyist, Mark Kelley, handed \$84,000 to Gresham
16 Barrett in June; you remember that one?

17 A: I remember that one.

18 Q: Now, do you recall Mr. Wren saying that that article, May
19 23rd article was -- in his deposition was a Sunday article?

20 A: It was.

21 Q: Okay. Do you recall him saying that he wrote that article
22 the prior week?

23 A: He did say that in his deposition.

24 Q: Okay. So, the prior week would have put us back -- if he
25 started on Monday, six days before the 23rd?

1 A: Yeah, I don't know exactly in that prior week, but he said
2 in the prior week; that's correct.

3 Q: All right. And did he say also that he wrote the May 21st
4 article after he wrote the May 23rd article?

5 A: He did.

6 Q: Okay. So, he's building up to this May 23rd, that's the
7 big Sunday paper article?

8 A: It was.

9 Q: Okay. And so he writes May the 21st on sometime right
10 before it came out on Friday, correct?

11 A: I understood, if I remember right, he wrote it sometime
12 Thursday where it has to go to the copy desk and he explained
13 all that.

14 Q: That would've been Thursday?

15 A: Correct.

16 Q: The 20th. All right. So, can you explain to the Jury
17 what you know about where Mr. Wren got the information that
18 you were handing money to Gresham Barrett and setting up a
19 meeting -- he's writing it on the 23rd, the day the paper came
20 out?

21 A: Which I found that -- when I read that email, I really
22 found that to be interesting because this would've been
23 writing to them after he had printed those two articles, after
24 they've already been on the racks and after they had already
25 been sold.

1 Q: Did Mr. Wren, throughout this entire pendency of this
2 lawsuit produce any document or testify to any evidence that
3 he had evidence that you had set up the meeting, you had
4 raised the funds or you gave the funds to Gresham Barrett?

5 A: He has not and did not.

6 Q: This email, in your understanding, says what to you as it
7 relates to what he wrote in the newspaper?

8 A: It would say to me, and again, my opinion of it is that he
9 ran with a story that he had no basis for. He set up that
10 story by trying to set up two days before that kind of the
11 venue, the scene, for what he wanted to say that he had
12 already written before. He had no evidence and now after
13 those two articles were published, put on the streets, he's
14 now asking people to give him information to help him, to bail
15 him out, from what he wrote about me.

16 Q: Is there any question but that what Mr. Wren wrote about
17 you, he did with knowledge?

18 A: Absolutely did with knowledge.

19 MR. BENDER: Your Honor, I would object.

20 THE COURT: State your objection.

21 MR. BENDER: That this witness has no basis to state
22 David Wren's knowledge with respect to anything.

23 THE COURT: Mr. Stevens?

24 MR. STEVENS: I think that goes to the issue for the Jury
25 as to what knowledge he had with regards to what he was

1 reporting.

2 THE COURT: Ask your question again.

3 MR. STEVENS: Okay.

4 BY MR. STEVENS:

5 Q: Regarding the email and regarding what was in the paper,
6 what is your understanding as to whether Mr. Wren had
7 knowledge of you handing campaign contributions to Gresham
8 Barrett or setting up the meeting?

9 A: And it says right there, after the two articles were
10 published, after they were out on the streets, he is now at,
11 what time, 10:15 a.m. on Sunday, now asking two people who are
12 working on other campaigns to find something to show as
13 evidence of me being involved in setting up the meeting with
14 Barrett and handing him the money.

15 THE COURT: I will allow that answer. Okay.

16 MR. BENDER: I have no objection to that answer.

17 THE COURT: I will allow that answer.

18 BY MR. STEVENS:

19 Q: Now, I'm not gonna go through all the emails. I'm gonna
20 wait till Mr. Wren gets up on the stand. But I want to ask
21 you specifically about another email that's dated May the 27th
22 and that is, it's in the Thirteen range. Yeah, it would be
23 Thirteen-E. Okay. We have that. Now I don't know whether
24 you can see that or not, but again it's the same type of
25 identification. It says email David Wren,

1 Dwren@thesunnews.com to Tim@NikkiHaley.com; you see that?

2 A: I do.

3 Q: All right. Now May 27th would have been between the
4 Sunday first article and the editorial; am I correct, there?

5 A: Yes, with another article that he ran on Tuesday after the
6 Sunday article.

7 Q: Okay. And it says, Tim, I wanted to check back with you
8 and see if there is any way that we can use the emails from
9 Barrett's campaign that seem to show the involvement of Brad
10 Dean and Mark Kelley in raising money for Barrett, now he says
11 and others. Do you know what he's talking about?

12 A: I have no idea what he's talking about there. Again, he's
13 asking for information or claims that he has emails from the
14 Barrett campaign that would show the involvement of Brad Dean
15 and Mark Kelley in raising money. In disclosure, I certainly
16 haven't seen any of those emails and I don't know how they
17 could be produced because I didn't work in raising money for
18 the Barrett campaign or the campaign of others.

19 Q: Okay. It goes on to say -- well, what he's doing is he's
20 asking if he can use the emails.

21 MR. BENDER: Your Honor, I object again to Mr. Stevens
22 testifying.

23 THE COURT: All right. Mr. Stevens, rephrase your
24 question.

25 MR. STEVENS: Okay. I was just -- I wasn't to my

1 question yet, I was just prefacing.

2 THE COURT: You were testifying.

3 BY MR. STEVENS:

4 Q: It says, I can definitely protect the source of the emails
5 but would say something to the effect that they came from the
6 Barrett campaign after the AP started asking questions in
7 October; you see that?

8 A: I see that.

9 Q: He's gonna tell the public that emails came from the
10 Barrett campaign?

11 A: That's what he's saying in the email. He's telling people
12 that he's gonna, he's gonna hide the source, not tell who the
13 source is, but say that it came from the Barrett campaign
14 after the AP started asking questions in October. That's
15 gonna be his, his, his excuse for having the emails to, to
16 basically hide his source or sources.

17 Q: Okay. Then he said, Recent events have overshadowed the
18 campaign funding issue and I'm looking for ways to move the
19 story forward. Do you know what he's talking about?

20 A: I do not have the faintest idea what he's talking about
21 there.

22 Q: It says, Thanks, David Wren, The Sun News and he's got his
23 number. Now, here he is again saying Mark Kelley in raising
24 money for Barrett and others; do you know who he's talking
25 about and others?

1 A: I do not.

2 Q: At any time during all of these reportings, all the
3 reporting that he did to the people of Horry County, did he
4 ever say in any of the articles, I got this information from a
5 Deputy Campaign Manager who had a nervous breakdown and left
6 the Barrett campaign and now is funneling the emails to Tim
7 Pearson, who is the campaign manager for Nikki Haley?

8 A: You mean in full disclosure of ---

9 Q: Yeah.

10 A: --- of what he, where his sources was and his information
11 was?

12 Q: Yes.

13 A: No, he never said that.

14 Q: Was the political campaign between Nikki Haley and Gresham
15 Barrett a hot campaign?

16 A: It was hot enough and I don't think Mr. Barrett really
17 wanted to relive that time, but it was hot enough they ended
18 up in a runoff. It was that close and they ended up in a
19 runoff and eventually Nikki Haley won.

20 Q: Okay. And what -- everybody knows what happens in runoffs
21 and campaigns. Describe whether or not there were accusations
22 running back and forth between the two camps?

23 A: In South Carolina politics, it pretty much isn't a
24 campaign unless there's accusations and mudslinging going on
25 back and forth.

1 Q: Is it important in your view that if you're gonna report
2 the news that if you have a biased source to reveal it to the
3 public?

4 A: I can't answer that it would be -- that you should maybe
5 reveal it to the public, but certainly if you know that your
6 source and your key source for your information is coming from
7 a very biased source, and you still move ahead with it, I have
8 some question as to the validity of the thought process that
9 anybody would go through to do that.

10 Q: Did David Wren ever email you?

11 A: No, sir, not to my knowledge.

12 Q: Your email, was it secret?

13 A: Well, if it was any kind of secret, it certainly isn't
14 now, is it? No, it was not secret.

15 Q: Okay. Would it have been just as easy for Mr. Wren to
16 email you and ask you those questions in writing?

17 A: It would have been.

18 Q: Would you have answered him?

19 A: I don't know.

20 Q: Okay. If he says I'm gonna write an article about you
21 accusing you of handing campaign donations to Gresham Barrett,
22 would you have answered him and told him it wasn't true?

23 A: I might have emailed him back and say you're probably
24 gonna write whatever you want to write because I know your
25 style.

1 Q: Okay.

2 A: But you'd be wrong.

3 Q: Again, would you deny that if he wrote you?

4 A: Would I deny it?

5 Q: Would you deny the fact if he told you he was gonna write

6 that column?

7 A: Yes, I would have denied that.

8 Q: Now, during the deposition of David Wren, did you listen

9 to his testimony?

10 A: I did.

11 Q: Was it under oath?

12 A: It was.

13 Q: All right. Do you recall the questions I asked him on

14 Page 21, Line 14 through 22, Line 16?

15 A: I'm pretty good, Mr. Stevens, but ---

16 MR. STEVENS: I have those on power point, Your Honor.

17 THE COURT: Okay.

18 MR. STEVENS: Any objection?

19 MR. BENDER: No.

20 THE COURT: No objection?

21 MR. BENDER: No objection.

22 THE COURT: All right. Without objection.

23 BY MR. STEVENS:

24 Q: Okay. When this deposition, can you see that?

25 A: Yes, sir, I can.

1 Q: What's the date?
2 A: Continuation of the June 24th, 2013. The date of this one
3 is April 28th, 2014.
4 Q: That's just briefly before this trial, right?
5 A: Yes, sir.
6 Q: It's May the 6th today, right? Correct?
7 A: Yes.
8 Q: Let's go to page 21. Okay. Can you read that or should I
9 read it?
10 A: With my eyes, I think it would be better if you read it.
11 Q: Okay. It says, question, Okay, let me go back then. Out
12 of all the people we talked about and all the people you have
13 listed in your interrogatories, did any of these people tell
14 you that Mark Kelley facilitated or called the meeting,
15 luncheon meeting, where Gresham Barrett was given campaign
16 donations, any of them? His answer, Not that I recall. Do
17 you remember that?
18 A: I do, sir. Yes, sir.
19 Q: Then the next question. Did any of the people we've
20 talked about, were any of your sources, whether we've
21 mentioned or not, tell you that Mark Kelley gave Gresham
22 Barrett the campaign donation? And his answer was, was, No.
23 A: I can answer that, no, sir. He said ---
24 Q: I didn't know he had it blown up? Okay. All right. The
25 next couple of questions, let's see if I've got them blown up

1 here.

2 MS. STEVENS-GRAZIANI: It doesn't work.

3 Q: It doesn't work. Okay. There we go, can you read that?

4 A: Yes, sir. In any of the people we've talked to about any
5 of your sources talk about or any of your sources tell you and
6 when I say tell you, I mean second hand, third hand, hearsay,
7 whatever, that Mark Kelley raised campaign donations for
8 Gresham Barrett?

9 Q: His answer was?

10 A: His answer was, No.

11 Q: Next question?

12 A: Did any of the people we've talked about or any of the
13 people you used as your sources tell you hearsay, whatever,
14 email, telephone, in person, in whatever fashion, that Mark
15 Kelley either touched the envelope, touched the checks in the
16 envelope, that contained the campaign donations or handed the
17 campaign donations to Gresham Barrett?

18 Q: And his answer?

19 A: And he said, No.

20 Q: Has that been his testimony since the very beginning of
21 this lawsuit?

22 A: Yes, sir.

23 Q: Okay. What's his explanation for saying that Brad Dean,
24 along with Chamber lobbyist, Mark Kelley, delivered \$84,000 in
25 campaign donations to Gresham Barrett in June; what is his,

1 what is his explanation?

2 A: His explanation to that was when first asked was that he
3 meant that I was there. He didn't mean at all that I had
4 anything to do with the handing over of the \$84,000 to
5 Congressman Barrett. That was his explanation.

6 Q: That's what he said in 2013 and 2014?

7 A: Yes.

8 Q: Is that what he's saying in his emails back and forth to
9 all the people who he was trying to get evidence on Mark
10 Kelley?

11 A: No, sir, not at all.

12 Q: Was it the same or diametrically opposed to?

13 A: It seems to be exactly the opposite to me.

14 Q: Now, he's talking about along with meaning that you were
15 sitting there, the way he used it?

16 A: Yes, because he said he would have used and.

17 Q: He would have used and?

18 A: And.

19 Q: Okay.

20 A: If he meant that I was actually involved with it. That's
21 what he said.

22 Q: Have you had an opportunity to read some of David Wren's
23 articles and see how he has in the past or presently using the
24 phrase along with?

25 A: I have.

1 Q: And I'll hand you these and ask you if that is some of the
2 articles that he's used along with?

3 MR. BENDER: Your Honor, I'd like to see those if I
4 could.

5 MR. STEVENS: I'm sorry.

6 A: Yes, sir, those are the three that I've seen.

7 BY MR. STEVENS:

8 Q: Okay. We would move to introduce them and show the Jury
9 how he's used them?

10 MR. BENDER: I would like an opportunity to take a look
11 over them.

12 THE COURT: All right. Are there several there, Mr.
13 Bender?

14 MR. BENDER: Yes, sir.

15 THE COURT: Would you like a few moments?

16 MR. BENDER: There are three of them and we'd like a
17 minute.

18 THE COURT: Okay. It's been an hour and a half. Mr.
19 Ropp, let's take the Jury into the jury room and let them have
20 a break.

21 (REPORTER'S NOTE: Jury exits courtroom. 2:55 P.M.)

22 BY THE COURT:

23 THE COURT: All right. We'll be at ease for a few
24 moments.

25 MR. KELLEY: Can I step down, Your Honor?

1 THE COURT: Certainly.

2 MR. KELLEY: Thank you, sir.

3 THE COURT: If you need to refresh yourself, Mr. Kelley,
4 please do.

5 MR. KELLEY: Thanks.

6 (RECESS - 2:55 P.M.)

7 *****OFF THE RECORD*****

8 (On the Record - 2:56 P.M.)

9 THE COURT: All right. We ready to go again? Bring in
10 the Jury. Please be seated.

11 (REPORTER'S NOTE: Jury enters courtroom. 3:19 P.M.)

12 THE COURT: All right. Very well. We have our jurors
13 and our alternates. Mr. Stevens, I believe you were examining
14 the witness.

15 MR. BENDER: I have an objection to these, Your Honor.

16 THE COURT: Very well. Then I'm sorry, send the Jury
17 back out and let me hear it. And Mr. Ropp or Ms. Smith, if
18 you could bring the lights up.

19 (REPORTER'S NOTE: Jury exits courtroom. 3:19 P.M.)

20 THE COURT: Okay. Okay, now they're out.

21 MR. BENDER: These articles were not previously produced
22 and have no relationship to the publications that form the
23 basis of this litigation. So I would ---

24 THE COURT: Let me hear what they say. What do they say?

25 MR. STEVENS: Your Honor, one of the main issues in this

1 case, is Mr. Wren's assertion that the article of May the
2 23rd, which says Brad Dean along with Chamber lobbyist, Mark
3 Kelley, delivered \$84,000 in campaign contributions to Barrett
4 in June. He's maintaining that along with meant, meant that
5 he was just sitting there.

6 THE COURT: I understand.

7 MR. STEVENS: And we are -- want to show that he has
8 written articles using that phrase that shows exactly the
9 opposite and these, these can't take him by surprise because
10 he wrote them.

11 THE COURT: Could I see them, please?

12 MR. STEVENS: Yes, sir.

13 THE COURT: The first one looks like it involves Mark
14 Brunty and some problems he ---

15 MR. STEVENS: But it says, it says -- I had highlighted
16 the -- highlighted and he was saying that he along with ---

17 THE COURT: Wait a minute. Wait a minute. I, I'm, I
18 don't see any -- Brunty along with partner Dennis Dillinger;
19 is that what you're talking about?

20 MR. STEVENS: Yeah, that's it.

21 THE COURT: Okay.

22 MR. STEVENS: Who's named as the Defendant in the
23 lawsuit. So we're showing that when uses the term along with,
24 he's talking about and.

25 THE COURT: You, you're offering these to show that he

1 uses the phrase along with interchangeably with ---

2 MR. STEVENS: With and.

3 THE COURT: --- and.

4 MR. STEVENS: See if he testified that had he meant to
5 accuse Mark Kelley of handing the campaign donations to
6 Gresham Barrett, he would've used the term and.

7 THE COURT: Okay.

8 MR. STEVENS: All right. We're showing through these
9 that he is using along with instead of the word and, and what
10 the meaning of those articles showing that so-and-so along
11 with so-and-so did such-and-such.

12 THE COURT: Who do you offer to authenticate these?
13 Okay.

14 MR. STEVENS: To show ---

15 THE COURT: Let me hear from you, Mr. Bender?

16 MR. BENDER: Number one, Your Honor ---

17 THE COURT: You're offering them merely as an example, as
18 examples of Mr. Wren's use of the word along, the words along
19 with interchangeably with or in areas where he wouldn't or
20 couldn't use and?

21 MR. STEVENS: That's correct.

22 THE COURT: All right, Mr. Bender.

23 MR. BENDER: Number one, I don't think there's any
24 witness competent here today to testify that that's how these
25 were being used. Secondly, we saw these when they were handed

1 to me just before the break. They have not been identified
2 previously as exhibits.

3 THE COURT: All right. Well, what I'm going to do is
4 this. I don't know if they're relevant yet. I don't know if
5 they've been authenticated. I will say this. I would not
6 prohibit Mr. Stevens from using them to impeach your, your
7 client should he take the stand and deny that he uses it. I
8 would let him use it in that context.

9 MR. BENDER: Certainly, and I don't have any objection to
10 that. My objection is introducing it in Plaintiff's case in
11 chief with the Plaintiff attempting to give grammatical
12 evidence.

13 THE COURT: And I would, I would sustain your objection
14 to that extent. Okay.

15 MR. STEVENS: Very well, Your Honor.

16 THE COURT: All right. All right. Let's bring the Jury
17 back in.

18 (REPORTER'S NOTE: Jury enters courtroom. 3:28 P.M.)

19 THE COURT: Mr. Stevens?

20 MR. STEVENS: Yes, sir.

21 Can we mark these for identification?

22 THE COURT: Certainly.

23 MR. STEVENS: Okay. There's just three of them.

24 COURT REPORTER: They're gonna be Eighteen, Nineteen and
25 Twenty for ID.

1 PLAINTIFF'S EXHIBITS EIGHTEEN, NINETEEN AND TWENTY

2 MARKED FOR IDENTIFICATION

3 (REPORTER'S NOTE: Jury enters courtroom. 3:28 P.M.)

4 THE COURT: All right. Now we have all our jurors back.
5 Mr. Stevens, you can proceed.

6 MR. STEVENS: Thank you, Your Honor.

7 BY MR. STEVENS:

8 Q: Mr. Kelley, so the Jury can get a better understanding,
9 can you tell us based upon your understanding of the statute
10 and as a legislator who voted on the Ethics Bill, what can a
11 lobbyist do?

12 A: In regards to a campaign?

13 Q: Yes.

14 A: Just about anything except be involved with the raising of
15 campaign funds. They can manage a campaign, they can consult
16 on a campaign, they can talk to the candidate about how to
17 spend the money, but the trail of a person who wants to donate
18 until that money is received by the candidate, the, a
19 registered lobbyist cannot be involved with that paper trail
20 and the trail that's there that's involved with that. Anything
21 else dealing with a campaign, they can be involved with it.
22 That's the simple fact of what the Legislation has said and he
23 was done, it was done, not just for the lobbyist, it was done
24 for candidates and it was rightfully done so because it was
25 out of control. It was out of control in the State of South

1 Carolina. And there needs to be more fixes and they're
2 working on that right now. I don't agree with money orders.
3 I don't agree -- you know, it's funny and this is how the
4 different areas of the country are. In D.C. a lobbyist that
5 -- I don't lobby in D.C.; I just lobby in the State of South
6 Carolina -- in D.C. a lobbyist can have fundraisers at their
7 office. They can bring Senators and Congressmen in, raise
8 money, give them money, do that, but they can't take corporate
9 checks. In South Carolina, lobbyists can't be involved with
10 the raising of campaign funds, but they can take corporate
11 checks. So most states are different; they all have their
12 different legal twists and turns in what they do. If, if I
13 had, in a perfect world in South Carolina, I would have the
14 legislation that we have in South Carolina and I would do away
15 with corporate checks and just make sure that they were
16 individual checks. That way you would have the paper trail
17 that everybody talks about. But it doesn't matter if it's an
18 LLC. Nobody's ever been charged in this case. It's been five
19 years since these monies have been distributed, not one person
20 has been charged in this case and nobody has been pointed a
21 finger at and said they did something illegal, wrong, except
22 innuendo that was done by this paper. But nobody's done
23 anything wrong -- and the FBI has been here, the IRS has been
24 here, the State Ethics Committee has been here and nobody's
25 been charged with anything. Now, should we clean it up some

1 more; absolutely. But the law is the law as it is today, an
2 LLC no different than C Corp or an S Corp. You could have a C
3 Corp or an S Corp that don't have -- they don't any money.
4 But the principal in an LLC, the General Manager of an LLC
5 account has total control over that LLC account and could put
6 money in, not put money in, run money through that account and
7 do that as a General Manager of the LLC. A corporation, a C
8 Corp and an S Corp are different in that they have
9 stockholders and you have percentages and people have to have
10 votes and do that. In an LLC, the controlling general partner
11 has that control. So, those kind of things when you keep
12 hearing about these LLCs, they're no different than
13 corporations. And a lobbyist, when you hear about lobbyist
14 can't, the other thing that we're hearing and I know you're
15 sick of hearing it, but a lobbyist can't touch an envelope. A
16 lobbyist can touch an envelope but he can't touch an envelope
17 in the trail between the donor of the funds and the recipient
18 of the funds, the candidate. If somebody along that trail
19 handed it -- if I was, let's take it, if I was in Mr. Stevens
20 office and he was getting ready to give a campaign donation to
21 -- I don't want to pick -- Senator Joe Smith and I walked in
22 his office and he said, here, Mark, look at this, I'm gonna
23 give a campaign contributions to Joe Smith and he had an
24 envelope and he handed it to me and I grabbed it and I go
25 that's nice and I had it back to him. That's not a violation.

1 It is a violation if he said Mark, I want to give this to
2 Senator Joe Smith, how about you hand it to him. That's a
3 violation. That's the trail. But touching an envelope just
4 for the sake of touching an envelope -- I just didn't y'all
5 come out of here thinking that a lobbyist can't touch an
6 envelope. He can touch them, he just can't be part of that
7 trail that goes from the actual writing of the donation till
8 it's basically received by the candidate. That's what I
9 wanted to clear up. Thank you.

10 Q: I heard you say something that -- and I think I understood
11 what you were saying. You said that a lobbyist couldn't seek
12 to, you know, raise campaign donations from the individual,
13 but I think you said they could with a corporation. Did you
14 mean the candidate could raise ---

15 A: A corporation can give money. A lobbyist can't give money
16 to any statewide official, House member, Senator. A lobbyist
17 can give money, a State Lobbyist, I can give money to members
18 of County Council in their campaigns.

19 Q: Why is that?

20 A: Because they're outside of the realm of my practice.

21 Q: Okay. You don't lobby in County Council?

22 A: I don't lobby -- the State doesn't recognize people that
23 lobby in the county level or city level. I can give money in
24 a city campaign.

25 Q: Okay. How about in a federal campaign?

1 A: Yes, sir, I can.

2 Q: Okay. So the point of the ethics is that you're
3 registered to lobby with State officials?

4 A: I'm registered to lobby in the General Assembly and
5 statewide officers.

6 Q: Okay. Now, I want to get to your damages. First of all,
7 I want to ask you has this damaged your reputation?

8 A: Yes, it has.

9 Q: Can you tell the Jury how it's damaged your reputation?

10 A: Well, I can tell you that, as you heard from some of the
11 other witnesses here today, the whispers, the way they look at
12 it, you know, the way that we don't get the phone calls we
13 used to get from clients. They used to call wanting to ask
14 for our services. It isn't the same as it was before. You
15 know, so evidently that has something to do with my reputation
16 because we didn't seem to have a problem with that before.

17 Q: You think people who read this stuff and now don't want to
18 deal with you are gonna come to you and say we don't want to
19 deal with you anymore because what had gotten written in the
20 paper?

21 A: No, sir. In fact, as, as you heard from one witness this
22 morning, who testified -- and I, and I heard it in court this
23 morning -- that he had actually somebody that he had worked
24 with, I guess they do timeshare industry business, they were
25 considering to hire me. They never talked to me. I never had

1 a chance to even explain that to them and they went in and
2 hired somebody else. So, so, you know, there effectively I've
3 lost a client for who knows how many years.

4 Q: How has this affected you personally?

5 A: Personally, you know, it's, it's, it's embarrassed me.
6 I'm embarrassed -- I'm embarrassed to be here today. I feel
7 like; you know, that this was the only way that I could see
8 justice done. They basically have convicted me in their
9 court. I needed this court of law for me to have my day. So
10 I'm here, but I'm embarrassed.

11 Q: Mentally, how has this affected you?

12 A: Well, it certainly -- I can tell you I slept about thirty
13 minutes last night and it's -- it affects me mentally because
14 I need to be focused on my family and my job and my clients
15 that I deal with. And I don't need to be focused on these
16 kind of articles and these kind of accusations that he put on
17 me. So, it's been stress.

18 Q: I know it's difficult, but have you seen any examples of
19 the public ridiculing you or scorning you?

20 A: Well, I can tell you ---

21 MR. BENDER: Your Honor, I would object when it calls for
22 hearsay.

23 THE COURT: Well, let me hear what he's gonna respond. I
24 don't know.

25 A: I can tell you that I've had members of the General

1 Assembly who have picked on me mercilessly about these
2 articles and my reputation. And as far as I'm -- you know,
3 after a while, that gets to be kind of harassing and it
4 doesn't seem to go away.

5 BY MR. STEVENS:

6 Q: How about members of the public?

7 A: And, you know, I think if I start saying something about
8 members of the public, my dear friend, Mr. Bender, will jump
9 up there and say it's hearsay, but there's, there's plenty of
10 evidence out there in the public.

11 Q: The news -- Sun News has a internet, right?

12 A: They do.

13 Q: I believe we heard some testimony about, quote/unquote,
14 crap that came into the news.

15 A: That would be Representative Nelson Hardwick and what you
16 see is what you get there. He is that way morning, noon and
17 night. He is who he is, yes.

18 Q: What was he talking about?

19 MR. BENDER: Your Honor, I think he's getting into an
20 issue we discussed before. The Sun News is not the publisher
21 of comments posted on its website. It's a matter of federal
22 law.

23 MR. STEVENS: We're not asking for that, Your Honor.
24 We're asking to show evidence of public scorn and ridicule.

25 THE COURT: And I will allow it to that extent.

1 MR. STEVENS: Okay.

2 BY MR. STEVENS:

3 Q: Without getting into all the comments to the editor, what
4 was the general tone?

5 A: Pretty sarcastic. I mean, if we can get into that, there,
6 there is scorn, harassment. I've been accused of just about
7 everything, that I should be in a jumpsuit, should be in
8 prison, should be, you know, I mean it's scurrilous the things
9 that they've said through the venue that they use.

10 Q: Okay. Did The Sun News change its policy with regards to
11 responses to the articles?

12 A: Since this, twice they have changed their policies.

13 Q: Since they wrote your articles?

14 A: Since these articles came out.

15 Q: They're policing it more?

16 A: Much more.

17 Q: Now, with regards to your -- let me ask you this -- and I
18 hate to get into your personal life but, Was anything going on
19 in your life at the time that this occurred in May?

20 A: I'm trying to get through this. Yes. My brother had a
21 mass in his stomach. The doctors told me he was probably
22 going to die. My wife had breast cancer. She was going
23 through that. We were trying to keep a straight face because
24 my oldest son was getting married at our house and I'd just
25 learned that my partner and friend for many, many years had

1 melanoma; and on top of all that, I had to deal with this.

2 So, yes, sir, in that May. May was an awful tough month for
3 me.

4 Q: And during that time, were you having any -- did you have
5 any time to do the things that David Wren accused you of?

6 A: No, sir.

7 Q: In regards to your lost job that Mr. Clemmons described,
8 do you know what is the normal area of income from timeshare
9 clients?

10 A: I couldn't tell you that because I -- it would've been
11 interesting to talk with them because I don't have a timeshare
12 client and, you know, so we don't. But I can tell you the
13 range for doing yearly contract work for any client can range
14 anywhere from 40,000 to 150, \$160,000 a year per client

15 Q: Does that depend upon their income, what you ---

16 A: It depends upon the amount of work, the issues that they
17 have, the criticalness of the issues and, and really it's a
18 negotiation between their level of funding and ability to pay
19 and the level of need that they have.

20 Q: Now, we've heard Dr. DeCenzo talk about stopping your
21 raises when the articles came out. The raise for you per year
22 was how much?

23 A: The raise was -- now, its \$18,000.

24 Q: How many of years of that did you lose?

25 A: Three years with them.

1 Q: Okay. That would total 54,000?

2 A: Yes, sir.

3 Q: Okay. Now, we didn't talk about living -- cost-of-living
4 increases that are given to State employees of Coastal
5 Carolina. Are you familiar with what the cost-of-living
6 increases were?

7 A: Yes, because I looked into that in 2010, there was no
8 cost-of-living increase. In 2011, Coastal employees got a
9 three percent cost-of-living increase. In 2012, they got
10 another three percent cost-of-living increase and last year
11 they got one percent cost-of-living increase.

12 Q: Okay. Now based upon your, your past history with Coastal
13 Carolina, I think you started at 70,000. Were you getting
14 raises about every year up until 2010?

15 A: Yes, sir.

16 Q: Was that expected to continue?

17 A: I certainly was hoping so. We were, we were certainly
18 working hard for them.

19 Q: Okay. Now, you're -- you have merit reviews at Coastal
20 Carolina, correct?

21 A: I do. I report directly to the President of Coastal
22 Carolina.

23 Q: Does he grade you?

24 A: He does.

25 Q: All right. Have -- has the Coastal Carolina given The Sun

1 News and David Wren's attorney your personnel file?
2 A: I don't know.
3 Q: Okay. Your personnel file would include your merit
4 evaluation by Dr. DeCenzo, right?
5 A: Yes, if he did one that year, sure.
6 Q: Now, the, you got a raise to 99,000 ---
7 A: 99,500.
8 Q: --- was that this year?
9 A: 99,5 that was this year. Well, that -- yes, this contract
10 year and I thanked them for it.
11 Q: Did, did you lose -- and I may have asked this already but
12 -- did you lose any clients after the articles by Wren in The
13 Sun News?
14 A: I have.
15 Q: Okay. How many?
16 A: In 2010, I had thirteen clients. I now have ten clients.
17 Q: Three?
18 A: Three.
19 Q: Did they tell you why they were no longer wanting you as
20 their lobbyist?
21 A: Again, clients usually never tell you. You run on yearly
22 contracts and at the end of the contract they decide whether
23 they're gonna renew the contract, not renew the contract, move
24 on to somebody else or not use a lobbying firm. So, they make
25 that decision. They don't talk to us about it. They don't

1 discuss it with us. If somebody wanted to get rid my company,
2 KMSO, as their lobbying firm, they simply would tell us
3 they're not renewing the contract. That's all we would know
4 about it.

5 Q: Where, where, were you and your business increasing in
6 clients prior to this?

7 A: We were increasing in clients and also increasing in
8 revenue. We were, we were looking at the client base and
9 because we were successful in building the client base, we
10 were able to also negotiate better contractual arrangements
11 with clients.

12 Q: After these articles, were you able to negotiate as you
13 had before?

14 A: No, we were negotiating for less money.

15 Q: That's all I have.

16 THE COURT: All right. Mr. Bender.

17 MR. STEVENS: Excuse me just a minute. We would move at this
18 time to introduce the Defendant Wren's two depositions.

19 MR. BENDER: No objection.

20 THE COURT: All right. Without objection.

21 I have before me a sealed deposition of David Wren taken
22 Monday, July the 24th, 2013 at 11:31. It was taken at the
23 office of the Stevens Law Firm on Broad Street in Loris, South
24 Carolina and the deposition was taken by Prestige Court
25 Reporting. Please mark that. Exhibits are attached. I also

1 have a deposition, a continuation taken April the 28th, 2014.
2 It was taken David Wren again at the Stevens Law Firm on Broad
3 Street in Loris April 28th, 2014 by Prestige Court Reporting.
4 It is sealed and I will open it here.

5 MR. STEVENS: We are not going into the deposition, Your
6 Honor, just going to ---

7 THE COURT: All right.

8 MR. STEVENS: --- ask a couple of questions.

9 PLAINTIFF'S EXHIBIT NUMBER TWENTY-ONE AND TWENTY-TWO
10 ADMITTED INTO EVIDENCE

11 BY MR. STEVENS:

12 Q: The email, Number Seventeen, how did you get notice of the
13 results of the straw poll?

14 A: Luke Byars sent me this on Sunday at almost 2:10 in the
15 afternoon, 14:09:45, so that would be almost 2:10 in the
16 afternoon.

17 Q: When you sent that to your friends, what was the purpose
18 of it?

19 A: The purpose I sent it to them was strictly for
20 information. I was so excited that Gresham won that straw
21 poll. We'd been talking to friends of ours that were
22 supporters of his and doing that and they were, you know,
23 anxious to hear any word about how Gresham was doing on the
24 campaign trail. The Silver Elephant Banquet is the big
25 Republican Banquet that's done every two years in Columbia.

1 It's the, basically the Who-Who of the Republican Party and
2 for him to win, that was great news. Great news.

3 Q: Were you trying to solicit donations?

4 A: No, sir, and, you know, the Jury certainly is -- can
5 believe me or not believe me, but I had no idea there was a
6 line on there dealing with contributions. I was so excited
7 about this I couldn't wait to tell my friends. Everyone on
8 here, everyone on this list of emails were friends of mine and
9 supporters of Gresham Barrett.

10 Q: Thank you.

11 THE COURT: All right. Mr. Bender?

12 MR. BENDER: If it please the Court, Your Honor.

13 CROSS EXAMINATION OF MARK KELLEY BY MR. BENDER:

14 Q: As we've come to learn -- excuse me -- as we've come to
15 learn, your email address is Repmkelley@aol.com?

16 A: One of my email addresses.

17 Q: And that in fact is the email address you used on your
18 website for your real estate business?

19 A: That would be -- probably, I've been using that address
20 for twenty-some years.

21 Q: Even though you're no longer a representative?

22 A: I didn't know you had to be a representative, sir, to be
23 able to use Repmkelley as an email address.

24 Q: Where's that Exhibit Seventeen? Now, is it your testimony
25 that you were so excited to talk about the results of the

1 straw poll that you didn't notice that there was a fund
2 raising solicitation in Exhibit Seventeen?

3 A: That is my testimony. I did not notice it.

4 Q: Even though you had to read past that to find the results
5 of the straw poll?

6 A: I'm not sure even read the results of the straw poll. I
7 seen the front of it; it said right there in big bold letters
8 on the top.

9 Q: You were in the General Assembly when Lost Trust happened;
10 is that correct?

11 A: No.

12 Q: Shortly thereafter?

13 A: Right, shortly thereafter.

14 Q: And you were involved in lobbyist and office holder and
15 candidate ethics legislation; is that correct?

16 A: I was.

17 Q: And is it fair to say there is a suspicion of lobbyists in
18 the general public?

19 A: Probably suspicion of candidates too.

20 Q: I was gonna get to that?

21 A: Yes, sir. Yes, sir.

22 Q: And there is a suspicion of money in politics, isn't
23 there?

24 A: Yes.

25 Q: And do you know Shep Guyton?

1 A: I do.

2 Q: Now, it's my understanding that Shep Guyton was involved
3 in getting these sequentially numbered cashier's checks from a
4 bank that came to candidates including Gresham Barrett; is
5 that your understanding?

6 A: That's my understanding from reading The Sun News
7 articles, yes.

8 Q: Have you ever talked to Shep Guyton about that?

9 A: No, sir.

10 Q: Now you said earlier you didn't know anybody involved in
11 the Chamber and in the fund raising, but in fact, you know
12 Shep Guyton?

13 A: I think the question was did I know anybody that was
14 associated with the LLCs. I couldn't match up Shep Guyton
15 with any of the LLCs. I have no idea which LLCs he's involved
16 in or not involved in.

17 Q: And the newspaper reported that he was the registered
18 agent for several of those, didn't it?

19 A: Yeah, probably did.

20 Q: And including one that had filed for bankruptcy?

21 A: Yes, I remember that article. That's correct.

22 Q: And one LLC that had lost its charter for failure to pay
23 taxes?

24 A: Yes, sir, I guess so. I don't remember that, but I
25 believe you. I know you wouldn't lie to me.

1 Q: That is absolutely true. Now, I was impressed by your
2 research into the dictionary; did you do it online?

3 A: Yep.

4 Q: Or did you do it the old fashioned way?

5 A: Yep. I can do inline and I can do it the old fashioned
6 way.

7 Q: Did you happen to look at any sites that dealt with
8 grammar?

9 A: No, I was looking at the dictionary and I was looking at
10 the Thesaurus and, when I seen that enough times, there was,
11 along with was the first citing after the explanation of and;
12 that pretty well satisfied me. As you can tell, I'm not an
13 English major. I know you are.

14 Q: No, I'm not, actually.

15 A: Oh, I thought you were.

16 Q: No.

17 A: I'm sorry.

18 Q: That's all right. I have a step-father who is one. But
19 let's look at this site right here. If you had looked into
20 grammar, you might've found this site from the University of
21 Wisconsin, The Writer's Handbook.

22 A: Wow.

23 Q: Dealing with subject verb agreement; do you know what
24 subject verb agreement is?

25 A: No, sir.

1 Q: All right. This is talking about when a subject has to
2 agree with the verb in terms of number. And it talks about
3 when the subjects are joined by and, and just below that it
4 has a warning; what does that warning say?

5 A: I lost it. I'm sorry.

6 Q: Right here. When the subject are joined by and, what's
7 the warning below that? It says be aware, be aware ---

8 A: Be aware of phrases such as in addition to as well as and
9 along with do not mean the same thing as and when inserted
10 between the subject and the verb. These phrases do not change
11 the number of the subject. Both Tom and Jane had English 106.
12 Tom, as well as Jane, has an English 207 paper due. And
13 they're saying here that doesn't mean the same thing; is that
14 what they're saying?

15 Q: That's what that says.

16 A: I guess I should have went to this .

17 Q: Well you've been trying to practice grammar on us since we
18 got here, so let's, let's talk about this. Now, you did say
19 that grammar was not your strong point; isn't that correct?

20 A: It is not my strong point. It's only my interpretation of
21 what I read.

22 Q: All right. Well, let's, let's do some illustration here.
23 What does that say?

24 A: I guess it could say Dick runs up the hill, but I would
25 say that you need a little work on the K and the H.

1 Q: All right. If it will help you, I'll do that right now.

2 A: Thank you, sir.

3 MR. STEVENS: Your Honor, I appreciate the English test
4 that Mr. Bender wants to give us all, but I don't know what
5 he's handing the witness and I haven't been provided ---

6 MR. BENDER: I'll be happy to show it, excuse me.

7 MR. STEVENS: May I -- is this your writing?

8 MR. BENDER: You bet.

9 MR. STEVENS: Okay. So, we're back to Dick and Jane.
10 Here you go.

11 BY MR. BENDER:

12 Q: What's the subject there? Dick?

13 A: Dick or hill.

14 Q: What is the verb?

15 A: Runs.

16 Q: All right. Is runs what you use with a singular subject?
17 How about this? Do you see a difference here?

18 A: Dick and Jane run up the hill.

19 Q: All right. Different verb, isn't it? Because it's ---

20 A: Oh, because it's run instead of runs.

21 Q: That's right. It's a plural, right, because the subject
22 Dick and Jane is plural.

23 A: Okay.

24 Q: How about this?

25 A: Dick, along with Jane, runs up the hill.

1 Q: All right. That verb singular or plural?

2 A: Well, it's got to be singular if you tell me runs on this
3 one is, then runs on this one must be singular.

4 Q: So, along with does not make the subject plural, does it?
5 And in the context in this exhibit, Exhibit Two, does not make
6 the subject plural, does it?

7 A: It does to me in Horry County.

8 Q: Let me show you a couple of emails here. Is this an email
9 you sent?

10 A: It looks like an email that I sent. You want me to look
11 at the second page?

12 Q: Sure.

13 A: Yeah, that looks like one dealing with tax ---

14 Q: Who is Cynthia Ellsberry is a friend of mine and also the
15 Superintendent of Horry County Schools.

16 Q: And you are the lobbyist for Horry County Schools; is that
17 correct?

18 A: I am.

19 Q: In addition to being the lobbyist for Coastal Carolina?

20 A: I am.

21 MR. BENDER: Okay. Let's mark this please, Defendant's
22 One.

23 DEFENDANT'S EXHIBIT NUMBER ONE

24 MARKED FOR IDENTIFICATION

25 Q: Did you get a response to your email that was Defendant's

1 One?

2 A: Can I see One again, so I can match them up?

3 Q: Sure.

4 A: This is back in 2010. So, Saturday, January 9th, or
5 Sunday, January 10th.

6 THE COURT: The Jury is having difficulty hearing.

7 A: I'm sorry, I apologize.

8 MR. BENDER: I don't know that he's answered, Your Honor.

9 BY MR. BENDER:

10 Q: All right.

11 A: I would, I would say that would be a response. One of the
12 responses there. It looks like that I just realized that
13 Jeff's address, when I respond to it, it comes back Cindy.
14 Thanks for the corrections. Spelling -- I will correct Jeff's
15 address when he responds. Mark. Okay.

16 MR. BENDER: Let's make this second one Exhibit Two.

17 DEFENDANT'S EXHIBIT NUMBER TWO

18 MARKED FOR IDENTIFICATION

19 Q: Now your response just -- after just got back in town,
20 what is your response to this email you got back from the
21 School District?

22 A: My response was, Just got back in town. Thanks for the
23 correction. Spelling and grammar are some of my weak points.
24 I will correct Jeff's address when he responds. Mark. That's
25 true.

1 Q: Now, you had a partner, Will McCain; is that correct?

2 A: That's correct.

3 Q: And Will had been a legislator and was a highly regarded
4 lobbyist; is that correct?

5 A: Yes, sir.

6 Q: And were any of the clients that you claim to have lost
7 Will McCain clients?

8 A: Some were clients of Will and mine together; some were
9 clients that Will and Angela's; none of them were Will's
10 clients by himself, no.

11 Q: So, do you have any way to apportion your loss of clients
12 between any cost and Will McCain's death?

13 A: I know at the time of Will McCain's passing that we sent a
14 letter out to all of our clients expressing that and asking
15 them if they had any problem with Angela and I continuing on
16 with the company with them.

17 Q: Through the contract year?

18 A: Through the contract year and none of them responded back
19 negatively.

20 Q: And some of those did not renew the next year?

21 A: Some did not renew. I don't have them all in front of me
22 now.

23 Q: Now, in your -- you talked about your raise. Now, I
24 thought I understood Dr. DeCenzo to say that when you got that
25 18.6 percent raise in this most recent contract, that that

1 made up for the three years of merit increase he had intended
2 to give you previously. Are you saying he only gave you one-
3 third?

4 A: I'm saying that in my understanding of what he said to me
5 was that they could do it in thirds, but they're -- they did
6 not give me any pay increase, so they were giving me 18, the
7 whatever, the difference was between 83,500 or 83,793.

8 Q: It was 18.6 percent is \$15,300 ---

9 A: Right.

10 Q: --- \$350. And the biggest merit increase you had gotten
11 any year before that was \$3500?

12 A: From that client, yes, sir.

13 Q: Who is Dr. Ronald Ingle?

14 A: Dr. Ronald Ingle was the Chancellor and then First
15 President of Coastal Carolina when it went independent from
16 South Carolina.

17 Q: Okay. Take a look at this document. Is that an email you
18 sent to Dr. Ronald Ingle?

19 A: Yes, it is.

20 MR. BENDER: I'd like to mark this as Defendant's Exhibit
21 Three.

22 DEFENDANT'S EXHIBIT NUMBER THREE

23 MARKED FOR IDENTIFICATION

24 MR. BENDER: I'm having as much fun with this technology
25 as Mr. Stevens has had with is.

1 MR. STEVENS: I beg your pardon?

2 MR. BENDER: I said I'm having as much fun with this
3 technology as you had with yours. Well, I thought I'd blew it
4 up, but I must have missed that.

5 BY MR. BENDER:

6 Q: What is a contract lobbyist?

7 A: A contract lobbyist is somebody that works for an agency
8 or for a client under a contract; basically a contract between
9 the lobbying firm and the client.

10 Q: Now, in 2004, 2005 fiscal year, the Governor wanted to
11 eliminate contract lobbyist money for state agencies; is that
12 correct?

13 A: Yes, he wanted to take it out of the state agencies any
14 funding that was used for them to have anybody to be in
15 Columbia to respond to the General Assembly.

16 Q: All right. Were you a contract lobbyist in 2004, 2005?

17 A: I think that would be correct.

18 Q: And what is the import of this email dated Tuesday, July
19 20th, 2004 to Dr. Ronald Ingle?

20 A: It just says basically that the Governor put these
21 reductions into, into, into its executive budget. Remember
22 the executive budget is a guideline. Budget in the State of
23 South Carolina must originate in the House. So, it is a
24 guideline as to the Governor's thoughts about what he thinks.
25 So, the House put in the \$60,000 line reduction for CCU.

1 Q: Excuse me. CCU is Coastal?

2 A: I'm sorry, Coastal Carolina University and other amounts
3 for other schools and agencies that use contract lobbyist by
4 the amount of the contract. But the House does not put in the
5 proviso that directs the reduction. This is so -- so as not
6 to create a fight on the floor of the House over this issue.
7 So, in other words, they reduced Coastal Carolina by \$60,000
8 of revenue that the State gave Coastal Carolina University,
9 but they didn't put the language in there that said basically
10 because of contract lobbyists. So, then the Senate passed the
11 identical lack of language in their version. They leave the
12 line reduction of 60,000, but an increase for the overall
13 budget for CCU, Coastal Carolina University, of \$500,000.
14 This is more than any other university received. Now we
15 worked on that. We knew the 60,000 there, but as you heard
16 President DeCenzo say earlier, Coastal Carolina is the lowest
17 funded -- state funded university in the State of South
18 Carolina. So, for us to get that kind of half a million
19 dollar increase in our state budget, we decided to kinda stay
20 quiet on the 60,000 they were taking because we netted out of
21 it basically \$440,000 for that year.

22 Q: And you're bragging about that in the line of \$500,000 to
23 CCU?

24 A: Not bad work for contract lobbyist. Wonder what the other
25 government liaison people were doing?

1 Q: Are you saying I'm better than they are?

2 A: I'm saying that at that particular situation on that
3 particular year dealing with the other universities, we slid
4 ahead a little bit only because we deserved it, only because
5 we are still the lowest funded and we were still the lowest
6 funded even with that. So, we were joking back and forth and
7 basically saying wonder what the other government liaison were
8 doing.

9 Q: That's not your title, isn't it, government liaison?

10 A: That's my title at Coastal as far as I'm recognized at
11 Coastal. As far as I'm recognized at the Ethics Commission,
12 I'm a lobbyist.

13 Q: And you're registered?

14 A: And I'm registered.

15 Q: That's subject to all the restrictions on lobbyist?

16 A: That's correct.

17 Q: Nothing further, Your Honor.

18 MR. STEVENS: Your Honor, we would, since he has educated
19 us on Run Dick run, run, run, run. I'd like to put those
20 articles back in to show the Jury how David Wren uses the
21 phrase along with. I think he has opened the door.

22 THE COURT: Well, not at this point. Thank you.

23 MR. STEVENS: Okay. Well, then I don't have anything
24 else.

25 THE COURT: You may step down, Mr. Kelley, thank you.

1 MR. KELLEY: Thank you, Your Honor.

2 MR. STEVENS: Your Honor, we would at this time call Mr.
3 William Lee.

4 THE COURT: Okay.

5 CLERK: Raise your right hand ---

6 THE COURT: Ms. Smith, one moment please.

7 BY THE COURT:

8 THE COURT: Ladies and gentlemen of the Jury, we have
9 reached, after conferring with the attorneys at the point in
10 this trial where I was gonna have to send you out for a
11 substantial period of time, bring you back and begin a witness
12 that might be substantially long witness. So. I'm going to
13 continue with matters that I have to take up in this trial
14 this afternoon, but I'm going to send you home. Okay? I'd
15 ask you to be back in your jury room at 9:30 in the morning
16 and we'll continue. The trial's gonna continue but it's gonna
17 continue with matters the Court has to take up with the
18 attorneys. Okay. So, you're free to go for the afternoon.
19 Please again, don't do any research on your own, don't post
20 any Facebook or social media comments about witnesses or the
21 trial of this case, don't discuss it with anyone, we will try
22 to finish up the testimony tomorrow and, and resolve this
23 matter. But I ask you please bear with us and refrain from
24 any contact with anyone who wants to speak to you about this
25 case or doing any internet research or posting anything about

1 this case. Thank you very much.

2 Bobby, if you would, take them back to their, the Jury
3 room and let them collect their things and what do we want in
4 the morning?

5 JUROR 150: I think we're up for biscuits again, sounds
6 good. Thank you, by the way.

7 THE COURT: Very well, Bobby. Bobby, if you would do the
8 same thing you did this morning. Okay?

9 BAILIFF: Yes, sir.

10 (REPORTER'S NOTE: Jury exits courtroom. 4:18 P.M. The
11 following takes place outside the presence of the Jury.)

12 All right, Ms. Smith, you can swear him.

13 CLERK: Please raise your right hand and place your left
14 hand on the Bible.

15 WILLIAM EYRE LEE, HAVING BEEN SWORN

16 TESTIFIES AS FOLLOWS:

17 CLERK: Have a seat, please, sir.

18 THE COURT: All right. Gentlemen?

19 CLERK: State your name for the Court, please, sir?

20 MR. LEE: William E. Lee.

21 THE COURT: Yes, sir, go ahead. Go ahead.

22 DIRECT EXAMINATION OF WILLIAM EYRE LEE BY MR. STEVENS:

23 Q: Mr. Lee, would you state your full name, please, sir?

24 A: William E. Lee.

25 Q: Spell your middle name?

- 1 A: Eyre. Its spelled E-Y-R-E.
- 2 Q: Okay. And what is your occupation?
- 3 A: I'm a professor at the Grady College of Journalism and
- 4 Mass Communication at the University of Georgia.
- 5 Q: Okay. And how old are you now?
- 6 A: I am sixty-four.
- 7 Q: And where do you live?
- 8 A: I live in Athens, Georgia.
- 9 Q: Okay. How long have you been a professor there at the
- 10 Grady College of Journalism and Mass Communication?
- 11 A: I've been on the faculty since 1977. I've been a full
- 12 professor since 1989.
- 13 Q: Okay. Could you give the Court the benefit of your
- 14 educational background?
- 15 A: I have a Bachelor's Degree from San Jose State University
- 16 in broadcasting, a Master's Degree in telecommunications from
- 17 Michigan State University and a PhD in Mass Communication from
- 18 the University of Wisconsin in Madison.
- 19 Q: Do you have any teaching and research appointments?
- 20 A: Yes, as part of my position, I am required to produce
- 21 research. I also am a co-author of a textbook that's now in
- 22 its ninth edition and I also teach courses.
- 23 Q: Is this the book, Law of Public Communication Ninth
- 24 Edition by Ken R. Middleton and William E. Lee; that's you?
- 25 A: Yes, it is.

1 Q: Okay. And do you write in this book about the subject of
2 libel?

3 A: Yes.

4 Q: Do you, during the period of your, have you in the period
5 of your occupation, trained investigative news reporters?

6 A: Yes, I have.

7 Q: How often do you do that?

8 A: Well, on a regular basis at Grady, but if I'm
9 understanding your question correctly, I also do consulting
10 with media firms to train their staff members.

11 Q: Okay. When you say media firms, who are you talking
12 about?

13 A: Companies like ---

14 THE COURT: Is it the full range of the media?

15 A: Yes.

16 THE COURT: Newspapers ---

17 A: Newspapers, broadcasting, cable, internet.

18 THE COURT: Thank you.

19 BY MR. STEVENS:

20 Q: How long have you been doing that?

21 A: Since the 1970's.

22 Q: Over forty years?

23 A: Well, late 70's.

24 Q: Late 70's. Getting toward forty years?

25 A: Yes.

1 Q: Now, I'm looking at your resume and your research
2 publications cover approximately one -- three and a half
3 pages?

4 A: Yes.

5 Q: Okay. You've written research publications, the first
6 part of it, are these research publications?

7 A: Yes.

8 Q: Okay. And the books you've written are the editions of
9 the Law of Public Communication?

10 A: Yes.

11 Q: It was published in every year since 2002 right on up
12 through 2013?

13 A: I had a co-author that left the book and I came on to the
14 book and so the book had existed for about ten or thirteen
15 years prior to my joining it, but I have been on the book
16 since 2002, I believe.

17 Q: Okay. And have you written chapters within books?

18 A: Yes.

19 Q: Such as Journalist Privilege?

20 A: Yes.

21 Q: The Priestly Class?

22 A: Yes.

23 Q: Modernizing the Law of Open-Air Speech?

24 A: Yes.

25 Q: Have you written in encyclopedias?

- 1 A: Yes.
- 2 Q: What, what is that?
- 3 A: I'm sorry, I'm drawing a blank of the title. I think it's
- 4 something like the Encyclopedia of American Civil Liberties.
- 5 Q: Okay.
- 6 A: Encyclopedia of American Civil Liberties, yes.
- 7 Q: Okay.
- 8 A: I have two entries in that.
- 9 Q: As I understand from your resume, you have delivered over
- 10 thirty papers and/or presentations in conferences sponsored by
- 11 groups including the Association of Education in Journalism
- 12 and Mass Communication, National Communication Association,
- 13 Annenburg Washington Program, Northwestern University, Quello
- 14 Center for Telecommunication, Management and Law at Michigan
- 15 State University, Telecommunication Policy Research
- 16 Conference, Magnus Institute, and so on and so on.
- 17 A: That's correct.
- 18 Q: You've been doing that for how long?
- 19 A: Ever since I joined the faculty at PGA.
- 20 Q: All right. Have you also consulted with other types of
- 21 businesses other than the media?
- 22 A: With law firms and with public policy organizations.
- 23 Q: All right. You have consulted law firms including
- 24 Rosenman & Colin in New York?
- 25 A: Yes.

- 1 Q: Robinson, Silverman, Pearce and so forth in New York;
2 Foran & Schultz in Chicago?
3 A: Yes.
4 Q: Mayer, Brown & Platt in Chicago?
5 A: Yes.
6 Q: Steal, Hector, Davis in Miami, Florida?
7 A: Yes.
8 Q: And Powell, Goldstein, Frazer & Murphy in Atlanta,
9 Georgia?
10 A: Yes..
11 Q: Now, have you been retained in the past to testify with
12 regards to lawsuits dealing with defamation?
13 A: Yes.
14 Q: And have you been qualified in the courts that you been
15 retained?
16 A: Yes.
17 Q: In what courts have you been retained and in what courts
18 have you been qualified by the sitting judge?
19 A: Are you just asking about defamation or are you talking
20 about in mass media practice?
21 Q: Mass media practice?
22 A: Okay. I have been qualified as an expert in the United
23 States District Court for the Southern District of New York,
24 which sits in Manhattan; the United States District Court for
25 the Northern District of Illinois, which sits in Chicago; the

1 United States District Court for the Northern District of
2 California, which sits in Sacramento; a District Court in
3 Minnesota, which sits in St. Paul; and a District Court, which
4 sits in Kansas City, Missouri. At the State level, I've
5 qualified I believe in four cases in the State of Georgia.
6 Q: Have you ever been retained in the State of South
7 Carolina?
8 A: Yes.
9 Q: And was the case you were retained in involving a
10 defamation case?
11 A: It was.
12 Q: And who is the attorney on the other side?
13 A: Mr. Bender.
14 Q: And did that case get to Court?
15 A: No.
16 Q: What happened?
17 A: I believe it was settled.
18 Q: Newspaper paid it?
19 A: I'm not aware of the, of the settlement.
20 Q: Okay. It never got to Court?
21 A: That's my understanding.
22 Q: The Court's in South Carolina haven't had the opportunity
23 to qualify you yet?
24 A: That's correct.
25 Q: Okay. So, am I correct in that you have been -- served as

1 an expert in about twenty-eight cases?

2 A: Yes.

3 Q: Okay.

4 THE COURT: Mr. Stevens, would you inquire as to how he
5 was qualified, in what field?

6 BY MR. STEVENS:

7 Q: In what fields were you qualified; give us all them?

8 A: Well, the general thing would be mass media practice, but
9 several of the cases ---

10 THE COURT: What does that entail?

11 A: That would entail the ---

12 THE COURT: I'm just trying to shorten this up if you ---

13 A: That would entail the standards employed by media
14 organizations and some of the cases involved government
15 regulations and my testimony had to do with how that
16 government regulation would affect media practice. These
17 would be challenges for example by cable companies or
18 telephone companies to government restrictions on entry into
19 the market or once a company had gotten into the market, the
20 regulation the government imposed and how that would affect
21 the operation of the journalistic side of the organization.

22 Other cases have to do with, again, defamation and the
23 standards that were being employed by these organizations in
24 gathering, evaluating and publishing information.

25 BY MR. STEVENS:

1 Q: So, that included investigative reporting?

2 A: Yes.

3 Q: Is mass communication, does that include ---

4 THE COURT: Let me -- is that covered in your textbook,
5 as well, the investigative standards?

6 A: Yes, sir.

7 THE COURT: And is that text used -- I'll refer to it as
8 text because Mr. Stevens did -- is it used at any university,
9 college; how, it's called a text, but how, where is it used as
10 a text?

11 A: It's used as a textbook at over one hundred colleges and
12 universities in the United States. It's now in its ninth
13 edition and it's rare for a textbook to get into a second
14 edition. The attrition is pretty high. So, for it to get
15 into the ninth edition is a testament to its adoption at a
16 range of colleges and universities.

17 THE COURT: Thank you. Go ahead.

18 BY MR. STEVENS:

19 Q: All right. You also have provided service to professional
20 and public organizations, have you not?

21 A: Yes.

22 Q: Such as member of the First Amendment Task Force?

23 A: Yes.

24 Q: That deals with the issue of defamation, does it not?

25 A: That organization, as I recall, really dealt with,

1 actually you're taking me back to the 80s.

2 Q: I'm just looking at all the professional organizations.
3 Members of the Advisory Board of First Amendment Center for
4 New Media, Washington, D.C.; Manuscript Reviewer for the
5 Journalism Monographs, Journal of Broadcasting and Electronic
6 Media, Communication Law and Policy and AEJMC Law. What's
7 that stand for?

8 A: That's the Association of Education and Journalism and
9 Mass Communication.

10 Q: And then a symposia, member of planning committee, Media
11 and Law Round Table sponsored by the American Bar Association
12 and the University of Georgia; that was in '95?

13 A: Yes.

14 Q: Now, do you also deal with electronic media where the
15 newspapers have now gone into the twentieth century, like my
16 daughter's trying to get me to do, where they print their
17 articles -- they print their articles online after it comes
18 out in the newspaper or maybe before?

19 A: That's correct.

20 Q: With regards, and we've talked a little bit about comments
21 by the public to news articles. Where the newspaper allows
22 them to come in to make comments so everybody can see it; do
23 you deal with that?

24 A: Yes.

25 Q: Okay. And do you, do you teach in that area?

1 A: Yes.

2 Q: Okay. Is that one way that a person would be able to see
3 or understand how the public understood the article?

4 A: I believe so.

5 Q: Pretty close to it?

6 A: I think so.

7 Q: Okay. Now, you have several areas of University
8 Governance; what is that?

9 A: Well, part of our responsibility as faculty members is we
10 have to help run the university. So, we serve on committees.
11 I've served on committees relating to the searches for
12 administrative officers and faculty members. I've served on
13 committees that did things like wrote the University Statutes
14 and Bylaws, consider appeals and Motion in Tenure decisions,
15 et cetera.

16 Q: Do you design and review the curriculum for journalism
17 schools?

18 A: Yes.

19 Q: Have you obtained any grants, fellowships or honors?

20 A: Yes.

21 Q: I'm not gonna make you go through all of that, but suffice
22 it to say that in your resume -- I'm looking at four pages of
23 grants, fellowships and honors; is that about right?

24 A: I'll take your word for it.

25 Q: Okay. Does this resume accurately reflect your background

1 in the area you're gonna testify to?

2 A: I don't know if that's up to date, but everything you've
3 said so far has been accurate.

4 MR. STEVENS: Okay. We would move to introduce it?

5 MR. BENDER: I'd like an opportunity -- I don't see the
6 reason ---

7 THE COURT: As a Court's Exhibit for the purposes of this
8 hearing, I would admit it. Okay. Perhaps later, we can
9 revisit it, but for the purposes of this hearing it's admitted
10 as a Court's Exhibit.

11 COURT'S EXHIBIT NUMBER ONE

12 ADMITTED INTO EVIDENCE

13 BY MR. STEVENS:

14 Q: With regards to your expected testimony so His Honor will
15 be able to make a correct ruling, what is the area you intend
16 to testify to?

17 A: The testimony would focus on whether The Sun News, David
18 Wren and the editor acted in accordance with standards that
19 would be followed by a responsible publisher.

20 Q: Would that include reporting on crimes?

21 A: Yes.

22 Q: Is that an area which -- is that an area which a reporter
23 or a publisher or an editor needs to be particularly careful
24 of?

25 A: Absolutely.

1 Q: Why is that?

2 A: Because imprecision in crime reporting leads to
3 proceedings like this.

4 Q: Now, are you going to be giving your opinion with regards
5 to a reporter's -- the necessary requirements of a reporter to
6 be aware of his sources and verifying his sources?

7 A: Yes.

8 Q: Okay. And will you be giving your opinion based upon your
9 review of emails and the timeline surrounding the emails as it
10 related to the timeline of the articles as to whether or not
11 the news reporter knew or should have known that the reporting
12 was false?

13 A: Yes.

14 Q: Have I missed anything?

15 A: I don't believe so.

16 Q: Huh?

17 A: I don't believe so. You've been thorough.

18 Q: Okay.

19 THE COURT: Mr. Bender, your witness.

20 MR. BENDER: Thank you, Your Honor.

21 EXAMINATION OF WILLIAM EYRE LEE BY MR. BENDER:

22 Q: Dr. Lee, good to see you again.

23 A: Thank you.

24 Q: So that you're not spreading any false tales along with
25 Mr. Stevens, the Plaintiff quit in that other case after your

1 deposition.

2 A: That's not what I was told by the attorney who hired me.

3 Q: You lawyer didn't tell the truth. Nobody got paid. The
4 doctor quit. As I understand ---

5 MR. STEVENS: Could you ---

6 Q: You have an outstanding academic career, there's no
7 question about that.

8 MR. STEVENS: I can't hear what you're saying, Jay.

9 THE COURT: Speak up. Well, you're deaf anyway, Mr.
10 Stevens. I've been talking to you all week.

11 BY MR. BENDER:

12 Q: How's this? That's better? You have an excellent
13 academic reputation. You have a magnificent CV. The last
14 time you were in the newspaper newsroom working was about
15 1964, wasn't it?

16 A: No, that's incorrect.

17 Q: When was the last time you were in a newsroom working as a
18 reporter?

19 A: In 1968, I wrote for my college newspaper, because of the
20 material I wrote there I was spotted by the publisher of a
21 magazine and then worked in that magazine from '69 to '70.

22 Q: I added four years to your age. I didn't mean to do that.

23 A: I hear you.

24 Q: So, with respect a newspaper, you worked on your college
25 newspaper I think for one semester in 1969; is that correct,

1 '68 or '69?

2 A: '68 and through '69.

3 Q: Now, as I understood what you said you would testify to is
4 whether The Sun News acted in accordance with standards a
5 responsible news organization would follow; did I get that
6 down correctly?

7 A: Yes.

8 Q: And you were asked if you would testify as to whether or
9 not The Sun News knew or should have known its reporting was
10 false?

11 A: Yes.

12 Q: You have not been in a position to evaluate David Wren's
13 state of mind with respect to any of the publications, have
14 you?

15 A: Actually, there are emails and portions in his deposition
16 in which he talks about knowledge of certain things, which are
17 not true.

18 Q: But none of those were published. We're not talking about
19 those emails in this litigation. We're talking about what was
20 actually published; is that correct?

21 A: Those emails were published in the sense that they were
22 communicated to someone other than Mr. Kelley.

23 Q: And they're not the basis of this lawsuit?

24 A: That's not a fact I'm aware of.

25 Q: Have you seen the pleadings in this case?

1 A: I have not.

2 Q: And knew or should've known, now that's not the actual
3 malice standard, is it?

4 A: You're incorrect. Should've known is an important part of
5 reckless disregard of the truth.

6 Q: Well, let's ---

7 A: Please don't interrupt me. Where a source is
8 questionable, where the information has been acquired from --
9 in a questionable way, where there is inherent improbability
10 to the charge, a reporter's claim I didn't think it was false
11 cuts no mustard.

12 Q: Oh, I agreed entirely with that.

13 A: So, the answer is should've known is an important part of
14 the reckless disregard portion of actual malice.

15 Q: And it relates to whether or not the reporter had
16 substantial doubt about the accuracy of what was being
17 published?

18 A: And the sources and information gathering.

19 Q: What have you looked at in terms of publications? Have
20 you looked at anything other than the emails in this case?

21 A: Yes. I've looked at articles that were published in The
22 Sun News beginning in October of 2009 and running through, I
23 believe, September or November of 2013.

24 Q: Now, there wasn't anything in any one of those articles
25 that was based on an anonymous source, was it?

1 A: Yes.

2 Q: Where?

3 A: The emails that are quoted, I believe, in articles
4 published in August of 2010 come from a source that David Wren
5 has promised to not reveal his identity.

6 Q: And what David Wren after he got those emails was ask
7 Gresham Barrett, who was the candidate, who was at the meeting
8 where the \$84,000 got passed, right?

9 A: I don't know the sequence -- I'm not sure your sequence is
10 correct, that the question to Gresham Barrett was after he
11 received the emails.

12 Q: Well, Gresham Barrett ---

13 A: I'm not sure of the dates.

14 Q: Okay. Gresham Barrett confirmed that there was a meeting
15 at which he received \$84,000, didn't he?

16 A: If you're talking about the interview that David Wren had
17 with him on May 20th, I believe that's true. I think Gresham
18 Barrett also told David Wren that Mark Kelley had nothing to
19 do with the money.

20 Q: And there is nothing that was published by David Wren that
21 said that Mark Kelley did anything illegal, is there?

22 A: I think the statement at issue in the May 23rd article
23 that refers to Brad Dean along with Chamber lobbyist, Mark
24 Kelley, delivered the \$84,000 to Barrett; I believe that is a
25 reference to Kelley.

1 Q: Well, since you're not testifying about the meaning of
2 English. What is it in there that you can help the Jury
3 understand about David Wren's state of mind?

4 A: Because on the same date that he publishes that in The Sun
5 News, he writes emails to Tim Pearson and Justin Stokes in
6 which he alleges that Mark Kelley was involved in the setting
7 up of the lunch and the handing of the money to Gresham
8 Barrett.

9 Q: Now, didn't he say in fact in the email, seemed to
10 indicate that Mark Kelley and Brad Dean were involved?

11 A: I think that's a later email.

12 Q: What is it that you know, aside from the emails, that
13 relates to David Wren's state of mind or the editorial
14 writer's state of mind with respect to any of these
15 publications?

16 A: I know nothing about the editorial writer's state of mind,
17 because I'm not -- I do not believe he's been deposed. But
18 David Wren's deposition has discussion of what he knew and
19 what he was thinking at various points during this process.

20 Q: Would you agree that Mark Kelley was along with Gresham
21 Barrett at a luncheon when \$84,000 changed hands?

22 A: Along with is a slippery phrase and while it might mean a
23 variety of things, one of the ways it can be used is meaning
24 that two people were doing something together in connection to
25 the conjunction with et cetera. So, I think one possible

1 reading of that phrase is that Mark Kelley was involved with
2 Brad Dean in the delivery of the money.

3 Q: But that's not what you're being qualified to testify as
4 to, is it?

5 A: I'm qualified -- I'm being qualified to talk about the
6 standards that a news organization would employ and precision
7 of regulation when it comes to crime reporting is an article
8 of faith, page 101, Middleton and Lee will tell you that
9 precision in crime reporting leads to things like this.

10 Q: Now, with respect to what you teach, does the University
11 of Georgia still divide its Journalism School into a
12 Department of Telecommunications and a Department of
13 Journalism?

14 A: No.

15 Q: When did that end?

16 A: A couple of weeks ago.

17 Q: Oh, up until a couple of weeks ago, which department did
18 you teach in?

19 A: Well, it's inappropriate to describe me as teaching in a
20 particular department because the courses I teach are reverted
21 as core courses. They are taken by all majors within the
22 college.

23 Q: So, you would have news editorial students in your
24 classes?

25 A: Absolutely.

1 Q: How long has that been going on?

2 A: Well, news editorial isn't a phrase we use anymore. I
3 think I know what you mean and ---

4 Q: Journalism students, perhaps.

5 A: Well, journalism students aren't easily categorized
6 anymore because there are broadcast journalism students, there
7 are print journalism students, et cetera and those boundaries
8 are collapsing and that's part of the reorganization that I
9 just told you of. But yes, my, my courses would have students
10 from across the college.

11 Q: That's different from the last time we talked, as I
12 recall?

13 A: I don't ---

14 Q: My recollection of your conversation was that you taught
15 the telecommunication students?

16 A: You know, I looked for that deposition. I don't have it.

17 Q: I'll give you a copy before you leave.

18 A: But at that time, my students would have also included
19 those in other departments.

20 Q: Thank you very much.

21 MOTION:

22 MR. STEVENS: We would move at this time to qualify Dr.
23 Lee.

24 THE COURT: Precisely in what field; what in?

25 MR. STEVENS: Investigative reporting dealing with the

1 standard of care that's supposed to be used by a news reporter
2 that reports on crime and as to his knowledge and training
3 investigative reporters as to how they are to avoid getting --
4 going past the line put down by the U.S. Supreme Court in New
5 York Times v. Sullivan. If you report something with
6 knowledge that its false or with a reckless disregard as to
7 whether it is true or false.

8 THE COURT: All right. Okay. Mr. Bender, he has offered
9 him as an expert. I'll hear from you.

10 MR. BENDER: Thank you, Your Honor. Rule 702 talks about
11 testimony by experts and it says if specialized knowledge will
12 assist the trier of fact to understand the evidence or
13 determine a fact at issue, a witness qualified as an expert by
14 knowledge, skill, training or education ---

15 THE COURT: Let's cover the first part. Would you agree
16 that the standards that would apply to a, a, an investigative
17 reporter were not or are not commonly within the knowledge or
18 the general knowledge of jurors and that specialized knowledge
19 would assist them in understanding the evidence in this
20 matter.

21 MR. BENDER: Not in this case because there is a
22 particular standard that the Plaintiff must prove and what
23 this testimony ---

24 THE COURT: And that's constitutional malice.

25 MR. BENDER: That's right. What this testimony is being

1 introduced for seems to me to go to what was rejected by the
2 Supreme Court, the unreasonable conduct constituting an
3 extreme departure from the standards of investigation and
4 reporting ordinarily adhered to by responsible publishers and
5 that's in Hart-Hanks Communication, Inc. v. Connaughton, a
6 1989 decision of the Supreme Court of the United States.

7 THE COURT: I understand that it is not a responsible
8 publisher standard, but the standard is whether or not he had
9 knowledge or whether or not he -- what was the exact language
10 ---

11 MR. BENDER: Reckless disregard of ---

12 THE COURT: --- had a reckless disregard. Recklessness
13 to me invokes some standard, some standard. Okay. What is
14 that standard?

15 MR. BENDER: Well, in --

16 THE COURT: Can you explain it to me?

17 MR. BENDER: Yes, sir. In St. Amant v. Thompson, the
18 Supreme Court of the United States addressed that standard and
19 talked about it in terms of having a substantial doubt about
20 the accuracy of what was being published and publishing anyway
21 and that same standard was articulated in the South Carolina
22 Supreme Court decision in Elder v. Gaffney Ledger, where it
23 says to prove reckless disregard there must be clear and
24 convincing evidence that David Wren or the editorial writer at
25 the time of the publication decision had substantial doubt

1 about the accuracy of what was being published and published
2 anyway. And what the testimony that Dr. Lee is seeking to
3 address I think runs afoul of what the Supreme Court of South
4 Carolina warned about in Holtzsheiter v. Thompson Newspapers,
5 that this would add a question related to negligence, which is
6 inappropriate in evaluating the standard under Times v.
7 Sullivan.

8 THE COURT: I understand fully this is not a negligence
9 standard. I understand that.

10 MR. BENDER: And my suggestion is that the testimony
11 being offered by this witness is to talk about whether or not
12 The Sun News acted in accordance with standards a responsible
13 news organization would follow.

14 THE COURT: Libel is an intentional tort, not an
15 accidental tort, I understand that, but I believe that this
16 witness possesses some specialized knowledge based upon his
17 education and experience that would assist the trier of fact,
18 the Jury, in understanding that evidence in this case.
19 There's a lot of evidence in this case. I believe also that
20 his education and knowledge would certainly exceed that of a
21 juror and that in doing so, he has met the standard for an
22 expert in this state.

23 I'll hear you further, but that's how it appears to me.

24 MR. BENDER: Well, I understand that he's an expert.
25 He's just not an expert for what's needed in this trial. I

1 think that the testimony that he's -- that Dr. Lee is being
2 offered to give doesn't have anything to do with the actual
3 malice test.

4 THE COURT: Tell me, Mr. Bender, is there any expert for
5 any purpose that could be brought into one of these trials
6 that you would be satisfied with?

7 MR. BENDER: Well, if I brought him.

8 THE COURT: Well, I'm sure.

9 MR. BENDER: No, I think that if there were a question
10 other than malice, that there might be appropriate
11 circumstances for an expert witness. There might've been an
12 appropriate circumstance for an expert witness to diagram the
13 sentence that's at issue here, but that witness hasn't been
14 identified and to have Dr. Lee testify about what he thinks
15 along with means is inappropriate because that's not what he's
16 being qualified for. That has nothing to do with ---

17 THE COURT: And I don't think that's what he's testifying
18 to.

19 MR. BENDER: Well, that's what he said.

20 THE COURT: He's testifying as to the standards.

21 MR. BENDER: I understood what he said he was gonna talk
22 about was he was gonna talk about these standards a
23 responsible news organization would follow ---

24 THE COURT: Everyone else has testified as to what along
25 with means and we didn't have to have an expert for that.

1 There's no reason to exclude him. Everybody's testified as to
2 what it means.

3 MR. BENDER: Well, I think -- well, and I think also he's
4 raised the point ---

5 THE COURT: We let Mr. Kelley testify as to what it means
6 and he admitted that he has poor background in grammar.

7 MR. BENDER: And I plan to use that.

8 THE COURT: So, I mean, everyone as testified as to what
9 it -- I don't think that that would require an expert.

10 MR. BENDER: Oh, I agree and that's why I don't think we
11 need Dr. Lee to testify about it because I'm concerned that
12 his status as an expert would interject the issue of
13 negligence inappropriately in conflict with Holtzscheiter in
14 this case. And his testifying about what language means is
15 not why he's qualified and to raise the question -- and we
16 have talked about this except Mr. Stevens asking about
17 comments. Well, The Sun News is not the publishers, as a
18 matter of federal law under 47 U.S.C.A. Section 320 of those
19 comments and I don't ---

20 THE COURT: I understand. I haven't heard anything about
21 the comments yet.

22 MR. BENDER: I think you ---

23 THE COURT: Other than Mr. Kelley said they were bad, but
24 has anybody published a single comment that was posted on the
25 board?

1 MR. BENDER: It would be inappropriate.

2 THE COURT: There hasn't been one and I will promise you
3 that there will not be a negligence charge in this matter.
4 The charge will be as I have said earlier. One, requiring the
5 Plaintiff to show constitutional malice, actual malice in this
6 matter and I will charge the standard.

7 I believe this witness is qualified to testify. I think
8 his testimony will assist the trier of fact and I'm going to
9 allow him to be qualified as an expert and to testify.

10 MR. BENDER: I understand your ruling, Your Honor, and if
11 I could ---

12 THE COURT: Yes.

13 MR. BENDER: I failed to call to your attention the South
14 Carolina Supreme Court decision in Dawkins v. Field, where it
15 talks about the scope of testimony by an expert on a legal
16 standard and the case involved John Freeman giving testimony
17 about what the law was ---

18 THE COURT: Absolutely.

19 MR. BENDER: So, I don't think this witness can testify
20 to what ---

21 THE COURT: And I can tell you under Vortex Sports v.
22 Ware, our Supreme Court also said or the Court of Appeals said
23 that expert testimony on legal issues is not appropriate, but
24 I don't think that's where he's going here. He's talking
25 about standards of reporting.

1 We're gonna be very careful to not interject a negligence
2 standard in here. As I said earlier, this sort of libel is
3 not or alleged libel is not an accidental tort; it's an
4 intentional tort and that's what this case -- I mean, the
5 Plaintiff's gonna have to prove. But I believe that this
6 witness may testify and that's my ruling.

7 Okay. Gentlemen, we will start back 9:30 in the morning.

8 MR. STEVENS: Thank you.

9 MR. BENDER: Thank you, Your Honor.

10 MR. STEVENS: May we leave our stuff here?

11 THE COURT: Certainly. Bobby, you can make sure the
12 courtroom is locked, are you not?

13 BAILIFF: It'll be locked.

14 THE COURT: Thank you.

15 (RECESS - 4:57 P.M.)

16 *****OFF THE RECORD*****

17 **(END OF DAY TWO.)**

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1 (MAY 7, 2014)

2 (On the Record - 9:35 A.M.)

3 (REPORTER'S NOTE: The following takes place outside the
4 presence of the Jury.)

5 BY THE COURT:

6 THE COURT: Mr. Bender, by noontime today, I want you to
7 tell me whether or not you want to bifurcate this trial in the
8 event of punitive damages or not.

9 MR. BENDER: I can tell you right now I do.

10 THE COURT: You do.

11 MR. BENDER: I think we should bifurcate it with respect
12 to each Defendant because there's are separate claims.

13 THE COURT: How long do you expect to try this case?
14 Into next week, obviously?

15 MR. BENDER: No, I expect to be through by tomorrow.

16 THE COURT: Okay. Okay. All right.

17 MR. STEVENS: May I put my objection on the record, Your
18 Honor.

19 THE COURT: Well I think he has the right to bifurcate
20 it; do you not, Mr. Bender?

21 MR. STEVENS: As to -- I'm talking about as to both
22 Defendants.

23 THE COURT: Okay.

24 MR. STEVENS: The pleadings have admitted and in their
25 depositions, which we have introduced, he was the agent, that

1 all of his articles were approved by the editor. And they
2 went through the whole rigmarole and he was acting in the
3 scope of his employment and so forth. So, I think the verdict
4 should be general as to both of them.

5 THE COURT: How about that?

6 MR. STEVENS: They have joint and several liability.

7 MR. BENDER: Well, I think that David Wren has no
8 possible liability for the editorials because he didn't write
9 the editorials. I think that if there is liability for the
10 editorial is solely on the corporation.

11 THE COURT: What do you say about that?

12 MR. STEVENS: We would agree with that.

13 THE COURT: Pardon?

14 MR. STEVENS: We'll agree with that.

15 THE COURT: Well, then how do you not ---

16 MR. STEVENS: As to the editorial, it could only be The
17 Sun News; as to the articles it would be joint and several.

18 THE COURT: We're gone have to do a special interrogatory
19 and a verdict form, would we not?

20 MR. BENDER: I think so.

21 THE COURT: All right. Gentlemen, I hope y'all can agree
22 on that, how we do it. Okay.

23 You got how many more witnesses, Mr. Stevens?

24 MR. STEVENS: Two.

25 THE COURT: How many do you anticipate, Mr. Bender?

1 MR. BENDER: Two perhaps.

2 THE COURT: Two perhaps. Okay.

3 MR. BENDER: One thing I would like to do before the Jury
4 comes back in. I marked three exhibits yesterday but did not
5 move them into evidence. They were marked as One, Two and
6 Three. They were emails from Mark Kelley. He authenticated
7 them. One has to do with an index of tax paying ability,
8 talking points that he prepared and sent to the School
9 District. The other is -- that's one. Two is a response from
10 the School District making changes in his talking points and
11 Mr. Kelley's response saying spelling and grammar was sort of
12 his weak points. And then third, Number Three is an email
13 sent by Mr. Kelley to the President of Coastal Carolina
14 talking about his accomplishments as a lobbyist.

15 THE COURT: All right.

16 MR. STEVENS: We'd object to it as being totally
17 irrelevant and ---

18 THE COURT: Well, I think it is relevant under 401 and
19 that it withstands a 403 challenge. So, I think that while,
20 like all evidence, it is intended to have some prejudicial
21 value it's, but greatly outweighed by the probative value in
22 that those are issues that have been raised in this trial
23 concerning Mr. Kelley's ability to interpret it as well as his
24 performance.

25 Is that the point you were gonna make, Mr. Bender?

1 MR. BENDER: Yes, sir.

2 THE COURT: Okay. Thank you very much. They're
3 admitted. They're in the record.

4 DEFENDANT'S EXHIBIT ONE, TWO AND THREE

5 ADMITTED INTO EVIDENCE

6 THE COURT: Okay. Let's bring the Jury in. Let's get
7 started.

8 (REPORTER'S NOTE: Jury enters courtroom. 9:41 A.M.)

9 THE COURT: All right. Good to see you all back this
10 morning. I see we have all our jurors in the courtroom.

11 Mr. Stevens, are you ready to proceed?

12 MR. STEVENS: Yes, sir.

13 THE COURT: Call your witness.

14 MR. STEVENS: The Plaintiff calls Dr. William E. Lee.

15 CLERK: Please raise your right hand and place your left
16 hand on the Bible.

17 DR. WILLIAM EYRE LEE, HAVING BEEN
18 SWORN TESTIFIES AS FOLLOWS:

19 CLERK: Please be seated.

20 MR. LEE: Okay.

21 CLERK: State your name for the record.

22 DIRECT EXAMINATION OF DR. WILLIAM EYRE LEE BY MR. STEVENS:

23 Q: Would you tell the Jury your name and where you live?

24 A: My name is William Eyre Lee. I live in Athens, Georgia.

25 Q: And what is your occupation?

1 A: I'm a professor at the Grady College of Journalism and
2 Mass Communication at the University of Georgia.
3 Q: And how old are you now?
4 A: I'm sixty-four.
5 Q: And how long have you been at the University of Georgia?
6 A: Thirty-seven years.
7 Q: And how long have you been teaching Mass Communication and
8 Journalism?
9 A: Thirty-seven years at the University of Georgia and three
10 years prior to that at the University of Wisconsin.
11 Q: And have -- have you written any books with regards to
12 journalism?
13 A: Yes, I have.
14 Q: And what's the name of it?
15 A: It's called the Law of Mass Communication, I'm sorry, the
16 Law of Public Communication; it's now its ninth edition.
17 Q: It's now in its ninth edition?
18 A: Correct.
19 Q: Okay. Now, the authors are Ken R. Middleton and William
20 E. Lee; that's you?
21 A: Yes.
22 Q: With regards to this textbook, is it used at the
23 University for the purpose of teaching Journalism?
24 A: Yes, it is as well as at a hundred other colleges and
25 universities throughout the United States.

1 Q: Okay. Now, you said you're a professor. Are you a
2 tenured professor?

3 A: Yes, I'm a tenured full professor and have been in tenured
4 since 1983 and full professor since 1989.

5 Q: Okay. Tell the jury your educational background?

6 A: My PhD is in Mass Communications from the University of
7 Wisconsin at Madison; my Master's Degree in Telecommunications
8 is from Michigan State University; and I have a Bachelor's
9 Degree in Broadcasting from San Jose State University.

10 Q: What years did you receive those degrees respectively?

11 A: Bachelor's Degree in 1972, Master's Degree in 1974 and PhD
12 in 1977.

13 Q: Thank you. Did you, have you, do you now have and have
14 you in the past had teaching and research appointments?

15 A: Yes, at the University of Georgia. And my
16 responsibilities are both to teach and to conduct research,
17 which would be published in scholarly journals.

18 Q: And have you written research publications in that regard?

19 A: Yes, I have. I have twenty-five Law Review articles,
20 several chapters in books and several monographs as well as
21 the Law of Public Communication.

22 Q: You said you had written Law Review articles?

23 A: That's correct.

24 Q: And tell the Jury what a Law Review article is?

25 A: A Law Review is typically published at a law school. It

1 can either be specialized in focusing on communication law
2 topics or it can be what we would call a general interest Law
3 Review, which publishes in a variety of topics. Some of the
4 Law Review side of publishing are the Supreme Court Review,
5 which is published at the University of Chicago; the Harvard
6 Journal of Law and Public Policy, which is published at
7 Harvard Law School; the Harvard Journal of Law and Technology,
8 which is also published at Harvard Law School; the Columbia
9 Science and Technology Law Review, which is published at
10 Columbia University; I can go on lists, an online vitae takes
11 more than two pages.

12 Q: Okay. Have you also written -- been asked to write
13 chapters in other books published by other, other people?

14 A: Yes, I have chapters that have appeared in three books.

15 Q: And what are those books? Journalist Privilege; is that
16 one of them?

17 A: That's correct. I'm drawing a blank of names of the
18 books.

19 Q: Media Freedom and Contempt of Court?

20 A: Yes.

21 Q: That was published in 2009?

22 A: Yes.

23 Q: Okay. And The Priestly Class in Entertainment and
24 Publishing Arts Handbook, 2007, 2008?

25 A: Yes.

1 Q: And Modernizing the Law with Open Air Speech, 2000 --
2 excuse me, 2005-2006?

3 A: Yes.

4 Q: Okay. And have you published, have you had any
5 publications in encyclopedias?

6 A: Yes, I published in, I believe it's the American
7 Encyclopedia Civil Liberties.

8 Q: Have you written any conference papers, made presentations
9 in conferences?

10 A: Yes, I've made a variety of presentations through my
11 career at professional meetings of groups like the Association
12 for Education in Journalism and Mass Communication.

13 Q: On the research publication, I'm looking at two pages of
14 research publications, approximately, correct?

15 A: I think there's a third page.

16 Q: Okay. A third page; yeah, you're right. I'm not gonna go
17 into all that. In addition to what you just testified to, do
18 you also consult?

19 A: Yes, I do.

20 Q: And who do you consult with?

21 A: Well, I've been hired by a variety of media companies to
22 do things like offer seminars to their news and editorial
23 staff relating to defamation, invasion of privacy, news
24 gathering techniques, et cetera. I've also consulted with
25 public policy groups and law firms throughout the United

1 States.

2 Q: I want to ask you who you consult -- what media
3 corporations have you consulted with?

4 A: Knight Ridder Newspapers, which is the former owner of The
5 Sun News. I believe they owned it from 1986 to 2006 when they
6 sold it to its current owner, McClatchy; Hart-Hanks
7 Newspapers; Viacom; Quiddle Communications; Group W; TCI -- I
8 think that's ---

9 Q: Dow Jones?

10 A: Dow Jones, Cumulus Radio.

11 Q: You said that you had been consulted by Knight Ridder, who
12 owned The Sun News in 2010?

13 A: I believe they sold it in 2006.

14 Q: Okay. Now, have you also been consulted by law firms?

15 A: Yes.

16 Q: And how many law firms?

17 A: I probably would say six or seven.

18 Q: Okay.

19 A: Possibly more.

20 Q: I'm looking and, and the states -- the states, New York,
21 Chicago, Florida and Atlanta, Georgia; does that sound right?

22 A: Yes.

23 Q: Okay. Have you served as an editorial consultant for any
24 textbook publishers?

25 A: Yes, I have.

1 Q: In what?

2 A: And this involves manuscripts that a publisher is
3 considering publishing as a textbook and they'll ask a
4 professor who's knowledgeable in the field to evaluate it as
5 to its quality and its thoroughness, matters like that. Some
6 of the publishers have been Pearson -- I'm drawing a blank
7 here on ---

8 Q: Addison Westgate?

9 A: Yes.

10 Q: What is that?

11 A: That's an academic publisher.

12 Q: Magraw Hill?

13 A: Yes, that's one of the largest academic publishers.

14 Q: Okay. MacMillan?

15 A: Yes.

16 Q: What is that?

17 A: That's also one of the largest academic publishers.

18 Q: Allyn and Bacon?

19 A: That's again an academic publisher.

20 Q: Pitman?

21 A: Also an Academic Publisher.

22 Q: And finally I think Mr. Bender and I know about this one,
23 West?

24 A: Yes.

25 Q: What is West? Tell the Jury what West is.

1 A: West is a company that focuses on I believe on textbooks.
2 Q: And they also provide online services for most attorneys
3 in today's world?
4 A: That's correct.
5 Q: Okay. They call it now WestLaw, don't they?
6 A: Yes.
7 Q: And WestlawNext; am I correct?
8 A: That's correct.
9 Q: And you have -- you have been a consultant to Westlaw?
10 A: Yes. West Publishing.
11 Q: Well, West Publishing Company, excuse me. Now, have you
12 served as an expert witness in other courts?
13 A: Yes, I have.
14 Q: Would you please tell the Court and the Jury how many
15 cases you have been qualified as an expert in?
16 A: I've been qualified as an expert in Federal District Court
17 in New York City; Federal District Court in Chicago; Federal
18 District Court in St. Paul; Federal District Court in Kansas
19 City, Missouri; Federal District Court in Sacramento,
20 California; four courts in the State of Georgia; and this
21 Court.
22 Q: Okay. Now, would it be fair to say that you have been an
23 expert in about twenty-eight cases?
24 A: Yes, I've offered depositions or affidavits as well as
25 testimony in court.

1 Q: Okay. You are also involved in University Governance?

2 A: That's correct.

3 Q: Tell the Jury what that is?

4 A: Just in addition to teaching and research we have to serve
5 on committees that do things like select new Presidents,
6 select new Deans, write the rules for the University,
7 administer policies, hiring and tenure decisions that are all
8 part of the faculty governance and I've done that in my
9 thirty-seven year career.

10 Q: And I'm looking at approximately three and a half pages of
11 grants, fellowships and honors.

12 A: That's correct.

13 Q: Okay. External, that is outside of the University of
14 Georgia and internal?

15 A: That's correct.

16 Q: And you have been invited by third parties to write for
17 them?

18 A: That's correct.

19 Q: And do you -- the area of your expertise, is what?

20 A: Freedom of expression, the practice of journalism and the
21 interplay between the law and the practice of journalism.

22 Q: All right. Now, have you had an opportunity to review
23 documents that have been produced by the Defendant in this
24 lawsuit?

25 A: Yes, I have.

1 Q: All right. And what do those documents include?

2 A: They include emails that David Wren received from Tim
3 Pearson; emails between David Wren and Tracy Edge; emails
4 between David Wren and Justin Stokes; I've also read Mr.
5 Wren's two depositions and other documents that have been
6 produced include The Sun Times Ethics and Policy.

7 Q: Okay. Excuse me just a moment. (To the Court) At this
8 time, Your Honor, we would move to introduce Exhibit Number
9 Twelve, which has been produced by The Sun News as their
10 Ethics Policy?

11 MR. BENDER: I would object, Your Honor.

12 BY THE COURT:

13 THE COURT: It hasn't been authenticated, Mr. Stevens.

14 MR. STEVENS: It was authenticated by their producing it
15 in response to discovery.

16 THE COURT: Perhaps this witness can authenticate it, I
17 mean, but we, we need someone to authenticate it and then
18 we'll ---

19 MR. STEVENS: I did put in the deposition of David Wren
20 and in that he authenticated it.

21 MR. BENDER: I have an objection to it, Your Honor.

22 THE COURT: All right. Let's take the Jury out.

23 (REPORTER'S NOTE: Jury exits courtroom. 9:56 A.M.)

24 THE COURT: All right. Mr. Bender?

25 MR. BENDER: May it please the Court, Your Honor. This

1 is an effort to introduce negligence into this case by trying
2 to establish what the internal policies of the paper are to
3 show a departure from that and that's clearly a negligence
4 standard and as you've ruled in this case this is not a
5 negligence case; this is an actual malice case.

6 THE COURT: Well, what if they are simply offering it to
7 show what the Defendant did, if he followed the policies of
8 the newspaper -- these are the policies of the newspaper, I
9 don't think they're gonna say that he failed to follow the
10 policies of the newspaper. I think what they're gonna do is
11 say he did follow them -- follow those policies and thus he
12 did have substantial doubts as to the proof of what was
13 published. Is that where you're going with it?

14 MR. STEVENS: That's essentially that he had knowledge of
15 what the, what the policy was and that he deviated from that
16 policy.

17 THE COURT: Now you're talking about a negligence
18 question, Mr. ---

19 MR. STEVENS: No, Your Honor. If you go beyond -- that
20 is knowledge on his part. The knowledge as to how he's
21 supposed to apply the principals of journalism. If he
22 deviates from them and in applying the facts that he knows, if
23 he goes to the point that he knows that what he's printing is
24 either false or he's printing it with reckless disregard of
25 the truth or falsity, it goes to the emails that we have been

1 introducing and the timeline which he knew all this stuff. He
2 has testified that he -- now testified that he didn't defame
3 him. So, that's what we're doing. This goes to the factual
4 issues of whether he complied with and Dr. Lee will be
5 testifying to what a -- what journalist should do in these
6 types of situations. That's discussed in almost every Supreme
7 Court opinion there is.

8 THE COURT: Well, what do the cases say establishes
9 recklessness in the context of constitutional actual malice?

10 MR. STEVENS: The failure -- printing the article with
11 knowledge of its falsity or with a reckless disregard of its
12 truth or falsity. A reckless disregard is he is conscious of
13 the fact that he does not have evidence to print what he's
14 printing, but he goes ahead and prints it anyway. That is
15 also called Bulverism, where the, where the, where the
16 reporter prints something, something knowing it to be false
17 and then tries to justify it by using technical words to
18 justify what he's writing. So, we get right within the New
19 York Times v. Sullivan test. Did he do it with knowledge of
20 its falsity or did he have serious doubts about its falsity or
21 its truth and he printed, printed it regardless of whether it
22 was true or false.

23 THE COURT: The issue here is serious doubt.

24 MR. STEVENS: Yeah. He has to have serious doubt about
25 what he's printing.

1 THE COURT: And how does that -- tell me once again, how
2 that relates to the deviation from standard?

3 MR. STEVENS: Because the, the ethics say don't do that.
4 They say don't print something you don't have the facts of in,
5 in, in -- and confirm your sources -- I can't remember all of
6 them. Yeah, you have to consider whether the sources you're
7 relying is an obviously biased source, would he have ---

8 THE COURT: Are you telling me that the standard creates
9 the doubt?

10 MR. STEVENS: No. No.

11 THE COURT: That it deviation ---

12 MR. STEVENS: It goes to the weight of the evidence.
13 They printed an ethics policy and in the ethics policy they
14 have a section called Reporting with Integrity. And they say
15 things like accuracy must -- we must strive to be completely
16 accurate in all that we report and represent. Check and
17 double-check the sources, et cetera. If erroneous information
18 is published, immediately print a correction that accepts
19 responsibility for the mistake and provide, and provide the
20 correct information. We do not use anonymous sources except
21 in extraordinary circumstances. It goes to the issue of
22 whether he printed it with reckless disregard for its truth or
23 falsity when he knew that the source was an obviously bias
24 source. It must be approved by the editor or the managing
25 editor and it says we correct all inaccuracies immediately.

1 We also run clarifications if we, if in our reporting, editing
2 or headline writing, we must, we may have given readers the
3 wrong impression of a person, place or event and that's what
4 we're talking about. They knew. The testimony's come in that
5 without describing the comment, they knew from the comments
6 what the public was understanding what he wrote and they
7 continued. They also -- that we must make every effort report
8 all sides of every issue. We must also be fair in our
9 presentation of the issue ensuring that both the structure and
10 the content of the story is balanced and then they go into
11 truthfulness. We are always truthful in what we report,
12 photograph, design, or otherwise represent. Overall fairness
13 and accuracy must never be sacrificed for the sake of style,
14 structure or drama and that's what I just said. Bulverism is
15 where a news reporter prints a story with a reckless disregard
16 of whether it's true or false or maybe he's printing it
17 knowing it to be false because it doesn't have the evidence
18 and that's what these emails show. He did not have the
19 evidence. There's emails that are gone come in and they're
20 already in where his main source, Tracy Edge, tells him to
21 call Trey Walker, who is the campaign manager for McMaster.
22 He calls Trey Walker and Trey Walker tells him, I don't know
23 what in the world you're talking about. So, he calls Tracy
24 Edge back and Tracy Edge can't give him the information. Then
25 he makes statements in his email that he doesn't know why he's

1 denying it and he talks about Mark Kelley handing the campaign
2 donations, why won't they tell me he did it; are they trying
3 to protect him; is he bending over backwards? And then he
4 starts saying he's just like every other campaign manager;
5 they all -- that none of them have any ethics and I don't know
6 why he's denying it when we know what'll turn out to be true.
7 And if that ain't printing something with a reckless disregard
8 for its truth or falsity, they's not a cow in Texas. So, what
9 we're showing here is they have their own ethics policy, which
10 is supposedly mirroring New York Times v. Sullivan. You don't
11 print somebody -- print something about somebody or event that
12 defames someone unless you have the proof. Now, I understand
13 that a newspaper reporter can say, well, I didn't investigate
14 it enough; that's fine. But that's not the case here. He
15 investigated it and he had evidence that was exactly opposite.
16 They were telling him call Gresham Barrett. In every one of
17 the emails if you look at them, every one of the people that
18 he interviewed or he talked to or he got an email from never
19 said one word about Mark Kelley. It was only David Wren
20 trying to talk them into giving him that information. That's
21 Bulverism. So what, what we got here is a reporter who's
22 reckless, extremely reckless. He had knowledge that what he
23 was trying to report was false, absolutely false. And if
24 that's not clear and convincing evidence, I don't know what
25 is. So, we think that this will go to the issue of whether he

1 made the statements in his news report with knowledge of its
2 falsity of with reckless disregard of whether it was true or
3 false.

4 THE COURT: Now, let me ask you one other thing. You
5 said without objection, Mr. Wren's deposition has come in.
6 Are you telling me that that's an exhibit to that deposition?

7 MR. STEVENS: Yes.

8 THE COURT: Is that right, Mr. Bender?

9 MR. BENDER: It is.

10 THE COURT: Well, then it's in.

11 MR. BENDER: My objection is to the examination of the
12 witness on those to establish professional standard because
13 that is negligence. And in Holtzsheiter, the Supreme Court
14 talked about we'll find some indirect evidence in the record
15 that the newspaper failed to follow its professional standards
16 in this matter by comparing the inconsistencies and times and
17 sequences of events related by the papers own witnesses, the
18 Jury could've found professional standards were breached and
19 that no one other than the reporter actually read the story
20 before it was published. This was some degree of negligence
21 sufficient to deny the newspaper a directed verdict motion.
22 In other words, those standards are negligence, not actual
23 malice. Actual malice is, did David Wren have substantial
24 doubt about the accuracy of what was being published and what
25 was published in spite of what Mr. Stevens is testifying to

1 here was that Brad Dean, Mark Kelley, Gresham Barrett and Drea
2 Byars were at a table when \$84,000 in contributions was handed
3 by Brad Dean to Gresham Barrett and that there was nothing
4 illegal about that activity in the opinion of the Counsel for
5 the Ethics Commission. These emails don't have anything to do
6 with what was published. What was published was Gresham
7 Barrett, Brad Dean, Mark Kelley and Drea Byars were at a table
8 when \$84,000 was passed from Brad Dean to Gresham Barrett and
9 that Mark Kelley didn't touch the envelope.

10 THE COURT: Well, Mr. Bender, I think it goes way beyond
11 that. When you look at the editorial where they clearly state
12 that the information they have is that Mr. Kelley had nothing
13 to do with it and then they editorialized by saying who's
14 protecting him; what's the unprovable truth here? What's the,
15 the innuendo there, Mr. Bender? That is highly damaging in
16 my, in my opinion.

17 MR. BENDER: It may be but it's the obligation of the
18 Plaintiff to prove by clear and convincing evidence that the
19 person who wrote that knew it was false or had a reckless
20 disregard of this potential falsehood. To say that it's an
21 unprovable truth, tracks the language of Hepps v. Philadelphia
22 Newspapers where the Court was dealing with who has to prove
23 falsity in a case and it said they're gonna be some cases
24 where falsity cannot be proven and in that case, the person
25 who bears the burden of proving falsity cannot recover.

1 There's no testimony here that deals with actual malice in the
2 context of that editorial.

3 MR. STEVENS: Your Honor, there's so much evidence in
4 here it is unbelievable. We've got Brad Dean saying it's
5 false. Gresham Barrett said it was false.

6 MR. BENDER: We haven't heard from Brad Dean ---

7 MR. STEVENS: Drea Byars said it was false.

8 THE COURT: There's a wealth of evidence. Everything
9 I've heard is that it didn't happen. Now, I'm gonna let it
10 in. It's already an exhibit for the Jury to be considered.
11 The deposition was put in without objection. It's an exhibit
12 to the objection -- to the deposition. I don't think it needs
13 to be reintroduced. I think you can refer it -- do you want
14 to have it remarked?

15 MR. STEVENS: We have it marked up there already as
16 Exhibit Twelve. We just have not had the opportunity to
17 introduce it. It's Exhibit Number Fifteen.

18 THE COURT: All right. I'm gonna allow it.

19 MR. STEVENS: Okay.

20 THE COURT: I'm gonna allow it in to examine this
21 witness.

22 MR. BENDER: On, on the standard; that's my objection.

23 THE COURT: On what standard?

24 MR. BENDER: Well, that's my question.

25 THE COURT: I'm gonna let him testify as to what

1 reporters do or what reporters don't do and how that may be
2 evidence of his state of mind whenever he printed this.
3 That's what I'm gone let him do.

4 MR. BENDER: I understand your ruling. Thank you.

5 THE COURT: All right. Bring them in.

6 (REPORTER'S NOTE: Jury enters courtroom. 10:13 A.M.)

7 MR. STEVENS: May I?

8 THE COURT: Yes, you may.

9 MR. STEVENS: Your Honor, for the record, we'll go ahead
10 and move to introduce the Ethics Policy.

11 THE COURT: Admitted. Objection noted.

12 PLAINTIFF'S EXHIBIT NUMBER TWELVE

13 ADMITTED INTO EVIDENCE

14 CONTINUATION OF DIRECT EXAMINATION OF WILLIAM E. LEE BY MR.

15 STEVENS:

16 Q: Now, what else did you review?

17 A: I reviewed the Defendant's responses to your
18 interrogatories.

19 Q: Tell the Jury what an interrogatory is?

20 A: It's a request by one of the parties for information or
21 answers to questions.

22 Q: And they're in writing?

23 A: Yes.

24 Q: Okay. Do they have to write it out?

25 A: Yes.

- 1 Q: And does the Rule provide that they have to swear to it?
- 2 A: Yes.
- 3 Q: Okay. And what else?
- 4 A: I believe that's all the documents that were produced
- 5 during discovery that I reviewed.
- 6 Q: Did you also see the documents that the Defendant produced
- 7 in discovery, Requests for Production of Documents by the
- 8 Plaintiff to the Defendant?
- 9 A: I don't recall.
- 10 Q: But you did see the Ethics Policy?
- 11 A: Yes.
- 12 Q: Okay. And that was in the Requests for Production you saw
- 13 the Requests for Production?
- 14 A: Okay.
- 15 Q: Okay. Now what did you -- you said you read the
- 16 deposition of David Wren?
- 17 A: That's correct.
- 18 Q: And the editor, Patricia O'Connor?
- 19 A: Yes.
- 20 Q: Did you read the deposition of Mark Kelley?
- 21 A: No.
- 22 Q: Was it, what was your purpose in reviewing the reporter
- 23 and the editor's deposition and not Mark Kelley's?
- 24 A: To get a sense of how the information was gathered, how it
- 25 was processed and the state of mind of both Mr. Kelley and the

1 editor -- I'm sorry, not Mr. Kelley, I misspoke -- Mr. Wren
2 and the editor.

3 Q: Ms. O'Connor?

4 A: Yes.

5 Q: And what else did you do to render an opinion to this
6 Jury; what else did you review?

7 A: I looked at the Associated Press Style Book, which is
8 frequently referred to as the Bible in the news industry.
9 It's a manual that you'll find in virtually every newsroom. I
10 looked at a number of textbooks relating to news writing. I
11 looked at other media law books and I believe that's about it.

12 Q: Okay. Have you reached an opinion in this case?

13 A: Yes.

14 Q: And would you state that opinion?

15 A: In my opinion, there were indications to Mr. Wren that
16 should have been paid attention to, which he did not. There
17 are contradictions in his deposition relating to his awareness
18 of the falsity that I think undercut the claim that they
19 published information believing that it was true. I believe
20 also that there is a problem in the way the information was
21 processed at The Sun News. All of this leads me to conclude
22 that The Sun News did not act the way professional news
23 organizations act in these circumstances.

24 Q: Did you reach an opinion as to -- from the evidence that
25 you had that there was reason to doubt any of the sources?

1 A: Yes.

2 Q: Tell the Jury what that is?

3 A: Let's put the story in context. This lunch occurs on June
4 20th, 2009. Suddenly, it becomes of interest eleven months
5 later, ten or eleven months later. Coincidentally, as the
6 Republican Gubernatorial Primary is in its most active phase
7 and we have information coming to Mr. Wren from people who are
8 involved in this political campaign. Information that comes
9 to him from Tim Pearson, who is the Campaign Director for
10 Nikki Haley, I'm sorry, Nikki Haley. All of these South
11 Carolina names are new to me. So please forgive me. Tim
12 Pearson provides Mr. Wren with emails that extensively come
13 from the Barrett campaign by Justin Stokes. Now, this is not
14 breaking news story, this isn't like an airplane crash or a
15 bridge collapsing or something like that. This is a story
16 about a lunch which took place nearly a year before. Because
17 of that and because of the possibility that you reporting on a
18 criminal act, that means that Mr. Wren and his editor should
19 have paid the greatest attention to the sourcing of the story
20 and the way it was written. There's every opportunity for Mr.
21 Wren to reach out to the person who knows exactly what's going
22 on here and that is Mark Kelley. And by reaching out, I'm
23 gonna quote the Associated Press Stylebook which says we must
24 make a real effort to let the party respond to claims. Mr.
25 Wren has testified that he made one phone call to Mr. Kelley.

1 There's no email; there's no follow up phone call; there's no
2 effort to meet Mr. Kelley in person; and the editor testified
3 that this probably was inadequate.

4 Q: Ms. Patricia ---

5 A: O'Connor, yes.

6 Q: In her deposition testified to that?

7 A: That's correct.

8 Q: With regards to the elements that you were provided, that
9 is the emails back and forth between David Wren and various
10 people, did you find any of the emails from anyone other than
11 David Wren providing David Wren with any evidence that Mark
12 Kelley arranged or facilitated the luncheon?

13 A: Absolutely not and, in fact, Mr. Kelley, during -- I'm
14 sorry -- Mr. Wren, very early on, learned from B.J. Bolling
15 that Mark Kelley did not have anything to do with facilitating
16 the lunch.

17 Q: As a matter of fact, one of the first emails that Mr. Wren
18 had was an email in June of 2009 from the Barrett campaign
19 saying he was gonna meet with Brad Dean at Sid and Roy's at
20 Market Commons; is that correct?

21 A: Yes.

22 Q: That's the first email that David Wren produced; isn't
23 that correct?

24 A: I believe so.

25 Q: And did -- anywhere in that email did it say anything

1 about Mark Kelley?

2 A: No.

3 Q: Okay. And that email was produced by Tim Pearson, who was
4 the campaign manager for Nikki Haley to David Wren. Now, was
5 he forwarding this email that he had received from Justin
6 Stokes to David Wren?

7 A: Yes.

8 Q: Okay. Now, and what he was doing, he was forwarding that
9 sometime in May; am I correct?

10 A: May of 2010.

11 Q: Almost eleven months later?

12 A: Yes.

13 Q: Okay. Now, throughout the emails that went forward, did
14 my, am I correct that he talked with Tim Pearson or had emails
15 from Tim Pearson?

16 A: Yes.

17 Q: He had emails from Justin Stokes?

18 A: Yes.

19 Q: Had emails from Tracy Edge?

20 A: Yes.

21 Q: And David Wren said to Tracy Edge that he had called Trey
22 Walker, the campaign manager for Henry McMaster, didn't he?

23 A: He did.

24 Q: Okay. Let's see what happened when he called Trey Walker.

25 Okay. I'm gonna hand you Exhibit Ten, Eleven, Thirteen-A

1 through Thirteen-H and ask you if these are the emails
2 produced by the Defendant that you reviewed?

3 THE COURT: While he looks at those, Mr. Stevens, I'm
4 gonna take a quick break. We'll be at ease for about five
5 minutes.

6 (REPORTER'S NOTE: Brief break in record.)

7 THE COURT: Please be seated. Please be seated. Keep
8 your seats. Mr. Stevens, go ahead.

9 MR. STEVENS: Your Honor, at this time, I'm sorry.

10 THE COURT: Go ahead.

11 MR. STEVENS: We have Exhibit Number Fifteen, which is
12 emails, he has no objection to Number Fifteen, Your Honor?

13 MR. BENDER: That's correct.

14 THE COURT: All right. Without objection.

15 PLAINTIFF'S EXHIBIT NUMBER FIFTEEN

16 ADMITTED INTO EVIDENCE

17 BY MR. STEVENS:

18 Q: I wanted to make sure I got all the emails; I had
19 forgotten about this one. I forgot where I was. I think I
20 was on the -- if I repeat myself; forgive me. Have you looked
21 at all the emails and starting from the beginning Mr. Wren had
22 information forwarded to him on May 19th. If you'll look at
23 Exhibit Number Ten at the bottom of the page from T.C. Pearson
24 to David Wren dated May 19th; you see that one?

25 A: Yes.

1 Q: Okay. And what he's doing is forwarding the message he
2 had from Gresham Barrett to Darrell Broom, Natalie Barrett,
3 Justin Stokes, and L. Byars on June 15th, 2009 and the subject
4 was Brad Dean Luncheon. It says when, Saturday, June the
5 20th, 2009 1:00 to 2:00 P.M.; where, Sid and Roy's, Market
6 Commons. From that did you understand that this was the first
7 document that was sent to Mr. Wren prior to the May 21st
8 article he wrote?

9 A: Yes.

10 Q: Okay. I believe there's some, I should say Tim Pearson,
11 but there were some other emails that were from Tracy Edge
12 back in May the 3rd; am I correct?

13 A: That is correct.

14 Q: And those emails from Tracy Edge -- I'm trying to get the
15 sequence here. I believe it started on May the 3rd at 2:14
16 P.M.; the next one was at 2:25 P.M.; the next one at 2:30; the
17 next one was at 2:51 and the last one was at 4:09. They go
18 back and forth between Tracy Edge and David Wren; am I
19 correct, there?

20 A: These are the May 3rd emails?

21 Q: Yes.

22 A: Yes.

23 Q: I think they start at the second page?

24 A: Yes.

25 Q: Tell the Jury what that first email says.

1 A: Do you mean the one at on the second page?

2 Q: Yeah.

3 A: Okay. The subject is, I called Trey Walker and he denied
4 knowing anything about it.

5 Q: Who is saying that?

6 A: This is David Wren writing to Tracy Edge. Tracy Edge is
7 the person who first told David Wren of this lunch and
8 suggested that he get in touch with Trey Walker in the
9 McMaster campaign with the belief that Walker had emails from
10 the Barrett campaign relating to this lunch and that these
11 emails would show that Mark Kelley was involved in the raising
12 and passing of money.

13 Q: From looking at the emails from Tracy Edge, does it say
14 anything about him even being present at the luncheon?

15 A: Actually, no.

16 Q: Okay. So what, what did David Wren tell Tracy Edge under
17 the subject I called Trey Walker and he denied knowing
18 anything about it; what does it say?

19 A: Well, this is, this is the one where he reports to Tracy
20 Edge his telephone conversation with Trey Walker. Again this
21 is at the suggestion of Tracy Edge that Wren call Walker and
22 ask about these emails and Walker tells Wren, Walker flat out
23 denied know anything, knowing anything, anything, basically
24 called you a liar. Now I'm really confused.

25 Q: Who's saying this?

- 1 A: This is David Wren.
- 2 Q: And he's telling Tracy Edge that Trey Walker called him a
3 liar?
- 4 A: Yes.
- 5 Q: Okay. What else does it say?
- 6 A: I know campaign managers have little or no ethics, but to
7 just flat out lie about something that eventually be shown to
8 be true isn't going to help him.
- 9 Q: Let me ask you this now. Mr. Wren is saying to Tracy Edge
10 quote/unquote, I know campaign managers have little or no
11 ethics; that's what is in his email?
- 12 A: That's correct.
- 13 Q: And he is relying on the campaign manager from Nikki Haley
14 to provide him with what he believed to be true that Mark
15 Kelley arranged the luncheon, had something to do with raising
16 the money and handed the campaign contributions to Gresham
17 Barrett?
- 18 A: So, his skepticism towards Trey Walker, apparently,
19 doesn't apply to Tim Pearson.
- 20 Q: Based upon what his statement is, would that, looking at
21 that, would that give, does that give, is he saying that he
22 doubts the campaign manager source?
- 23 A: I believe so.
- 24 Q: If he says they don't have any ethics, would that be a
25 reason to doubt him?

1 A: Well, no, sir ---

2 Q: In Wren's mind?

3 A: Yes. And notice he says he believes that Walker is lying,
4 but again, there's no skepticism ever expressed in any of
5 these emails or in the deposition about what Tim Pearson says
6 or provides to him.

7 Q: And there were emails going back and forth and Mr. Edge
8 made a statement after David Wren said that about the campaign
9 managers and about the fact that Trey Walker essentially
10 called him a liar. He says I'm gonna call O'Connor at the
11 State and see where he is on it. My guess is and it's a good
12 one and I think that -- I think is that they all think Kelley
13 is protected in some way by the paper. I just want to see how
14 you brought me up before I call Trey. This will take some
15 time but Richard Quinn is probably the real one making this
16 happen. If so, he will talk to you with no hesitation. Now
17 that's from Tracy Edge to Mr. Wren and what's the next email?

18 A: It's from Wren to Edge saying any word back from Trey or
19 O'Connor.

20 Q: That was at 4:09 that afternoon?

21 A: May 3rd.

22 Q: May the 3rd. Anymore emails from back and forth between
23 David Wren and Tracy Edge?

24 A: There are some later that have to do with whether or not a
25 lobbyist may make a contribution to a local candidate.

1 Q: Oh, that's when Mr. Wren wrote to Brad Dean and was
2 investigating now whether Mark Kelley can make a contribution
3 to a local candidate like county council?

4 A: Yes.

5 Q: Well, what did -- what did he find out?

6 A: He found out that they may make contributions to them.

7 Q: Read to the Jury what Mr. Wren said to -- I think he was
8 replying back to his editor, wasn't he? Who's he replying to?

9 A: He's writing to Tracy Edge.

10 Q: Oh, Tracy Edge. Okay. Well, what did he tell Tracy Edge
11 his investigation showed?

12 A: I got in touch with Cathy Hazelwood who told me lobbyist
13 can't make contributions to state candidates, but can to local
14 candidates. So, it looks to me like it was a legal donation
15 done in September so it did not show up on any reports until
16 after the election was concluded.

17 Q: Okay. What's the date of this?

18 A: March 9th, 2009, no, I'm sorry, 2011.

19 Q: March 9th, 2011, almost a year after all these articles in
20 May of 2010?

21 A: Yes.

22 Q: He's still looking into campaign donations supposedly by
23 Mr. Kelley?

24 A: And regarding Mr. Edge as an expert on this.

25 Q: Okay. What does that reveal to a person who would be in a

1 supervisory capacity to David Wren?

2 A: I would question his reliance on Tracy Edge as an expert
3 on matters like this. I would -- if I were his editor, I
4 would say talk to Cathy Hazelwood. She's the expert or
5 someone on the State Ethics Board; don't talk to Tracy Edge.

6 Q: Okay. Now let's go back to Exhibit Number Ten. There is
7 another email, I think about half the way the page up, from
8 T.C. Pearson dated Thursday, May the 20th at 9:02 A.M. Do you
9 see that?

10 A: What is the Bates stamp on that?

11 Q: DWREN026.

12 A: Okay. Which one are you asking about?

13 Q: Right in the middle of the page.

14 A: Okay.

15 Q: From T.C. Pearson sent Thursday, May the 20th, 2010 at
16 9:02 in the morning?

17 A: Okay.

18 Q: And he's writing to Wren, Re: Subject Brad Dean luncheon;
19 what is he telling Mr. Wren to do?

20 A: Ask Gresham directly who gave him the money.

21 Q: Specifically, he said, maybe go ask Gresham directly who
22 gave him the money?

23 A: Yes.

24 Q: And then David Wren writes back four minutes later on --
25 excuse me, I'm sorry -- he writes him back at 5:11 -- I'm

1 sorry, I've got it mixed up.

2 A: I think the response is, Great, thanks; I'll get in touch
3 later this week.

4 Q: Okay. I'm having trouble reading. Then on May the 19th,
5 this is, a line of emails between Mr. Pearson and Mr. Wren
6 later on in July the 19th, 2010, at 5:11, he writes to Tim
7 Pearson and tell the Jury what he's asking Tim Pearson, right
8 about the second one up there on ---

9 A: I'm hoping to use those emails now that the primary is
10 over and Barrett is out of the picture. Wanted to check with
11 you, we will of course not identify the source of the emails
12 or say how we obtained them.

13 Q: Okay. This is about two months after the first article?

14 A: Yes.

15 Q: And Gresham Barrett has already been defeated and out of
16 the picture?

17 A: Yes.

18 Q: And he's still trying to use emails or asking for emails?

19 A: At this point The Sun News has not quoted from the emails
20 and it does refer to documents The Sun News has obtained in
21 those stories. For example, on May 21st and the 23rd, they
22 don't actually quote the emails until they get permission from
23 Justin Stokes.

24 Q: Okay. Now, the last one up there at the top is a response
25 from Tim Pearson to David Wren on July the 19th at about 5:49

1 responding to his request to use the emails. What does Tim
2 Pearson say?

3 A: Not really my call, but push Stokes on it some. Let me
4 know if you don't hear from him in the near future.

5 Q: Okay. Now, based upon your investigation and the
6 documents that came from the Defendant, David Wren and The Sun
7 News, did David Wren have any evidence that Mark Kelley had
8 set up the meeting, raised the money or gave the money, the
9 contributions to Gresham Barrett?

10 A: Absolutely not. In fact, he has three sources, Gresham
11 Barrett, Brad Dean and B.J. Bolling telling him no.

12 Q: And also one that says I don't know what you're talking
13 about.

14 A: That's correct, that's Trey Walker.

15 Q: Would that, would that type of background investigation
16 give a reasonable investigative reporter knowledge that Mark
17 Kelley had nothing to do with giving campaign donations to
18 Gresham Barrett or setting up a meeting?

19 A: Absolutely. Especially since the two parties most
20 intimately involved, Brad Dean and Gresham Barrett, both tell
21 Mr. Wren on May 20th that Mark Kelley had nothing to do with
22 this and Mr. Wren is not a novice, he doesn't -- didn't just
23 walk into this newsroom ---

24 MR. BENDER: Your Honor, I would object. That's not
25 responsive to the question.

1 THE COURT: Well, ask him a question.

2 BY MR. STEVENS:

3 Q: Well, that was my next question. Based upon reading his
4 deposition, had Mr. Wren been in the investigative reporting
5 field for quite some time?

6 A: Yes.

7 Q: Would he have been considered a novice in investigative
8 reporting?

9 A: Absolutely not. This is not his first time around the
10 block and I'm sure this is not the first time he's been, been
11 a reporter when there's been a tense political campaign and
12 reporters learn very quickly the way that political campaigns
13 seek to leak information about opponents and ask for
14 protection so that their identity will not be revealed.

15 Q: Okay. What's an anonymous source?

16 A: Well, sources ask to not be identified for a variety of
17 reasons. Sometimes, they don't want to get in trouble with
18 their boss. Sometimes they don't want to deter their future
19 employment prospects. And Justin Stokes makes it clear that
20 he does not want to be identified in these -- when he gets
21 permission to use the emails he says I do not want to, I do
22 not want to be identified. He says, for example, I'm
23 beginning a new job in two weeks, which may put me in a
24 position not to get pulled in. And then ultimately he tells
25 David Wren, I'm fine with using the emails as long as you

1 don't show the actual emails to anyone and protect the source.
2 In other words, don't ever publish that I'm the person who
3 provided you these emails that I obtained while I worked for
4 Gresham Barrett and then I gave them to Gresham Barrett's
5 opponent, Nikki Haley's Campaign in the form of Tim Pearson.

6 Now, if we look at The Sun News Ethics Policy, there is a
7 statement about anonymous sources. It says we do not use
8 anonymous sources except in extraordinary cases, which must be
9 approved by the editor or managing editor. The editor shares
10 the reporter's obligation to protect the confidentiality of
11 the source. What that means is the newspaper will, in certain
12 instances, agree that it will not identify in its news
13 reporting, where the information come from, but that has to be
14 an extraordinary case and this idea of protecting the
15 confidentiality is built on the notion that we want to
16 encourage people to expose information to us and in rare
17 circumstances, we will withhold from the public the identity
18 of that person. Now, Mr. Wren, in his deposition, claims that
19 Justin Stokes is not an anonymous source and that completely
20 baffles me because the transaction as shown through the emails
21 is clearly premised on Mr. Wren not disclosing Justin Stokes'
22 identity. You can easily understand Justin Stokes' concern
23 here because there are few people that are gonna want to hire
24 someone to work on a political campaign or in a political
25 office knowing that in his prior employment, he took emails

1 and provided them to the opposition. It doesn't make him look
2 good and that's why he's expressing this concern. The fact
3 that The Sun News did not disclose where this information came
4 from, I think is quite telling. I think the fact that Nikki
5 Haley's Campaign Manager was leaking information about Gresham
6 Barrett is a story and I think that's an important fact that
7 the public should know about.

8 Q: Why is that?

9 A: Because it shows again the inner workings of political
10 campaigns and how political campaigns sneak to smear their
11 opponents, how they try to manipulate information and they do
12 this under the guise of anonymity. Now there are many news
13 organizations which have taken a lot of heat for the way in
14 which they promise anonymity sources and have -- there's been
15 an effort in the industry to pull back from doing this because
16 the public doesn't trust when a newspaper says we have this
17 information which we obtained from an anonymous source.
18 That's not something that's going to build trust with your,
19 with your audience, your readers, et cetera. And again, an
20 experienced reporter understands what's going on here. This
21 is a political campaign attempting to smear an opponent, but
22 they won't step up and say name us. We want to be on the
23 front page with the information that says Tim Pearson, Nikki
24 Haley's Campaign Manager provided the information that was
25 taken by Justin Stokes from Gresham Barrett's campaign.

1 That's something no campaign manager wants and that's
2 something Nikki Haley certainly didn't want the public knowing
3 as she was running for Governor.

4 Q: Now, there are -- are there within the field of
5 journalism, sources that you can rely on and sources that you
6 can't rely on?

7 A: Absolutely.

8 Q: What do you call a source you can't rely on?

9 A: It's not a source.

10 Q: It's not a source.

11 A: You wouldn't rely on it.

12 Q: And they're also called something else within the
13 vernacular of journalism?

14 A: I can't think of a term but no reputable journalist
15 wouldn't rely on an unreliable source.

16 Q: Does the reporter -- is the reporter supposed to look at
17 the source and determine whether the source is biased and take
18 that into consideration in writing an article?

19 A: Clearly, one of the factors that should be addressed in
20 the interim what is the agenda of the source? Does the source
21 have an axe to grind? And that's why you would start
22 questioning why is Tracy Edge disclosing this information?
23 Why is Tim Pearson? Why is Justin Stokes disclosing this
24 information? What agenda are they pushing? That's what a
25 reporter would do is question who are these people and what

1 agenda are they pushing.

2 Q: Okay. In this situation, would the source of Tim Pearson
3 and Justin Stokes be a source that a, a competent journalist
4 would not rely on?

5 A: I don't know Tim Pearson nor Justin Stokes, but just from
6 their positions, I would say that a reporter should approach
7 what they say with skepticism and David Wren's already
8 indicated in his email to Tracy Edge, campaign managers have
9 no ethics. Right there, that's a profound statement that
10 should have translated into, okay, I'm getting information
11 from Tim Pearson, why is he leaking this to me and I better be
12 careful here.

13 Q: Was he careful?

14 A: I don't believe so.

15 Q: Okay. Now, you say that anonymous sources should only be
16 approved in extraordinary cases. Now, what are you talking --
17 what kind of cases would be within the umbrella of
18 extraordinary?

19 A: I don't know what The Sun News means by extraordinary, but
20 clearly that word would indicate that it would be a very rare
21 circumstance when the editor would approve a reporter
22 promising confidentiality and I don't believe Ms. O'Connor
23 approved confidentiality here.

24 Q: Okay. Well, let me -- I want to ask you about a couple of
25 things and this came to my mind. Would a source that, that

1 had identified a crime and was afraid of retribution by giving
2 information to the police, would that be an extraordinary
3 circumstance?

4 A: Certainly, where someone feared for their life. Let's say
5 they witnessed a mafia hit and they were aware that if they
6 were identified they would possibly being killed, something
7 like that. There are a variety of circumstances in which
8 people have information and they don't want to be publicly
9 identified with it for personal repercussions.

10 Q: Now, I think all of us probably remember the movie All the
11 President's Men and Watergate. The two newspaper reporters,
12 investigative reporters from Washington Post -- I can't
13 remember their names.

14 A: Woodward and Bernstein.

15 Q: Yeah. Woodward and Bernstein, they were talking to an
16 anonymous source they called Deep Throat and they would obtain
17 the information but what would Deep Throat tell them to do?

18 A: Oh, he would always tell them things like follow the
19 money; that's the classic line from their book and ---

20 Q: He was telling them to confirm what he was saying?

21 A: Yes.

22 Q: Before they printed it?

23 A: Yes.

24 Q: And they followed what he said?

25 A: Yes.

1 Q: Okay. Deep Throat was an anonymous source, but I think we
2 all found out who he was recently?

3 A: A few years ago, we found out he was Mark Felt, who was a
4 high FBI official.

5 Q: Okay. And in that particular circumstance, would that
6 have been extraordinary to protect that person from the public
7 or the government to know what was happening here?

8 A: Yes.

9 Q: All right. And the office of the President was being
10 attacked?

11 A: And there were efforts by the Nixon Whitehouse to shut
12 down the investigation, et cetera, and control what the FBI
13 was doing.

14 Q: Okay. Now going further with the emails, at some point,
15 David Wren, I believe, contacted the Gresham campaign and was
16 talking about the contributions by the LLCs; do you remember
17 that?

18 A: Yes.

19 Q: And he was alerted by Associated Press reporter who wrote
20 to B.J. Bolling with the Gresham Campaign and said there may
21 be an issue with these donations. Want to get your head
22 around the sources and get back to me. Do you see that?

23 A: I do.

24 Q: So, an AP reporter went directly to Gresham Barrett and
25 say, said there appears to be some question about these

1 campaign donations. Do you want to go look into it and get
2 back to me? Is that what a reporter, good reporter is supposed
3 to do?

4 A: Yes.

5 Q: Okay. And Gresham Barrett and his campaign did that for
6 him, didn't they?

7 A: I believe so.

8 Q: And we never saw anything else from the Associated Press,
9 did we?

10 A: Not that I'm aware of.

11 Q: Okay. And actually on DWREN029, in October 14, 2009,
12 Justin Stokes was with the campaign of Gresham Barrett and he
13 was one of the ones who was investigating what the AP reporter
14 said about questionable donations, right? You see that on the
15 second one up?

16 A: I do.

17 Q: And he's writing to Tompkins and B.J. Bolling and somebody
18 named Heath@Scott-Howell.com and he says, Re: Questionable
19 donations. What did he tell them? Can you read that to the
20 Jury?

21 A: These are all from last quarter. These guys are tied to
22 the Myrtle Beach Chamber of Commerce. Brad Dean, the Chamber
23 President worked behind the scenes to pull these together last
24 quarter.

25 Q: Okay. And going up further, there's another message from

1 B.J. Bolling responding to an email from Tompkins to B.J.
2 Bolling where he asked, where he said all appeared to be beach
3 developers, cannot figure what the issue would be. Try Mark
4 Kelley, our Horry expert or perhaps Alan Clemmons and that was
5 on October the 14th, 2009. And what did, what was the reply
6 there from B.J., BJBolling@greshambarrett.com?
7 A: Yes, they are. I've asked Davenport what the issue may
8 be. Waiting to hear back.
9 Q: Okay. And then at the top of the page -- well, let me ask
10 you this. Was there anymore emails back and forth between
11 Tompkins and the Gresham campaign questioning the donations
12 after October 14th?
13 A: I don't believe so.
14 Q: And then at the top of the page with all of these emails
15 down below it, there's an email from David Wren to Justin
16 Stokes and that's dated July the 12th, 2010 almost about a
17 year later -- no, eight months later?
18 A: Well, again, the, the emails are written in October within
19 the Barrett campaign in response to a request by an Associated
20 Press reporter, Jim Davenport. These are then provided to
21 David Wren by Tim Pearson in, I believe it's May 19th, 2010,
22 and then in July, David Wren is contacting Justin Stokes again
23 asking can I use these emails. Apparently, they had been
24 provided to with the understanding that he would not quote
25 from them and then later we see that he agrees that he would

1 not identify the source.

2 Q: And I believe Mr. Wren told Justin Stokes on July the
3 12th, thanks, these are the emails I was interested in?

4 A: Yes, sir.

5 Q: And this is after he wrote the article of May the 23rd and
6 editorial of May the 30th that was written by the editorial
7 staff of The Sun News?

8 A: Yes.

9 Q: Okay. Let me ask you this. You've read the editorial --
10 excuse me -- the article on May the 23rd?

11 A: Yes.

12 Q: Does, does it, does it or does it not accuse Mark Kelley
13 of a crime?

14 MR. BENDER: Your Honor, I would object.

15 Q: Was your understanding of reading the article ---

16 THE COURT: You can tell -- ask him what it accuses him
17 of doing and I will determine in my charge what constitutes a
18 crime under the laws of our state.

19 BY MR. STEVENS:

20 Q: What does it accuse him of doing?

21 A: This is the May 23rd article?

22 Q: The Sunday article.

23 A: Okay.

24 Q: Do you need to look at the article?

25 A: No, I know this sentence. Brad Dean along with Chamber

1 lobbyist, Mark Kelley, delivered \$84,000 to Barrett.

2 Q: Does that accuse him of a crime?

3 A: I believe it does.

4 THE COURT: That objection was sustained. I will ask the
5 Jury to disregard the question and the response just entered
6 to the witness and responded to. Okay. Take that out of your
7 mind. Whether or not the conduct was a crime or not will be
8 for you to determine based upon the law that I give you.

9 MR. STEVENS: I'll rephrase the question. I apologize,
10 Your Honor.

11 BY MR. STEVENS:

12 Q: Did it accuse Mark Kelley of, of handing campaign
13 contributions to Gresham Barrett?

14 A: Yes.

15 Q: Okay. Did, did you read the editorial of May the 30th?

16 A: Yes.

17 Q: And what was your understanding of what the editorial was
18 saying?

19 A: I think the key phrase there is a parenthetical, which
20 basically says that Brad Dean has been forced to lie to
21 protect Mark Kelley, protect him from being exposed as being
22 involved in the handling of the campaign contributions.

23 Q: All right. What did you understand their, their use of
24 the phrase no matter what the unprovable truth is?

25 A: We don't have any facts to support what we're saying.

1 Q: Okay. Does that indicate that that was written with
2 knowledge; that there was no evidence?

3 A: Yes.

4 Q: That was the title of the article for the editorial,
5 Absence of Evidence?

6 A: Correct.

7 Q: And that was written by David Wren's supervisor, the
8 editor, one of the editors?

9 A: I think she was one of the writers, yes.

10 Q: And in the deposition of Patricia O'Connor, did she
11 describe how editorials are written?

12 A: I believe so.

13 Q: Tell the Jury how she described that.

14 A: I can't recall the name of the primary writer of this
15 piece, who is now retired from the, from The Sun News. I
16 believe he is the primary writer with collaboration by others
17 on the editorial staff.

18 Q: Okay. When you say collaboration by others on the
19 editorial staff; what do you mean?

20 A: Well, typically a newspaper will have a group of people
21 who write editorials. Frequently, they are sole authored.
22 Frequently, they be collaborative efforts. And this
23 particular editorial, Ms. O'Connor says is based on reporting
24 of David Wren.

25 Q: All right. In collaboration was there any testimony as to

1 whether all the editorial staff read the editorial before it
2 was published to the public?

3 A: I believe Ms. O'Connor read it.

4 Q: Okay. And based upon her testimony in her deposition, did
5 she have any objection to it?

6 A: She thought that the word, an interesting word, pinioning,
7 which means to restrict or bind, she thought that was a
8 mistake and it should be pinning.

9 Q: Well, if she thought that, what should she have done?

10 A: She should have taken the word pinioning out and
11 substituted pinning.

12 Q: Regardless of whether it's pinioning or pinning, would it
13 have changed the meaning?

14 A: No, I think either word still conveys the meaning that
15 Brad Dean is lying to protect Mark Kelley.

16 Q: Now, let's go to Exhibit Number Fifteen. Look down at the
17 email from Justinco6@yahoo to David Wren on May the 20th, 2010
18 at 4:29 P.M., the afternoon before the first article, it says
19 subject Barrett. Read that to the Jury.

20 A: Any luck looking for other emails now. I don't think I
21 have anything documenting. We'll keep thinking how else to
22 document he set up the meeting.

23 Q: And that's signed by Justin?

24 A: Yes.

25 Q: Okay. And right above it, there's an email from David

1 Wren to Justin Stokes dated July the 12th, 2010 at 9:45 A.M.,
2 Re: Barrett. It says Justin. Tell the Jury what David Wren
3 was asking Justin?

4 A: Was wondering if now that the primary is over whether I
5 can go ahead and use the emails regarding Brad Dean and the
6 Chamber money.

7 Q: Now, with regards to the emails, as a, with your
8 background as an expert, would the proof of the, or the
9 contents of the emails give the investigative reporter
10 knowledge that there was really some problem with saying that
11 Mark Kelley handed the campaign donations to Mark -- Gresham
12 Barrett?

13 A: There's nothing in the emails that says that he did so,
14 except Tracy Edge.

15 Q: Okay. And Tracy Edge was telling him to call somebody
16 else?

17 A: Trey Walker.

18 Q: Now, and we know what Trey Walker said. Does that
19 indicate to you, as an expert, that the journalist knew or
20 should have known that printing -- the story printed was
21 wrong?

22 MR. BENDER: Objection.

23 THE COURT: Mr. Stevens.

24 MR. BENDER: Should've known ---

25 THE COURT: Should've known is not a part of the

1 standard. You want to rephrase your question?

2 MR. STEVENS: Okay, Your Honor.

3 BY MR. STEVENS:

4 Q: The -- I apologize, Your Honor. From the emails and the
5 evidence, depositions of both Ms. O'Connor and David Wren, as
6 they, an expert, does, does the emails give evidence that
7 would give a investigative reporter knowledge that accusing
8 Mark Kelley of handing campaign donations to Gresham Barrett
9 was false?

10 A: Again, the only source of claims that Mark did this is
11 Tracy Edge. All of the documents coming from within the
12 Barrett campaign do not show anything of Mark actually
13 facilitating or handing the contributions to Gresham Barrett.

14 Q: Well, you say Tracy Edge, but the emails from Tracy Edge
15 is where he's repeating somebody else?

16 A: Yes.

17 Q: He wasn't at, at the luncheon, was he?

18 A: No, he was not.

19 Q: He indicated that Trey Walker knew about it is what he
20 told David Wren?

21 A: Yes.

22 Q: And when he called Trey Walker, Trey Walker said that's
23 not true. I don't know what you're talking about.

24 A: And he said Tracy Edge is a liar.

25 Q: Well, would that give a -- an investigative reporter cause

1 to believe that printing an article accusing Mark Kelley of
2 handing campaign donations to Gresham Barrett, if he printed
3 it, he printed it with a reckless disregard for whether it's
4 true or false?

5 A: He has no basis for making a claim that Mark Kelley was
6 involved in these contributions. His sources are suspect. He
7 has no documentation to prove this. This is ---

8 Q: Would he be printing that without knowledge of whether
9 it's true or false or without evidence that it's true or
10 false?

11 A: He knew that it was false because before he prints
12 anything about this, on May 20th he interviews Brad Dean and
13 Gresham Barrett and both of them tell him Mark Kelley had
14 nothing to do with this. He uses that knowledge to structure
15 an interview with Cathy Hazelwood in which he doesn't ask her
16 about Mark Kelley handling the money. Because as he says in
17 his deposition, I already knew he didn't handle the money;
18 that's what Gresham Barrett and Brad Dean told me. That's on
19 the 20th. Then on the 23rd, he writes an email -- the 23rd,
20 by the way, is the same day as the article which uses the
21 phrase Brad Dean along with Mark Kelley delivered \$84,000 to
22 Barrett. On the 23rd, he writes an email in which he asserts
23 that Mark Kelley was involved in handling the money and as he
24 acknowledges in his deposition, on the 23rd, he believed that
25 Mark Kelley handled the money. So, somehow between the 20th

1 when both Brad Dean and Gresham Barrett tell him that Mark
2 Kelley had not handled the money and the 23rd where he writes
3 an email saying that Brad Kelley -- that Mark Kelley did
4 handle the money, he forgot what the two most credible sources
5 on this matter told him. The two people who were at the
6 lunch, somehow forgets. I don't get that.

7 Q: Now, with regards to the ethics policy of The Sun News, do
8 the policies contain standards that is generally recognized
9 through the journalism industry with regards to investigative
10 reporting?

11 A: Yes, this is a fairly boilerplate policy. It's the sort
12 of thing you'd find in newspapers all over the country.
13 McClatchy is one of the largest newspaper chains and this is
14 the sort of thing they would have affecting everyone in their
15 newsrooms.

16 Q: They have in the policy on DWREN038, if erroneous
17 information is published, immediately print a correction that
18 accepts responsibility for the mistake and provide the correct
19 information. You see that up there on the first paragraph
20 under accuracy?

21 A: Yes, I do see that.

22 Q: The last -- it's entitled under Section Two, Reporting
23 With Integrity. Do you see that?

24 A: Yes.

25 Q: All right. And it also says we must strive to be

1 completely accurate in all that we report and represent. Is
2 that standard in the journalism industry to be completely
3 accurate?

4 A: Yes, earlier I referred to the Associated Press Style
5 Book. It says accuracy is paramount. If we look at news
6 writing textbooks, they will also have statements like that,
7 accuracy is paramount. There's nothing more important than
8 accuracy.

9 Q: Now, and also down under corrections talks about
10 inaccuracies maybe misspelling or a way the word is used in a
11 sentence, et cetera. And what -- it says we correct all
12 inaccuracies immediately and about four more lines down it
13 says we also run clarifications if in our reporting, editing
14 or headline writing, we may have given readers the wrong
15 impression of a person, place or event. Is that standard in
16 the journalism industry?

17 A: Yes.

18 Q: Now, I'll ask you, based upon what you have seen, did the
19 reporter deviate from these standards?

20 A: Precision in writing is the most important thing
21 especially when writing about crime because that's an area
22 that journalists know deeply affects someone's reputation.
23 So, Wren and the editor should have gone over these articles
24 with a fine tooth comb. Again, this isn't breaking news, so
25 there was plenty of time to go back to sources, plenty of time

1 to verify information, plenty of time to polish and make sure
2 that there was nothing here that conveyed the idea that Mark
3 Kelley handed the money or facilitated contributions for
4 Gresham Barrett.

5 Q: Let me ask you this. Their policy also states under
6 Fairness, we must make every effort to report all sides of
7 every issue. We must be fair in our presentation of the issue
8 ensuring that both the structure and content of the story is
9 balanced. What do they mean by that?

10 A: This simply means that if you're going to report about
11 someone, you want to give them an opportunity to respond, to
12 have input into the article and that would mean as the editor
13 admitted, leaving a phone call, making a phone call leaving a
14 message on an answering machine doesn't cut it. You've got to
15 do more to give someone like Mr. Kelley the opportunity to
16 respond to these claims.

17 Q: Now, they use the term balanced. I've heard the term
18 being used fair and balanced. Is that a standard within the
19 journalism industry?

20 A: I want to stay away from the way that that has been
21 appropriated by Fox News because that's a very controversial
22 issue. But definitely, professional journalists do strive to
23 prevent -- present a balanced picture that is both sides of a
24 story.

25 Q: Now, down under the last section of Reporting With

1 Integrity is the heading Truthfulness. We are always truthful
2 in what we report, photograph, design or otherwise represent
3 overall fairness and accuracy must never be sacrificed for the
4 sake of style, structure or drama. Now, is that a standard
5 within the journalism industry?

6 A: I believe so.

7 Q: Okay. In this particular case, was accuracy sacrificed
8 for style, structure and drama?

9 A: Yes.

10 Q: As I understand your testimony, when David Wren reported
11 on May 23rd that Brad Dean along with Mark Kelley handed
12 campaign -- \$84,000 in campaign donations to Gresham Barrett
13 in June, he knew, based upon all the evidence he had that he
14 didn't have that evidence?

15 A: Correct.

16 Q: And based upon the editorial where it said that Brad Dean
17 was being pinioned, means to wrap your arms around and hold
18 your arms down and make them tell the truth, that they're
19 making Brad Dean, forcing him to lie and say that Mark Kelley
20 didn't have anything to do with the campaign donations
21 regardless of what the unprovable truth is. Now, that is
22 saying, I believe you said, that they're saying to the public
23 that Brad Dean is lying and Mark Kelley is guilty of handing
24 campaign donations to Gresham Barrett?

25 A: Yes.

1 Q: And they, they entitled their editorial the Absence of
2 Evidence. What does that telling you as a journalist?

3 A: It's hot air; they're blowing smoke.

4 Q: Is it proper for a newspaper investigative reporter to get
5 snippets of information when you really want it to be
6 sensational and use rumors that he can't confirm to accuse a
7 person of a crime?

8 A: It's okay to take rumors to use as the basis for further
9 investigation, but you don't print what you haven't verified,
10 especially when it comes to accusing someone of a crime.
11 Again, precision of language is the most critical thing in
12 reporting on a crime. There's no room for sloppiness, for
13 loose language. It's got to be precise.

14 Q: Let me ask you this. If he didn't have the evidence and
15 he was still trying to gather it on May the 23rd or whenever
16 he wrote the May 23rd article and the editor, before the
17 editor wrote the editorial, if he didn't have the information
18 and he tells the editor he didn't have the information and
19 assuming the editor read the articles, and let's assume they
20 read the emails or say they didn't see the emails or read the
21 emails, would that give evidence that they would be printing a
22 story, printing without knowledge of whether it was true or
23 false?

24 A: Yes.

25 Q: And they would be doing that consciously?

1 A: Again, Mark Kelley is identified by both Gresham Barrett
2 and Brad Dean on May 20th as having nothing to do with these
3 donations. David Wren uses that information when he talks to
4 Cathy Hazelwood and he says, I didn't even ask her about Mark
5 Kelley doing this because I knew he hadn't. Yet on the 23rd
6 when the article says that Brad Dean along with Mark Kelley
7 appears. We also had David Wren writing emails in which he
8 says Mark Kelley was involved with this money. There's
9 something weird going on here about his knowledge of Mark
10 Kelley's lack of involvement and then his sudden awareness of
11 it. It doesn't make sense.

12 Q: Does it show that he was conscious of the fact that he
13 didn't have the evidence?

14 A: He would have to be.

15 Q: Would that be disregarding the truth or the falsity of
16 what he was writing?

17 A: Yes.

18 Q: And he was conscious of that from your reading of the
19 emails?

20 A: And his deposition in which he says he knew that Mark
21 Kelley did not -- on May 20th he knew Mark Kelley did not
22 touch this money. On May 23rd he's saying Mark Kelley did.
23 There's no document that's been produced that shows that some
24 piece of information came to him between the 20th and the 23rd
25 that altered what he had been told by Brad Dean and Gresham

1 Barrett.

2 Q: So, if he knew that he didn't have evidence and he printed
3 it, that would be intentional on his part?

4 A: Yes.

5 Q: And if he knew he had no evidence and he printed it
6 regardless of whether it was true or false, that would be a
7 reckless disregard whether it was true or false?

8 A: Yes.

9 Q: Is there anything that I have forgotten to ask you about
10 your opinion? I don't know whether I've cut you off or not.

11 THE COURT: That's not an appropriate question.

12 Q: Okay. Well, let me ask you did you give us your entire
13 opinion?

14 A: I believe so.

15 BY THE COURT:

16 THE COURT: All right. I know this Jury needs a --
17 everybody raise your hand that wants a break. Look at all
18 those hands going up. We're gonna take a break before we
19 begin the cross examination because I don't want to stop in
20 the middle of that. Okay.

21 Mr. Ropp, if you would take them into the jury room and
22 let's give them a few moments.

23 (REPORTER'S NOTE: Jury exits courtroom. 11:27 A.M.)

24 Doctor, if you would like to refresh yourself, I'll allow
25 you to.

1 MR. LEE: Thank you.

2 THE COURT: I will allow you to do so as well.

3 We're at ease.

4 (RECESS - 11:28 A.M.)

5 *****OFF THE RECORD*****

6 (On the Record - 11:40 A.M)

7 MR. STEVENS: Your Honor, I need to introduce the
8 deposition of Patricia O'Connor because he relied on that.

9 THE COURT: Well, what does Mr. Bender say?

10 MR. STEVENS: So, is David Wren. I want to introduce,
11 that's what he relied on.

12 MR. BENDER: David Wren's a party.

13 THE COURT: Well, it's a statement by a representative of
14 the party. I will, I will -- I think it's a statement by a
15 representative of a party Defendant. We talked about it.
16 It's been used. I'll allow it.

17 All right. Well, he's just offering right now. We
18 haven't even used it. So ---

19 MR. STEVENS: It's just the basis of his opinion.

20 COURT REPORTER: This will be the Plaintiff's?

21 THE COURT: Yes.

22 PLAINTIFF'S EXHIBIT NUMBER TWENTY-THREE

23 ADMITTED INTO EVIDENCE

24 THE COURT: Okay. Let's bring the Jury in if they're
25 ready to come.

1 (REPORTER'S NOTE: Jury enters courtroom. 11:42 A.M.)

2 THE COURT: All right. We have all our jurors back in
3 the courtroom. Mr. Stevens, you may, Mr. Bender, you may
4 proceed.

5 MR. BENDER: May it please the Court, Your Honor.

6 CROSS EXAMINATION OF WILLIAM EYRE LEE BY MR. BENDER:

7 Q: I'll stand over here. The Jury said they had trouble
8 hearing me, so I'll try to speak up today, I'm sorry. I think
9 I lost my voice.

10 Professor, thank you very much for coming over from
11 Georgia to be with us today. As a tenured full professor, how
12 many courses do you teach each semester?

13 A: Typically, two.

14 Q: How about this last semester?

15 A: Two.

16 Q: What did you teach?

17 A: Law of Mass Communication.

18 Q: Both courses?

19 A: An honors course and a large lecture course.

20 Q: Now, typically you teach telecommunications courses,
21 right, broadcast courses?

22 A: Actually, that's not true.

23 Q: When did you change?

24 A: In recent years, my primary teaching responsibility has
25 been to core course, Mass Communication Law.

1 Q: Now, you've been testifying about what a newspaper
2 reporter and what a newspaper editorial should have done.
3 Tell the Jury what your newspaper writing experience is?

4 A: I've written op-ed pieces for the Wall Street Journal, for
5 the Atlantic Journal Constitution, for a newspaper called the
6 Red and Black, which it's in Athens. When I was in college, I
7 wrote for the Spartan Daily and from there I went to magazines
8 for two years.

9 Q: Now, with respect to that newspaper, is that the only time
10 you were a newspaper reporter?

11 A: Yes.

12 Q: And how long was that?

13 A: I believe for two semesters.

14 Q: And that was in what year?

15 A: 1968 and '69.

16 Q: And since that time, you have not been a newspaper
17 reporter?

18 A: Again, I've written op-ed pieces for ---

19 Q: My question was, Since that time, you have not been a
20 newspaper reporter?

21 A: Correct.

22 Q: Now, just a wild guess, you're being compensated to come
23 over here; is that correct?

24 A: That's correct.

25 Q: And who's paying you?

- 1 A: Mr. Kelley.
- 2 Q: And how much are you being paid to come give testimony?
- 3 A: \$350 an hour.
- 4 Q: And how many hours have you spent getting ready for and
- 5 providing that testimony?
- 6 A: I don't want to guess. I don't want to guess.
- 7 Q: Have you sent a bill?
- 8 A: No.
- 9 Q: More than five hours?
- 10 A: Yes.
- 11 Q: More than ten hours?
- 12 A: Yes.
- 13 Q: More than twenty hours?
- 14 A: Yes.
- 15 Q: More than thirty hours?
- 16 A: Probably.
- 17 Q: So around thirty hours or more than thirty hours at \$350
- 18 an hour to review all of this material and come testify?
- 19 A: Yes.
- 20 Q: Now you've read all these newspaper reports. The
- 21 underlying dispute was citizens challenging campaign
- 22 contributions that seemed to be tied to the Chamber of
- 23 Commerce, right?
- 24 A: By that you mean the checks that were drawn by the LLCs?
- 25 Q: Yes.

1 A: Yes.

2 Q: And there was some question about whether or not those
3 were legitimate campaign contributions, right?

4 A: Questions were raised, but I don't believe there's been a
5 adverse legal ruling about them being illegal.

6 Q: There were questions raised by a citizens group about the
7 source of campaign contributions of hundreds of thousands of
8 dollars, right?

9 A: I don't know if it's hundreds of thousands of dollars, but
10 I believe there were questions raised.

11 Q: Now, the first story on this issue May 21st, Exhibit One,
12 has a headline, Dean Handed Over Envelope of \$84,000; any
13 ambiguity in that?

14 A: None.

15 Q: There is, Mark Kelley, a lobbyist for the Chamber of
16 Commerce also attended the meeting; is that false?

17 A: No.

18 Q: And the source for that is Barrett, right?

19 A: Can you show me the paragraph?

20 Q: Certainly, right here.

21 A: Yes.

22 Q: Barrett is not an anonymous source, is he?

23 A: No.

24 Q: Now were you here when Mark Kelley testified; did you hear
25 his testimony?

- 1 A: Only a portion of it yesterday afternoon.
- 2 Q: Did you hear the part where he said he would never call
3 David Wren back and never would talk to The Sun News?
- 4 A: No, I did not.
- 5 Q: If he wouldn't, that would make it difficult to get in
6 touch with him, wouldn't it?
- 7 A: In assuming that that was his position.
- 8 Q: Now, in Exhibit One, there is a discussion starting here
9 about strict rules for lobbyists. If you would read that
10 through this paragraph here. Start here and read through
11 here.
- 12 A: There are strict rules that prohibit lobbyists from
13 facilitating campaign donations from statewide candidates.
14 However, a spokeswoman for the South Carolina Ethics
15 Commission said it does not appear any laws were violated in
16 this case. Quote, Just being in the same room is not a
17 violation; it happens all the time, end of quote, said Cathy
18 Hazelwood, the Commissions General Counsel. Quote, He,
19 (Kelley) is not supposed to touch the envelope or hand over
20 the envelope, end of quote.
- 21 Q: So, if nothing illegal was done, there's nothing in
22 Exhibit One that suggests Mark Kelley did anything illegal, is
23 there?
- 24 A: Correct.
- 25 Q: Now you have formed an opinion that David Wren and The Sun

1 News have accused Mark Kelley of a crime; is that correct?

2 A: Yes.

3 Q: Now, where does that come from? Is it in Exhibit Two, Bad
4 Debt Adds to Donor Mystery?

5 A: Yes..

6 Q: All right. Tell me what words you rely on for that
7 opinion.

8 A: Dean along with Chamber lobbyist, Mark Kelley, delivered
9 about \$84,000 of those contributions to Barrett in June.

10 Q: Okay. Does it say Dean and Kelley delivered those
11 contributions?

12 A: No, it used a more imprecise phrase, along with.

13 Q: Which is a prepositional phrase?

14 A: Yes.

15 Q: And where it falls in the sentence creating a context may
16 determine how it is to be interpreted?

17 A: That's possible.

18 Q: And in fact, we talked yesterday, were you here when I
19 showed Mr. Kelley the grammar material from the University of
20 Wisconsin that said when you're dealing with subject/verb
21 agreement, that along with does not make the subject plural?

22 A: And I would disagree with that because there are other
23 ways that along with can be used to indicate two or multiple
24 people are involved in the same activities.

25 Q: They were present at the lunch, right? There's no

1 ambiguity about that.

2 A: Yes.

3 Q: And from the beginning Dean handed over the envelope?

4 A: Correct.

5 Q: And that Kelley did nothing illegal according to Cathy

6 Hazelwood?

7 A: On May 21st.

8 Q: Do you happen to know who Tracy Edge is?

9 A: Yes.

10 Q: Who is he?

11 A: He's a State Representative.

12 Q: And he is, he, Tracy Edge, apparently talked to David Wren

13 and said call Trey Walker because he has some information that

14 Mark Kelley is involved in raising money for Gresham Barrett?

15 A: Yes.

16 Q: And when Brad, according to the emails, when David Wren

17 called Trey Walker, he said I don't know anything about it?

18 A: That's correct.

19 Q: And then David called back and talked to Tracy Edge and

20 Tracy said it looks like the paper is protecting Mark Kelley;

21 isn't that what that email said?

22 A: Your question said he called me back, I believe it's an

23 email.

24 Q: That's email, I'm sorry, email. And did it say it looks

25 like the paper is protecting Mark Kelley?

1 A: Yes.

2 Q: Now, do you know who Jim Davenport is?

3 A: He's an Associated Press Reporter in Columbia.

4 Q: Now, you talked about there was nothing further from
5 Davenport after the emails you made reference to where he sent
6 a list of suspect contributions to the Barrett Campaign. Do
7 you know why that is?

8 A: No.

9 Q: Do you know he died of cancer about that time?

10 A: No.

11 MR. STEVENS: Now, he's testifying.

12 MR. BENDER: No, I'm asking questions, Your Honor.

13 THE COURT: I'm gonna allow the question. Go ahead.

14 BY MR. BENDER:

15 Q: I believe you said that where you have a source, that
16 gives you rumor, it's appropriate for a reporter to follow up
17 and investigate?

18 A: Again, you know, if someone comes in with some farfetched
19 sort of thing, we'd do that. But if there is a rumor that you
20 think that has some validity it's appropriate to check that
21 out.

22 Q: And that's what David Wren did in this case, isn't it?

23 A: Yes.

24 Q: He asked for emails, he asked for information that would
25 indicate whether or not Mark Kelley, a lobbyist, was trying to

1 raise money for Gresham Barrett?

2 A: Yes.

3 Q: And the only thing that you say ties that to an accusation
4 is the use of along with in that paragraph in Exhibit Two?

5 A: No, there's a second article in which Robert Kelley is
6 quoted as referring to this as a scandal and he refers to Brad
7 Dean and Mark Kelley as raising this money and I believe that
8 appears on May 24th.

9 Q: And what is it in that piece that you think accuses Mark
10 Kelley of improper conduct? And that's Exhibit what?

11 A: Four. This is a quote by Robert Kelley. Quote, In the
12 past, the Chamber has denied any involvement in this scandal,
13 but now Brad Dean admits he set up the lunch with Chamber
14 lobbyist, Mark Kelley, and he handed Mr. Barrett the envelope
15 full of checks said Robert Kelley, who is not related to the
16 lobbyist.

17 Q: All right. Now, what is it in there that says David Wren
18 is accusing Mark Kelley of making a campaign contribution?

19 A: There are two parts to this statute that are, that affect
20 lobbyists. One, lobbyist can't give money to state
21 candidates; and two, candidates can't accept money from
22 lobbyists. So, Mark Kelley, as a former legislator and as a
23 lobbyist, knows this law from both sides. He knows that he
24 can't facilitate anything like setting up a lunch and here's a
25 reference to him setting up -- Brad Dean admits he set up the

1 lunch with Chamber lobbyist, Mark Kelley.

2 Q: All right. That says that Brad Dean set up the lunch,
3 doesn't it?

4 A: No, I believe it says he and Mark Kelley set up the lunch.

5 Q: Brad Dean admits he set up the lunch with Chamber
6 lobbyist, Mark Kelley. Brad Dean set up the lunch is what
7 that says, isn't it?

8 A: No, I think it means both Brad Dean and Mark Kelley had a
9 role in setting up the lunch.

10 Q: So, every time you see Brad Dean and Mark Kelley, you're
11 saying that The Sun News is saying they're engaged in a joint
12 enterprise to violate the law?

13 A: No, that's not true.

14 Q: That's what you said with respect to this Number Four and
15 this Number Two?

16 A: That's not. These aren't all the articles that are in
17 evidence and there are articles in which Mr. Wren refers to
18 Mark Kelley in separate paragraphs from those that refer to
19 Brad Dean. In this particular piece though, he's got a quote
20 from somebody who calls this a scandal and I read this as
21 meaning that both Brad Dean and Mark Kelley set up the lunch.

22 Q: Now your undergraduate degree was what?

23 A: Broadcasting.

24 Q: How would you report this? Were you here yesterday when
25 Cathy Hazelwood testified?

1 A: I was not.

2 Q: Cathy Hazelwood is the Counsel for the South Carolina
3 Ethics Commission. She's been quoted in these stories talking
4 about what is lawful and what is unlawful. In her testimony
5 yesterday, she said Mark Kelley's forwarding of this email to
6 that list of people at the top was facilitating a campaign
7 contribution for Gresham Barrett. How would you report that?

8 MR. STEVENS: Objection to him characterizing -- he's
9 characterizing the testimony.

10 THE COURT: I'm gonna allow it. I don't think it is a
11 mischaracterization. Go ahead.

12 A: Well, I haven't read that email and I wasn't here for the
13 testimony. Are you asking me how would I report on her
14 testimony?

15 BY MR. BENDER:

16 Q: Sure.

17 A: Then you would say that in the testimony Ms. Hazelwood
18 referred to an email that Mark Kelley had forwarded as a
19 violation of South Carolina Campaign Law.

20 Q: What's the date of that email?

21 A: April 25th, 2010. I don't believe this email was
22 something that Mr. Wren had in his possession until it was
23 disclosed by ---

24 Q: I didn't ask you that. I asked you how you would report
25 it if you were a reporter.

1 THE COURT: I think he was responding that he didn't have
2 it.

3 Q: Well, I agree. You didn't look at that. Look at it now.

4 A: I think it would be important to report that this was
5 disclosed as part of the defamation lawsuit brought by Mr.
6 Kelley and that this information was not in possession of
7 David Wren at the time when he wrote these articles.

8 Q: Now what about this? You testified that The Sun News has
9 a policy to publish corrections and clarifications when it has
10 notice; is that correct?

11 A: Yes.

12 Q: What if Brad Dean never called to say there's something
13 wrong with these stories; The Sun News gonna know about it?

14 A: Possibly not.

15 Q: What if Mark Kelley never called to say there's something
16 wrong with these stories; The Sun News gonna know about it?

17 A: That's possible.

18 Q: What if Gresham Barrett never called to say there's
19 something wrong with these stories?

20 A: Again, it's possible.

21 Q: Possible that the paper would not know about it and would
22 not be in the position to run a correction or clarification?

23 A: Well, your question is premised on someone calling The Sun
24 News. People might object to these stories and not deal
25 directly with The Sun News. They might express their

1 objections to other parties and that information could come
2 back to The Sun News.

3 Q: Do you have any information that anybody in the
4 hypothetical you just formulated, contacted The Sun News to
5 express unhappiness with David Wren's reporting or the
6 accuracy of David Wren's reporting with respect to the meeting
7 or campaign contributions.

8 A: I would say that filing the lawsuit is a pretty strong
9 statement.

10 Q: Do you know when that happened?

11 A: I do not.

12 Q: Would timing have some bearing on when you would run a
13 correction?

14 A: Sure. Although again, if it's an egregious error, the
15 fact that time has passed may not lessen the need for a
16 correction for clarification.

17 Q: Now, I think you interpreted Plaintiff's Exhibit Five, if
18 I'm correct, as accusing Brad Dean of lying?

19 A: It's saying that they don't know what the truth is and
20 that they're, and that Brad Dean is, I'm sorry, Barrett. No,
21 I don't believe I referred to Brad Dean.

22 Q: You're saying that it was accusing Gresham Barrett of
23 lying?

24 A: Forcing him to say that Kelley had no involvement
25 regardless of what the unprovable truth is.

1 Q: And the truth is being sought with respect to these
2 contributions is, Where did the money come from?

3 A: No, the truth that's being sought is largely whether Mark
4 Kelley had any role to play in the raising of the money.

5 Q: And where did it come from?

6 A: It came from these LLCs, I believe.

7 Q: Look here. The darkest accusation in this affair is if
8 the money in question came directly from the Myrtle Beach
9 Chamber of Commerce. Isn't the inquiry, Where did the money
10 come from; how did it get to Gresham Barrett; how did it get
11 to these other people?

12 A: Okay.

13 Q: Is that the inquiry?

14 A: That's part of it.

15 Q: And \$84,000 of the money was handed by Brad Dean to
16 Gresham Barrett at a luncheon where Mark Kelley was present?

17 A: Correct.

18 Q: And Drea Byars was present?

19 A: Correct.

20 Q: And if somebody's questioning what the role of the Chamber
21 of Commerce has been in this matter, that would be relevant,
22 wouldn't it?

23 A: Yes, but Mark Kelley was not the lobbyist for the Chamber
24 of Commerce.

25 Q: Well, how do you know that?

1 A: Mr. Kelley told me.

2 Q: All right. Do you know that the Chamber's lobbying arm is
3 called the Grand Strand Business Alliance?

4 A: I know there is an entity called the Grand Strand Business
5 Alliance. I do not know that it's the Chamber's lobbying arm.

6 Q: Do you know that it is funded by the Chamber of Commerce?

7 A: I did not.

8 Q: So if you say Mark Kelley is not the lobbyist for the
9 Chamber of Commerce, you're doing that solely on the basis of
10 what Mark Kelley has told you about his relationship to the
11 Chamber of Commerce?

12 A: Correct.

13 Q: Excuse me one minute.

14 Thank you, professor.

15 THE COURT: Is that all?

16 MR. BENDER: That's all from me, Your Honor.

17 THE COURT: Very well. Yes. The exhibit?

18 MR. BENDER: I trying a new technique of holding on
19 today.

20 REDIRECT EXAMINATION OF WILLIAM EYRE LEE BY MR. STEVENS:

21 Q: You read the email while you had it up there, correct?

22 A: Yes.

23 Q: The email was from Mr. Byars, Campaign Manager for Gresham
24 asking people for donations, correct?

25 A: Correct.

1 Q: And it also, the main thing was the excitement about the
2 Straw Poll with Gresham Barrett leading?

3 A: If I may correct, I have not read that email. I've read
4 what's -- that portion of it that's up here.

5 Q: Let me -- I'll read it. The first part of it is the
6 email. This is from here up is the email from Representative,
7 excuse me, Mr. ---

8 THE COURT: I think the witness, I think the witness, I
9 think the witness said he has read what is on the poster
10 board.

11 MR. STEVENS: Yes, on the bottom.

12 THE COURT: No, I think he's read what's on the poster.

13 A: What's on the poster, yes.

14 MR. STEVENS: He has read the whole thing.

15 THE COURT: You don't need to read it to him.

16 BY MR. STEVENS:

17 Q: So, you understand the, the, this top part was just
18 forwarding what the campaign manager had sent to everybody
19 anyway?

20 A: Yes.

21 Q: All right. And did the top part, did it say that I want
22 you to donate money to Gresham Barrett?

23 A: No, in fact, Mark testified yesterday that he was so
24 excited about the results of the poll that he did not even
25 notice that there was a request for contributions.

1 Q: Okay. And were you here when Cathy Hazelwood said if he
2 had forwarded this just for a matter of information, it would
3 not be a violation?

4 A: I did not hear that.

5 MR. BENDER: I object to that. I think that's a
6 completely ---

7 MR. STEVENS: He's testifying, Your Honor.

8 MR. BENDER: I think that's completely ---

9 THE COURT: All right. Let's don't do that. Let's
10 disregard the question. Rephrase it, if you would, Mr.
11 Stevens.

12 BY MR. STEVENS:

13 Q: All right. If it is for informational purposes, is that a
14 violation of the statute?

15 MR. BENDER: I don't know that he can testify to that?

16 THE COURT: Again, you'll have to qualify him in that
17 regard whether he would know or not.

18 MR. STEVENS: Okay.

19 THE COURT: I don't think he has even suggested that he's
20 an expert on South Carolina Election Law.

21 MR. STEVENS: I'll withdraw it.

22 THE COURT: Okay.

23 BY MR. STEVENS:

24 Q: In reading the article that Mr. Bender was talking about,
25 the 21st article, is it your understanding that Robert Kelley,

1 excuse me, that Mr. Mark Kelley didn't allege that the 21st
2 article was defamatory?

3 A: I believe so.

4 Q: Okay. So that's never been a question?

5 A: Correct.

6 Q: But let me ask you this. In reporting what he asked Cathy
7 Hazelwood about handing the campaign donations back and forth
8 and when he evidently asked Cathy Hazelwood, What if he
9 touches the envelope? And she said, Well, if he touches the
10 envelope that would be illegal. Based upon that, does it
11 appear that what he's doing is trying to set up his May the
12 23rd article?

13 THE COURT: That calls for an absolute speculation on the
14 part of the witness outside of the qualification.

15 MR. STEVENS: All right. I'll withdraw it.

16 BY MR. STEVENS:

17 Q: Is that particular article contrary or inconsistent to
18 what he wrote on May the 23rd?

19 A: By that particular article, you mean the May 21st article?

20 Q: Yes. Is it inconsistent with the article of May the 21st?

21 A: Yes, it is.

22 Q: And when he was talking about the Robert Kelley quote,
23 that quote also said Dean admits to a scandal, did it?

24 A: I don't recall. I think Mr. Kelley, Mr. Robert Kelley,
25 calls this a scandal.

1 Q: Yeah.

2 A: But I don't think he says that Brad Dean admits to it. I
3 think it says Brad Dean admits to setting up the luncheon with
4 Mark Kelley.

5 Q: Okay. So, Robert Kelley called it a scandal?

6 A: Yes.

7 Q: Now, with regards to what an investigative journalist is
8 supposed to do, if someone he hears quotes something is wrong
9 and he has reason to believe that that quote is wrong and it
10 accuses somebody of a crime, if the newspaper reports it, does
11 that relieve the newspaper of responsibility for saying
12 something false?

13 A: Absolutely not.

14 Q: Why?

15 A: Because the newspaper is legally responsible for what it
16 publishes whether it writes it itself or repeats the
17 quotations of others.

18 Q: Okay. So what, for example, if I were to say William E.
19 Lee is a criminal, he's committed armed robbery, and I turn
20 around and I tell my associate, Natalie Stevens-Graziani and
21 she repeats it, who's responsible?

22 A: Both.

23 Q: Okay. That's all I have.

24 THE COURT: Mr. Bender, would you redirect or cross?

25 MR. BENDER: I have nothing more for Professor Lee.

1 THE COURT: You may step down, Mr. Lee. Thank you.

2 COURT REPORTER: Would you hand me those please, those
3 Exhibits.

4 A: You want these exhibits? Okay.

5 THE COURT: All right. Will there be further need of Mr.
6 Lee? Any ---

7 MR. STEVENS: More testimony?

8 THE COURT: Are you ---

9 MR. STEVENS: I'm through with that witness.

10 THE COURT: Well, I would like to know if Dr. Lee can be
11 released from his subpoena is what I'm trying to get at,
12 gentlemen?

13 MR. STEVENS: As far as I'm concerned, yes.

14 MR. BENDER: I have no objection.

15 THE COURT: No objection. All right. Dr. Lee, you are
16 released from your subpoena. You're welcome to stay with us,
17 but you certainly may leave if you wish.

18 Mr. ---

19 MR. STEVENS: We'll call Buster Phipps.

20 THE COURT: All right.

21 MR. BENDER: Your Honor, before Mr. Phipps is called, I
22 have a matter I'd like to take up.

23 THE COURT: Okay. Thank you. Send the Jury out.

24 (REPORTER'S NOTE: Jury exits courtroom. 12:13 P.M. The
25 following takes place outside the presence of the Jury.)

1 THE COURT: All right. Mr. Bender?

2 MR. BENDER: May it please the Court, Your Honor. This
3 witness has not been disclosed to us previously.

4 THE COURT: I thought he was on the witness list. Was he
5 -- wasn't there a Mr. Phipps ---

6 MR. BENDER: In responses to any of the interrogatories
7 he has not been identified.

8 THE COURT: I see him on the witness list that I read,
9 Buster Phipps.

10 MR. BENDER: I think he may be on the witness list but
11 he's certainly not in response to any of the interrogatories
12 indicating who he is and what he's gonna testify to.

13 THE COURT: Is he offered as an expert in some field?

14 MS. STEVENS-GRAZIANI: May it please the Court. He was
15 named in the pre-trial brief as a rebuttal witness and in
16 detail -- gave in detail what he would testify to and I would
17 also argue that he's -- that it's foreseeable that the English
18 language and the lesson of English language would be something
19 that the Defendant is prepared to argue. So it wouldn't be
20 prejudicial since they're argument has been that Dean along
21 with Chamber lobbyist, Mark Kelley, delivered \$84,000 of
22 campaign contributions to Barrett in June. That's always been
23 the issue from the beginning. So, he is -- would be prepared
24 to ---

25 THE COURT: Well, how long have you known about this

1 witness?

2 MS. STEVENS-GRAZIANI: How long have I known about him?

3 THE COURT: Yeah, I mean how ---

4 MS. STEVENS-GRAZIANI: In preparing for the trial.

5 THE COURT: Well, did you provide Counsel with the Trial
6 Brief?

7 MS. STEVENS-GRAZIANI: I did provide Counsel with the
8 Trial, the Pre-trial Brief.

9 THE COURT: When was that?

10 MS. STEVENS-GRAZIANI: Friday.

11 THE COURT: All right. Mr. Bender, we've talking about
12 grammar -- is that what he's gonna talk about?

13 MS. STEVENS-GRAZIANI: Yes, Your Honor, he is, he was an
14 English teacher. He was actually my English teacher.

15 THE COURT: Well, aren't you qualifying him as an expert
16 if he's gonna talk about that?

17 MR. STEVENS: Yes, sir.

18 MS. STEVENS-GRAZIANI: As an expert on grammar, yes.

19 THE COURT: So you have an expert witness that hasn't
20 been disclosed.

21 MR. BENDER: That's what it appears to me to be, Your
22 Honor, and that's my objection.

23 THE COURT: I'm sorry. I cannot allow that not for an
24 expert. You may be able to call him in rebuttal. I don't
25 know what's gonna develop, but ---

1 MR. STEVENS: Might I say one other thing for the record?

2 THE COURT: Yes, sir.

3 MR. STEVENS: I understand your ruling. One of the
4 things that we have been trying to do is take -- continue
5 David Wren's deposition and we have been met with objection to
6 it. It was ruled upon that we could and they made a Motion to
7 Quash and we were gonna take the editor and finish up David
8 Wren's deposition. We then took the depositions and found out
9 that that's what they were trying to say, that the statement
10 along with meant something else other than what the normal
11 person would understand it to mean.

12 THE COURT: Well, what in the world could an expert on
13 the English language add to a dispute as to what something
14 said means in Horry County?

15 MR. STEVENS: Well, that's what really gets me. I can't
16 understand what they're ---

17 THE COURT: What relevance would it have?

18 MR. STEVENS: --- and they got up there and used some
19 thing, some ---

20 THE COURT: Mr. Stevens, this is an expert. An expert is
21 a different animal than a regular fact witness, at least in my
22 view. I think they have the right to have notice.
23 Furthermore, I am not sure that an expert's testimony would
24 aid the Jury in determining what the words used would mean,
25 quite frankly. They're -- they have common usage. They're

1 commonly used words. What could he add to the Jury? The Jury
2 is gonna look at this and they're gonna reach their own
3 conclusion and I don't think they need to be assisted in
4 understanding what it means. You've both put in things --
5 testimony -- you've both put up testimony concerning what it
6 means.

7 MR. STEVENS: Okay.

8 THE COURT: I'm just not gonna allow the addition of an
9 expert at this late juncture in this case.

10 MR. STEVENS: If they bring it up in their defense, am I
11 entitled to bring it up in reply?

12 THE COURT: Yes. Now, gentlemen, I know that we're at
13 the point where you're going to want a -- you're gonna rest?

14 MR. STEVENS: Yes.

15 THE COURT: Okay. We'll have some motions to do. Would
16 anybody have any objection to having the deputy go back,
17 advise the Jury that are released until 1:30, let's make it
18 1:45, 1:45, and to tell them to remember my admonitions about
19 the case? Would anybody have any objection to the deputy
20 doing that?

21 MR. BENDER: No objection, Your Honor.

22 MR. STEVENS: No objection.

23 THE COURT: All right. Deputy, would you just go back
24 and tell the Jury that they're released for lunch until 1:45
25 and to remember what I have told them about talking about the

1 case or having any contact with the media or anyone else about
2 the case. Okay. I've given them that instruction many times
3 and I think they can remember it.

4 (REPORTER'S NOTE: Jury released for lunch. 12:20 P.M.)

5 THE COURT: All right. Let me hear from you.

6 MOTIONS:

7 MR. BENDER: May it please the Court, Your Honor. At
8 this time, Defendants would move for a directed verdict.
9 First, as to David Wren, the requirement is that the Plaintiff
10 demonstrate by clear and convincing evidence that there was a
11 false statement of fact published as to David Wren -- by David
12 Wren as to Mark Kelley and that it was occasioned by actual
13 malice. Did David Wren know what he was publishing was false
14 or did he have reckless disregard of the potential falsity,
15 which is measured by did he have substantial doubt about what
16 was being published. And as the Supreme Court of South
17 Carolina has pointed out, that even an extreme departure from
18 what responsible journalists might do, does not constitute
19 actual malice and that tracks language in the U.S. Supreme
20 Court decision in Hart-Hanks Communications v. Connaughton
21 where the Court pointed out that the showing of highly
22 unreasonable conduct constituting an extreme departure from
23 the standards of investigation and reporting ordinarily
24 adhered to by responsible publishers, does not satisfy actual
25 malice. And the testimony here is that this is what a

1 responsible reporter should have done. That's not sufficient.

2 There has to ---

3 THE COURT: I understand. Let me tell you what my, my
4 problem here is, Mr. Bender, with your argument. There's no
5 question that this was at first blush a newsworthy event,
6 something that Mr. Wren would or any investigative reporter
7 might pursue, cannot be faulted for that. However, the
8 testimony has I have heard it is that he received information
9 via Tracy Edge that was secondhand information. That
10 information came from -- Byars?

11 MR. STEVENS: Trey Walker.

12 THE COURT: Trey?

13 MR. STEVENS: Walker.

14 THE COURT: Trey Walker, excuse me. Contact was made
15 with Trey Walker, who denied it. Said it wasn't true. Okay.
16 Thereafter, at a bare minimum, Gresham Barrett and the other
17 folks at the -- present at the meeting, said it didn't happen.
18 There was an email or a, or a deposition taken where he talked
19 with someone from the Ethics Commission. He had a subsequent
20 email before anything was printed saying that Mr. Kelley had
21 nothing to do with it. Now, if that's not evidence that would
22 suggest that he had a substantial doubt as to the truth of
23 whether or not Mr. Kelley was present or facilitated the
24 transfer of these funds -- I mean, isn't that evidence ---

25 MR. BENDER: There's certainly evidence ---

1 THE COURT: --- from whence the Jury may conclude? It
2 may be circumstantial, but circumstantial evidence is good
3 evidence from which the Jury can conclude that he did have
4 substantial doubt.

5 MR. BENDER: The issue is not whether or not Mark Kelley
6 was at the meeting because it's uncontested that he was there
7 and he was sitting between ---

8 THE COURT: It was the transfer, his facilitation of the
9 transfer.

10 MR. BENDER: The only testimony about facilitation is
11 this strained interpretation that, comma, along with Mark
12 Kelley, comma, is to be read as an and, and in Bose Corp. v.
13 Consumers Union the Supreme Court talked about the issue where
14 words used or adoption of language chosen from one of a number
15 of possible rational interpretations of an event that bristled
16 with ambiguities and descriptive challenges. A lobbyist
17 sitting at a meeting where campaign contributions are being
18 given seems to me to require a definite description, as the
19 Plaintiff's expert said, if you're going to accuse him of
20 something you say Brad Dean and Mark Kelley delivered the
21 money. What, what the Supreme Court is saying in Bose is just
22 because there is another word that somebody else might have
23 used, you can't change, you can't base a finding of actual
24 malice on that.

25 THE COURT: Don't these emails and the final editorial

1 where they speak of unprovable truth, just didn't make it ---

2 MR. BENDER: I ---

3 THE COURT: And we're talking about just Mr. Wren, but
4 those things together combined, don't they make it very clear
5 that what Mr. Wren was doing and Mr. Wren meant to do?

6 MR. BENDER: I think what Mr. Wren was doing was looking
7 to see if a lobbyist had participated in the solicitation of
8 funds for Gresham Barrett or anybody else.

9 THE COURT: And that lobbyist would be Mr. Kelley.

10 MR. BENDER: That's no question about that and he did not
11 write that because he did not find any evidence that that was
12 so.

13 THE COURT: I would certainly -- I certainly appreciate
14 your position, Mr. Bender, but at least on those grounds, I
15 would deny your motion for directed verdict as to Mr. Wren. I
16 think there's ample evidence to take this to the Jury.

17 Now as to -- I assume you're making this same motion as
18 to the Sun Publishing?

19 MR. BENDER: With respect ---

20 THE COURT: Or did you want to make additional grounds
21 for Mr. Wren?

22 MR. BENDER: No, I think that's the issue of David Wren,
23 the absence of any proof of actual malice.

24 THE COURT: All right.

25 MR. BENDER: Now, with respect to Sun News, Sun

1 Publishing Company, I don't think there's any doubt but that
2 if David Wren published defamatory material, Sun Publishing
3 Company is gonna have liability for that. Where I was gonna
4 draw the distinction is with respect to the editorial, which I
5 know you find objectionable, but that's not the test. In
6 Times v. Sullivan, the Supreme Court of the United States said
7 we're gonna protect these sorts of things even if they're
8 unpleasant, caustic, sharp and this is in fact a caustic,
9 sharp editorial which focuses on the source of campaign funds
10 that were funneled through LLCs, apparently, all of which had
11 connections to the Chamber of Commerce and Brad Dean handing
12 some of the money over in the company of the Chamber's
13 lobbyist and for that reason, since there is a special
14 protection for editorials, distinguished from news reports,
15 that this editorial itself is separate from the news reports
16 and is protected.

17 THE COURT: Okay. And could not that report be
18 reasonably read by the Jury to simply say everybody's taking
19 the rap for Mark Kelley. He violated the law. All the
20 evidence points otherwise and we can't prove it but we think
21 that's the truth. Isn't that essentially what it says?

22 MR. BENDER: Well, I think that what, if you look at
23 Philadelphia Newspapers v. Hepps, where the Supreme Court of
24 the United States apportioned the burden of proof on falsity,
25 it said it's up to the plaintiff to prove falsity and they're

1 gonna be some cases where the truth is unprovable or the
2 falsity is unprovable and there the person with the burden
3 fails. And to write an editorial that says we don't know
4 what the truth is here ---

5 THE COURT: No, I think they say we know what the truth
6 is. We know what it is; we just can't prove it.

7 MR. BENDER: Well, I don't ---

8 THE COURT: And that's, and I think that's the most
9 offensive part of this whole scenario to say we have no
10 evidence but we know what the truth is, we just can't prove
11 it. There's something not right about that, Mr. Bender.

12 MR. BENDER: Well ---

13 THE COURT: It's one thing to say they're different views
14 on this and this is what the evidence suggests, but to say we
15 had no evidence, but we still think it's the truth.

16 MR. BENDER: I don't think that's exactly what it says,
17 Your Honor, but ---

18 THE COURT: I think it's a reasonable reading of it. I
19 mean, I read in Horryee's and that is just what it seems to
20 me. I would deny your motion for directed verdict. We're
21 just gonna submit this to the Jury.

22 MR. BENDER: I do have ---

23 THE COURT: Oh, I'm sorry, I didn't mean to cut you off.

24 MR. BENDER: I understand and you didn't. One further
25 thing I would like to move with respect to is any claim that

1 identifying Mark Kelley as the Chamber lobbyist is defamatory
2 for two reasons. There's no proof that that in fact was
3 defamatory; and number two, that's not been pled in the second
4 amended complaint as the basis for liability.

5 THE COURT: Well, I, I don't know that anyone has
6 actually said that that's defamatory. The fact that he was
7 the Chamber's lobbyist, in and of itself, I don't think that's
8 defamatory. I think when it becomes defamatory is when it
9 associates him with illegal conduct on the part of the Chamber
10 of Commerce. I think you have to take it all together that as
11 lobbyist for the Chamber of Commerce, he engaged in
12 transferring improperly campaign funds and that would be
13 improper. I don't think anybody has said ---

14 MR. BENDER: Of course, our position is that that's not
15 what is being said. What's being said is the Chamber of
16 Commerce collected these funds and passed them on and there's
17 a question about the source. Every, every one of the articles
18 that talked about legality says there is nothing illegal about
19 what has happened.

20 THE COURT: What if Mr. Stevens were a member of the
21 House of Representatives, or suppose he's not, let's suppose
22 he's not, and it was reported that Mr. James Stevens, a member
23 of the House of Representatives -- of course that's not
24 defamatory, it may be incorrect, but it's not defamatory --
25 but if it's report that Mr. Stevens, a member of the House of

1 Representatives, accepted illegal campaign funds. Then it
2 becomes an issue. The fact that someone mistakenly printed
3 that he's a member of the House, that may be an honorable
4 thing, but when you associate it with the illegal act that's
5 when it becomes defamatory.

6 MR. BENDER: The accusations of the second amended
7 complaint are that it was defamatory to report that Mark
8 Kelley delivered \$84,000 in contributions and I think that's
9 what the issue is for the Jury, not the collateral stuff and
10 relationships. Accusing the Plaintiff of delivering, being
11 involved in and/or causing the delivery of about \$84,000 in
12 campaign contributions to a gubernatorial candidate, that's
13 the question, not the other stuff. That's what the Plaintiff
14 has chosen to say is defamatory.

15 THE COURT: Mr. Stevens?

16 MR. STEVENS: There's also -- all of the articles taken
17 together give the unreasonable inference that he was involved
18 in it.

19 THE COURT: All right. I'm going to deny the motion for
20 directed verdict. I'm gonna submit it to -- allow it to go to
21 the Jury.

22 All right. Let's try to be back -- and gentlemen, again,
23 I want to know what your requests are gonna be. I don't know
24 how many witnesses Mr. Bender is gonna have. I don't know how
25 far we're gonna go this afternoon. I don't know what our

1 cutoff point will be. Mr. Bender has indicated three or four
2 witnesses.

3 MR. BENDER: Two, Your Honor.

4 THE COURT: Two. He's got two witnesses. We put up
5 those witnesses. My preference would be to bring you back in
6 the morning and -- I hate to split arguments and charge, to
7 separate them. I don't like to do that. I don't like to
8 argue and charge and let the Jury deliberate the next day, but
9 I don't want to keep this Jury here until 9:00 or 10 o'clock
10 or 11 o'clock tonight and Mr. Bender's already indicated he's
11 gonna ask for bifurcation in the event there is a punitive
12 award or an actual award, which would justify under the
13 statute a, a second hearing. I don't want to do that. So,
14 what I intend to do is chop it off today whenever we get
15 through the witnesses. I'm gonna bring them back. I want you
16 to be able to argue and charge. I want -- my Clerk has got to
17 have any requests for charge or I'm gonna charge it just like
18 I sent it to you. Okay? So, I would suggest you get on the
19 ball.

20 MR. STEVENS: We have got our charges on the ---

21 THE COURT: We gave them to you three days ago, Mr.
22 Stevens, do you want that exact charge? You need to look at
23 the one I prepared. I think I've been incorporated what you
24 all put in, but there are other things we're gonna have to put
25 in it and I understand that and I want to make sure that we

1 have an agreement because I give my charge to the Jury
2 especially on a case like this.

3 All right. Let's break until 1:45.

4 MR. STEVENS: Okay.

5 (RECESS - 12:35 P.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 1:56 P.M.)

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the Jury.)

10 THE COURT: Thank you. Please be seated. Let's go. We
11 ready?

12 MR. STEVENS: Yes, sir.

13 THE COURT: All right. Let's bring the Jury.

14 MR. STEVENS: You want to do the charge ---

15 THE COURT: Yes, yes, yes, okay.

16 CHARGE CONFERENCE:

17 MR. STEVENS: Your Honor, your charge is -- it covers
18 everything except for our request number ten, which deals with
19 defamation by insinuation; and number twelve, which deals
20 agency and principal.

21 THE COURT: Yeah, I didn't have them in there. Number
22 ten, you didn't have them numbered, the ones I had.

23 MR. STEVENS: I'm sorry.

24 THE COURT: So, I numbered them. Okay. These, yeah
25 yours are. I think it was Mr. Bender's that weren't numbered

1 but I have done it.

2 MR. STEVENS: And on eleven, only if they fail to call
3 Mr. Wren and Ms. O'Connor, but if they call them then ---

4 THE COURT: All right. Mr. Bender, tell me about the ---

5 MR. STEVENS: And Your Honor, and I told your Clerk that
6 we wanted to charge headnote number one on the Erickson case
7 which states the defendant, the publisher, asserting as a
8 truth -- certain truths as a defense in a defamation case must
9 prove the statement or purported fact is true, not that a
10 person quoting actually made a statement. In other words if
11 they make a statement that's false and they repeat it just the
12 same as a witness ---

13 THE COURT: Which one is that?

14 MR. BENDER: That is the next one we had.

15 THE COURT: Which one, number one?

16 MR. STEVENS: It's not in there. It's headnote one.

17 THE COURT: Let's take them one at the time so we can
18 give Mr. Bender an opportunity to respond.

19 MR. REDMOND: I'm trying to find -- I have never received
20 a copy of their proposed additions, not that -- they weren't
21 attached to the email. If I can get a copy of those we could
22 probably handle reviewing these in short order.

23 MR. STEVENS: The only one that was additional is the ---

24 MR. REDMOND: I don't have any of them. I've got ten,
25 eleven and twelve, but I don't have your -- I don't have ---

1 MS. STEVENS-GRAZIANI: Yeah, you do. You have -- and
2 this headnote but the -- the proposed additions are ten,
3 eleven and twelve on the pre-trial brief's jury charges that
4 we gave Friday.

5 MR. REDMOND: I don't have those.

6 MS. STEVENS-GRAZIANI: Oh, I'm sorry, you're saying you
7 don't have them because -- I didn't know you the lawyer at the
8 time on the case.

9 MR. REDMOND: That's right, this Friday.

10 MR. STEVENS: I don't -- but the only other issue is I
11 understand the Judge's ruling on public figure and to protect
12 our position, we would accept two charges on public failure.

13 THE COURT: All right. Let, let's go back and give me an
14 opportunity to, to talk with Mr. Bender about this, okay?

15 Mr. Bender or Mr. Redmond?

16 MR. REDMOND: I'm trying to find their -- Your Honor.
17 I'm looking.

18 THE COURT: Because we're gonna go over, I tell you what
19 let's do. Let me look these over. Let's get this Jury in
20 here and let's finish up the testimony. I, I would anticipate
21 being able to get through that rather quickly. As I said, I
22 don't want to do closings or charging until in the morning.
23 We'll have an opportunity at that time to go over this and in
24 the meantime, Mr. Redmond is gonna have an opportunity to look
25 over this for Mr. Bender. Right, Mr. Redmond?

1 MR. STEVENS: Judge, I said about our request to charge,
2 withdrew -- we said our request was in your charge except for
3 ten ---

4 THE COURT: Eleven and twelve.

5 MR. STEVENS: Eleven and twelve. That's all.

6 THE COURT: And we're gonna talk about all those, but
7 let's talk about them when we've taken care of this Jury.
8 Okay?

9 Bring in the Jury, Brad.

10 (REPORTER'S NOTE: Jury enters courtroom. 2:02 P.M.)

11 THE COURT: All right. We have all our jurors and
12 alternates back in the courtroom. The Plaintiff, ladies and
13 gentlemen, has rested in this case. You have heard the
14 Plaintiff's evidence. Now, we're about to begin the Defense.
15 Mr. Bender and Mr. Redmond will be putting up witnesses for
16 your consideration.

17 All right. Mr. Bender?

18 MR. BENDER: May it please the Court, the Defendants call
19 David Wren.

20 CLERK: Please raise your right hand and place your left
21 hand on the Bible.

22 DAVID WREN, HAVING BEEN SWORN
23 TESTIFIES AS FOLLOWS:

24 CLERK: Have a seat please, sir. State your name for the
25 Court please, sir.

1 MR. WREN: My name is David Wren.

2 DIRECT EXAMINATION OF DAVID WREN BY MR. BENDER:

3 Q: Good afternoon, Mr. Wren.

4 A: Good afternoon.

5 Q: Did you write the news report that is Plaintiff's Exhibit
6 One with the headline, Dean handed over envelope of \$84,000?

7 A: I did.

8 Q: Did you write the news report that is Plaintiff's Exhibit
9 Two, with the headline, Bad debt adds to donor mystery?

10 A: I did.

11 Q: Did you write Plaintiff's Exhibit Three, a news report
12 with the headline BOOST calls for Barrett and others to return
13 campaign money?

14 A: I did.

15 Q: Did you write the news report that is Exhibit Four with
16 the headline, Donations tied to MB Chamber blasted?

17 A: Yes, I did.

18 Q: Did you write the news report that is Exhibit Six, FBI,
19 IRS probe Myrtle Beach campaign donations?

20 A: I did.

21 Q: Now, Exhibit Seven appears to be the same publication; but
22 in the newspaper rather than on the internet. Take a look at
23 these. One published on the internet and one published in the
24 newspaper.

25 A: That's right. One's on the internet. This is the

1 internet; this is the newspaper.

2 Q: So Six is the internet; Seven is the newspaper; same
3 story?

4 A: Yes, sir.

5 Q: Did write the news report that is Exhibit Eight, Campaign
6 staffers say Myrtle Beach Area Chamber of Commerce President,
7 brought in disputed cash?

8 A: I did.

9 Q: Did you write the news report that is Exhibit Nine,
10 Plaintiff's Exhibit Nine, Campaign donors face foreclosures?

11 A: Yes, I did.

12 Q: Did you write in any of these that Mark Kelley had passed
13 a campaign contribution to Gresham Barrett?

14 A: No, I did not.

15 Q: Did you ever intend to write that in any of these?

16 A: No, I did not.

17 Q: What's your educational background?

18 A: I attended Virginia Western Community College in Roanoke,
19 Virginia. I attended Radford University in Radford, Virginia.
20 Left Radford without a degree to take a job in journalism.

21 Q: Where have you worked in journalism?

22 A: I worked in Manassas, Virginia at a paper called the
23 Journal Messenger. Roanoke Rapids, North Carolina, I worked
24 at a paper called the Daily Herald. I moved to Martinsville,
25 Virginia to be closer to my family. I worked at the

1 Martinsville Bulletin. I worked there for about five years
2 and went to the -- I had applied for a job at The Sun News and
3 got, got a call from them to come down to interview for a job
4 in '91, got the job and moved here in 1991, worked there until
5 '99. I had an opportunity to work at the Rocky Mountain News
6 as an Assistant Business Editor. In 1999, I moved to Denver,
7 Colorado, stayed there for two years. My family did not like
8 the city, they wanted to move back to Myrtle Beach. Our house
9 had not sold at the time; it was on the market. So, we moved
10 into the same house. I had called my former boss and asked if
11 there was a job opening here and she said that there was an
12 opening. I applied for it, got the job and in 2001 moved back
13 to Myrtle Beach where I've been since.

14 Q: What is -- what was your position at The Sun News in 2010?

15 A: I was an investigative reporter.

16 Q: How long had you been an investigative reporter?

17 A: Since about 2004.

18 Q: What is an investigative reporter?

19 A: It's someone who uncovers facts that someone wants to try
20 to hide.

21 Q: Exhibit One is dated in May 2010, Dean handed over
22 envelope of \$84,000. That's dated May 21st, 2010; is that
23 correct?

24 A: That's right

25 Q: Is that the first news report you wrote dealing with

1 campaign contributions that had a connection to the Myrtle
2 Beach Chamber of Commerce?

3 A: No.

4 Q: When did you start reporting on those contributions?

5 A: It was probably late August, early September of 2009.

6 Q: And what provoked that report?

7 A: There was questions raised about the source of campaign
8 contributions from a series of limited liability corporations
9 that apparently had no assets other than maybe some real
10 estate, questions raised about whether these, where the money
11 came from to make these contributions and where that money had
12 come from the Myrtle Beach Area Chamber of Commerce as sort of
13 a payback to politicians who had approved a one percent sales
14 tax for advertising that went to the Chamber of Commerce that
15 year.

16 Q: What got you started or who made that an issue, those
17 contributions?

18 A: There was a, a group called BOOST, which I believe was
19 business owners in support of tourism, and a gentleman named
20 Tom Heron, who led that group and another man named Robert
21 Kelley. They had searched through Secretary or Ethics
22 Commission records to, to find these contributions and they
23 posted them on their website and then I, I found out about
24 them that way.

25 Q: What caused the initial concern about those contributions?

1 A: These were LLCs, all of them with the same registered
2 agent, who was former Board Chairman of the Myrtle Beach Area
3 Chamber of Commerce, and none of these LLCs had any money or
4 assets. Some of the members of the LLCs said they didn't know
5 where the money came from and there was just questions about
6 whether, you know, where this money came from from these LLCs
7 to donate to the campaigns.

8 Q: Now did BOOST make public accusations about those
9 contributions?

10 A: Yes, they did.

11 Q: Who was the registered agent for the LLCs that you
12 mentioned was the former Chairman of the Chamber Board?

13 A: It was Shep Guyton.

14 Q: When you got to May of 2010, did you have a conversation
15 or an email exchange with Tracy Edge?

16 A: I did.

17 Q: Who is Tracy Edge?

18 A: He is a State Representative; he represents North Myrtle
19 Beach.

20 Q: What was the subject of that exchange?

21 A: He was, he wanted me to, to get in touch with a campaign
22 worker for Henry McMaster's campaign to -- said he had some
23 information about the LLCs.

24 Q: And was that in an email?

25 A: I'm not sure; I believe it was.

1 Q: There had been a discussion about that email previously?

2 A: I may be mistaken.

3 Q: Do you recall what Trey Walker was supposed to give you
4 information about?

5 A: He was supposed to give me information about a meeting
6 between Mark Kelley, Brad Dean and Gresham Barrett, in which
7 campaign donations were delivered to Gresham Barrett.

8 Q: Were these campaign donations tied to those checks,
9 cashier's checks on LLC accounts?

10 A: Some of them were.

11 Q: And you called Trey Walker?

12 A: I did.

13 Q: And what did you tell Mr. Walker?

14 A: Basically, what I just said, you know, Tracy Edge suggest
15 that I give you a call and he said you had some information
16 about a meeting between Gresham Barrett, Brad Dean and Mark
17 Kelley in which campaign contributions had been delivered.

18 Q: Did Representative Edge make any suggestion about
19 involvement by Mark Kelley in that campaign contribution?

20 A: Not that I recall.

21 Q: What did you do after you talked with Trey Walker?

22 A: Trey Walker said he didn't know anything about it so I got
23 back in touch with Tracy Edge.

24 Q: And what was your next step?

25 A: Asked Tracy Edge where, you know, where to go for, for the

1 information.

2 Q: And did he make a suggestion?

3 A: Yes, he did.

4 Q: Who did he suggest you contact?

5 A: He suggested I contact Tim Pearson with Nikki Haley's

6 campaign.

7 Q: Did you contact Tim Pearson?

8 A: I did.

9 Q: And what did you ask Mr. Pearson?

10 A: I told him the same thing, that Tracy Edge suggested that

11 you had some information about a meeting in which Gresham

12 Barrett, Brad Dean and Mark Kelley attended and in which

13 Gresham Barrett received campaign contributions.

14 Q: Did you write a story as a result of that?

15 A: No.

16 Q: What did you do?

17 A: Nothing. I just continued to try to get the information.

18 Q: Did you ultimately get some information?

19 A: I ultimately got some emails that were sent to me from --

20 they originated with Gresham Barrett's campaign and they were

21 sent to me by Tim Pearson and Justin Stokes, who was a former

22 Barrett campaign staffer.

23 Q: Stokes had been in the Barrett campaign?

24 A: He had been.

25 Q: And then left?

- 1 A: That was my understanding, yes.
- 2 Q: Where did he go?
- 3 A: I'm not exactly sure where he went.
- 4 Q: And what did you get from those two men?
- 5 A: A series of emails that purportedly -- I mean, they, they
- 6 showed -- first of all, one of the emails was a one from Jim
- 7 Davenport with the Associated Press. Davenport was inquiring
- 8 of the Barrett campaign where did, you know there might be
- 9 some problem with these LLCs, the contributions from these
- 10 LLCs. You want to get your head around them, get back with me
- 11 and let me know what's up with them.
- 12 Q: Did those contributions reflect in any way the
- 13 contributions you'd been trying to identify?
- 14 A: They were the same, same groups, same LLCs.
- 15 Q: What did you do after you saw the email that Jim Davenport
- 16 had sent asking about those campaign contributions?
- 17 A: Those were, that was the only email that they sent to me.
- 18 Q: What did you do?
- 19 A: I continued to try to investigate more to find out more
- 20 about where the money came from.
- 21 Q: Were you able to find out where it came from?
- 22 A: No.
- 23 Q: If you were to find out tomorrow where the money came
- 24 from, would you write about it?
- 25 A: Yes.

1 Q: Why?

2 A: It's news. People need to know where they're -- where
3 these campaign contributions came from.

4 Q: Now you ultimately got a number of emails from the Barrett
5 campaign; is that correct?

6 A: I did.

7 Q: And they came from?

8 A: Tim Pearson.

9 Q: And one of those emails made reference or had been sent by
10 a fellow named Tompkins?

11 A: That's right.

12 Q: Do you know who Tompkins is?

13 A: I -- he was with Gresham Barrett's campaign. He was
14 either -- I think he might have been his campaign manager.

15 Q: All right. And what did that email suggest?

16 A: It was responding -- well, they were trying to figure out
17 what Jim Davenport's question, where these LLCs, you know,
18 what was the problem with these LLCs contributions and so
19 Warren Tompkins suggested that the staff, Gresham Barrett's
20 staff contact Mark Kelley, he would know the source of the
21 contributions.

22 Q: Did it describe or characterize Mark Kelley in any way?

23 A: Only as knowing the source of the contributions.

24 Q: What did you do when you saw that email?

25 A: I continued to try to pin down the source of the money and

1 investigate further where these LLCs came from and where they
2 got their cash to give the, to the candidates.

3 Q: What did you do with respect to information about a
4 meeting involving Gresham Barrett, Brad Dean and Mark Kelley?

5 A: I asked Tim Pearson and Justin Stokes for, for more
6 information to corroborate that the meeting actually took
7 place.

8 Q: Did you write anything based on what Justin Stokes or Tim
9 Pearson told you about that meeting?

10 A: No.

11 Q: Did you consider them sources that you used in a story?

12 A: They were not sources for a story, they were sources of
13 information and that information I was able to, you know,
14 take and investigate further to, to eventually write stories
15 once I got it confirmed.

16 Q: Who did you ask about the meeting?

17 A: I asked Gresham Barrett.

18 Q: How did you happen to see Gresham Barrett?

19 A: He was holding a political campaign event in Myrtle Beach.

20 Q: Did you talk to him in person?

21 A: I did.

22 Q: What did you ask him?

23 A: I asked him if he met with Brad Dean and Mark Kelley at
24 the, at a luncheon, and I believe I gave him the date -- I
25 don't recall the date of the luncheon -- and he said he did.

1 And I asked him if campaign contributions were delivered to
2 him at this meeting and he said they were and I asked him who
3 gave him the contributions and he said it was Brad Dean.

4 Q: Had you talked to Brad Dean previously about campaign
5 contributions from the Myrtle Beach Area Chamber of Commerce?

6 A: I had.

7 Q: When did you start talking to him; do you recall?

8 A: It would have been when the issue was first raised back in
9 maybe September of 2009.

10 Q: And what did Brad Dean tell you about contributions?

11 A: He repeatedly stated that the Chamber of Commerce had
12 nothing to do with contributions and that he himself had
13 nothing to do with the contributions.

14 Q: When Gresham Barrett told you that there had been a
15 luncheon and Brad Dean had handed him an envelope with
16 contributions, what did you do?

17 A: I called Brad Dean.

18 Q: What did Brad Dean say?

19 A: He admitted that he did attend the meeting and he did hand
20 over the contributions.

21 Q: Is that the first time that had come up that he told --
22 that he confirmed?

23 A: Yes, that's the first time he ever said that he had
24 anything to do with it.

25 Q: Did you write about that?

- 1 A: I did.
- 2 Q: All right. Is that Exhibit One?
- 3 A: It is.
- 4 Q: Do you have the publications or did I put them back over
5 here; I put them back over here. What did you write in
6 Exhibit One about the luncheon?
- 7 A: I said that Brad Dean arranged a luncheon and Brad Dean
8 gave Barrett an envelope with cashier's checks from local
9 corporations linked to former Chamber Board Chairman, which
10 was Shep Guyton.
- 11 Q: Did you mention Mark Kelley in Exhibit One?
- 12 A: Yes. Mark Kelley, the lobbyist for the Chamber of
13 Commerce, attended the meeting, according to Barrett.
- 14 Q: Did you say anything about Mark Kelley delivering campaign
15 contributions?
- 16 A: No.
- 17 Q: What was the basis of the characterization of Mark Kelley
18 as lobbyist for the Myrtle Beach Chamber of Commerce?
- 19 A: I understood -- that's how I understood his position with,
20 what the relationship was between the Chamber and the Grand
21 Strand Business Alliance.
- 22 Q: Who gave you that information?
- 23 A: Mike Wooten, who is the President of the Grand Strand
24 Business Alliance.
- 25 Q: And what did Mike Wooten tell you?

1 A: He told me that the Business Alliance is the lobbying arm
2 for the Myrtle Beach Area Chamber of Commerce.

3 Q: Did you determine how the Myrtle Beach Business Alliance
4 was funded?

5 A: In part, it gets money from the Myrtle Beach Area Chamber
6 of Commerce to pay Mr. Kelley's lobbying fee.

7 Q: How did you find that out?

8 A: Brad Dean told me that.

9 Q: Did you do any further inquiry about the contributions or
10 the meeting?

11 A: Yes.

12 Q: What did you do?

13 A: I continued to try to determine where the money came from
14 for these corporations.

15 Q: Did you focus any more on the lunch meeting with Brad
16 Dean, Mark Kelley and Gresham Barrett?

17 A: Yes, there were other stories that we wrote.

18 Q: All right. Take a look, if you would, at Exhibit Two;
19 what's the headline on that piece?

20 A: Bad debt adds to donor mystery.

21 Q: What was the mystery?

22 A: Where the money came from.

23 Q: And what was the bad debt?

24 A: This one of the LLCs that was facing a foreclosure of its,
25 of its beach house because it had failed to make payments on

1 its mortgage, one of the LLCs that had contributed money to
2 Gresham Barrett's campaign and to others.

3 Q: Now, did you make reference to Mark Kelley in that piece?

4 A: I did.

5 Q: And what is the reference?

6 A: I say that he was with Brad Dean.

7 Q: Read the paragraph that says that?

8 A: Dean along with Chamber lobbyist, Mark Kelley, delivered
9 about 84,000 of those contributions to Barrett in June. Those
10 contributions including a \$3500 cashier's check from Garden
11 City Partners.

12 Q: Was Garden City Partners the one that was being sued for
13 foreclosure?

14 A: Yes.

15 Q: Read the sentence that has along with in it again, please.

16 A: Dean, along with Chamber lobbyist, Mark Kelley delivered
17 about 84,000 of those contributions to Barrett in June.

18 Q: In your mind, does that say Mark Kelley and Brad Dean
19 delivered the contributions?

20 A: No.

21 Q: If you had wanted to say that, what would you have said?

22 A: I would have said Dean and Mark Kelley delivered about
23 84,000 of those contributions to Barrett in June.

24 Q: All right. Let's talk about the punctuation there in that
25 sentence. Dean -- what follows the word, Dean?

1 A: A comma.
2 Q: And then what clause?
3 A: It's, it's a clause unrelated to the ---
4 Q: What, read the clause; Dean, comma, what?
5 A: Dean, comma, along with Chamber lobbyist, Mark Kelley?
6 Q: What's the punctuation?
7 A: A comma.
8 Q: Then what's the next -- what's the verb?
9 A: Delivered.
10 Q: In your mind, what are you saying?
11 A: I'm saying Dean delivered about 84,000 of those
12 contributions to Barrett in June. Mark Kelley was along with
13 Dean when Dean delivered the contributions.
14 Q: Do you have any doubt about Mark Kelley being at the table
15 when the contributions were made?
16 A: I have no doubt.
17 Q: Was that confirmed by Gresham Barrett?
18 A: Yes, it was.
19 Q: Was that confirmed by Brad Dean?
20 A: Yes, it was.
21 Q: Did either of them tell you that Mark Kelley had passed
22 the envelope?
23 A: No.
24 Q: Did you attempt to write that Mark Kelley had passed the
25 envelope?

- 1 A: No.
- 2 Q: I draw your attention to Exhibit Four, Donations tied to
3 MB Chamber. You wrote that?
- 4 A: I did.
- 5 Q: What were you covering?
- 6 A: This was a press conference that BOOST held to discuss the
7 campaign contributions.
- 8 Q: Who was the spokesperson for BOOST?
- 9 A: Robert Kelley.
- 10 Q: Do you know Robert Kelley?
- 11 A: I know him as the President of BOOST.
- 12 Q: How did you learn of him?
- 13 A: Through questions over the campaign contributions.
- 14 Q: Did Robert Kelley contact you?
- 15 A: I believe I may have contacted him after talking to
16 someone else at BOOST.
- 17 Q: Do you quote Robert Kelley directly in that article?
- 18 A: I do.
- 19 Q: And what are you saying that Robert Kelley said?
- 20 A: I say, In the past, the Chamber has denied any involvement
21 in this scandal, but now Brad Dean admits he set up the lunch
22 with Chamber lobbyist, Mark Kelley and he handed Mr. Barrett
23 the envelope full of checks, said Robert Kelley, who is not
24 related to the lobbyist.
- 25 Q: All right. All of that sentence you've read before said

1 Robert Kelley, is it in quotation marks?

2 A: Yes.

3 Q: What are you intending to signify by those quotation
4 marks?

5 A: That is a direct quote. That is something Robert Kelley
6 said.

7 Q: And Robert Kelley was saying that in the context of what
8 issue?

9 A: This revelation that the Chamber of Commerce actually was
10 involved in the campaign contributions based on Brad Dean's
11 delivery of campaign contributions to Gresham Barrett in the
12 meeting that was held and which Mark Kelley attended.

13 Q: And that knowledge that the Chamber was involved through
14 Brad Dean came from your conference, your reporting that Brad
15 Dean confirmed the luncheon and the delivery of \$84,000?

16 A: That's right.

17 Q: Now, let's talk about what Robert Kelley is saying here.
18 Now, to the best of your ability, was that an accurate quote
19 of Robert Kelley said?

20 A: Yes.

21 Q: All right. What were the two paragraphs preceding that
22 talking about?

23 A: You want me to read them?

24 Q: Sure.

25 A: Kelley questioned -- this is Robert Kelley -- Kelley

1 questioned why at least one of the corporations made \$20,500
2 in political contributions last year yet failed to pay the
3 mortgage on its only asset, a beach house, which is now in
4 foreclosure. Kelley also said Dean has changed his story
5 about the Chamber's involvement of the campaign donations.

6 Q: All right. Now, let's go back to the quotation you read
7 earlier. Start with it again. It starts with quotation
8 marks?

9 A: Yes.

10 Q: All right. And it says what?

11 A: In the past, the Chamber has denied any involvement in
12 this scandal.

13 Q: All right. Stop right there. Whose word is scandal?

14 A: That is Robert Kelley's word.

15 Q: Did you use that word before in connection with your
16 inquiries about these campaign contributions?

17 A: No.

18 Q: All right. Go on.

19 A: Comma, but now Brad Dean admits he set up the lunch with
20 Chamber lobbyist, Mark Kelley -- Chamber is in ---

21 Q: All right. Stop right there. Read that again and stop
22 right after Chamber lobbyist.

23 A: But now Brad Dean admits he set up the lunch with Chamber
24 lobbyist, Mark Kelley.

25 Q: Any question in your mind about who set up the meeting in

1 that sentence?

2 A: No.

3 Q: Who set up the meeting?

4 A: Brad Dean.

5 Q: All right. Go on after Chamber lobbyist, Mark Kelley.

6 A: And he handed Mr. Barrett the envelope full of checks, end
7 of quote.

8 Q: Who is the he that handed the envelope?

9 A: Brad Dean.

10 Q: Did you have any thought that he had made reference to
11 Mark Kelley?

12 A: No.

13 Q: Was Robert Kelley intending to say Mark Kelley delivered
14 the money?

15 MR. STEVENS: Objection, Your Honor, calls for ---

16 THE COURT: That would call for speculation on the part
17 of the witness.

18 MR. BENDER: How about this, Your Honor? Thank you.

19 BY MR. BENDER:

20 Q: Is there any indication that Robert Kelley was intending
21 to implicate Mark Kelley?

22 A: No.

23 Q: Now, let's, let's focus on these contributions from the
24 LLCs. Was there anything unusual about the contributions?

25 A: All of the contributions from the LLCs were purchased at

1 the same bank. They were cashier's checks in numeric --
2 sequential numerical order purchased on the same day at the
3 bank where Shep Guyton, registered agent for these LLCs, was a
4 board member.

5 Q: So, we have Shep Guyton, who has a connection to the
6 Chamber of Commerce; is that correct?

7 A: He, he was their -- I believe was their past Board
8 Chairmen, previous past Board Chairman.

9 Q: And we have LLCs that Shep Guyton is the agent, the
10 official agent for those corporations?

11 A: He's the registered agent for them.

12 Q: He's registered with the South Carolina Secretary of State
13 for those LLCs?

14 A: That's right.

15 Q: He was on the board of the bank where the checks came
16 from?

17 A: Yes.

18 Q: And the checks were in sequential numerical order?

19 A: That's right.

20 Q: All purchased on the same day?

21 A: Yes.

22 Q: And the corporations on whose accounts these checks were
23 drawn included those that had no assets except maybe a beach
24 house?

25 A: That's right.

1 Q: Including one that was in foreclosure?

2 A: That's right.

3 Q: And including an LLC that had its status revoked for
4 failure to pay taxes?

5 A: Yes.

6 Q: Did that raise questions in your mind about the legitimacy
7 of those campaign contributions?

8 A: It did raise questions in my mind, yes.

9 Q: And what were you trying to do in investigating those
10 contributions?

11 A: Trying to find out where the money came from.

12 Q: Did you ever find out where the money came from?

13 A: I did not.

14 Q: Did you talk to people who received those contributions?

15 A: I did.

16 Q: Now, we had two House members and a former House member
17 yesterday testifying in the Plaintiff's case. Each of those
18 men received a contribution from these accounts and from these
19 checks; is that correct?

20 A: That's correct.

21 Q: Now, the person who talked to you first about all of this,
22 Tracy Edge, did he get any money?

23 A: He did.

24 Q: What did he do with it?

25 A: He thought that there was something unusual about the

1 cashier's checks and he didn't want to cash them. He gave
2 them back to the -- I believe he gave them back to Shep
3 Guyton.

4 Q: Now, when you were looking into this, you had emails that
5 had come from the Barrett campaign through the Haley campaign
6 to you?

7 A: Yes.

8 Q: Did you write anything based on those emails without
9 corroborating it with some other source?

10 A: No.

11 Q: And your source with respect to the meeting was Gresham
12 Barrett?

13 A: Gresham Barrett and Brad Dean.

14 Q: And your source with respect to the passage of the money
15 was?

16 A: Gresham Barrett and Brad Dean.

17 Q: In these news reports, you have quoted Cathy Hazelwood; is
18 that correct?

19 A: That's right.

20 Q: And Cathy Hazelwood was introduced to us yesterday. Why
21 did you call Cathy Hazelwood?

22 A: She's the General Counsel for the South Carolina Ethics
23 Commission. I didn't know at the time if Mark Kelley attended
24 a meeting, I didn't know if that was a violation of ethics
25 rules, so I called her to see.

1 Q: And what did Cathy Hazelwood tell you about attendance at
2 a meeting where a campaign contribution is delivered?

3 A: She said it's not illegal; it happens all the time.

4 Q: And that the problem would come up if what?

5 A: He's not supposed to deliver the contributions. He's not
6 supposed to touch the envelope or have anything to do with
7 giving the contributions to the candidate.

8 Q: Did you have any information that Mark Kelley had touched
9 the envelope?

10 A: No.

11 Q: Did you have any information that Mark Kelley had
12 delivered the envelope?

13 A: No.

14 Q: Did you report that Mark Kelley had delivered the
15 envelope?

16 A: I did not.

17 Q: Did you report that Mark Kelley had touched the envelope?

18 A: No.

19 Q: Had you found out that he had done either of those things,
20 what would you have done?

21 A: I would have reported it.

22 Q: Now, did you call Mark Kelley asking him for comment?

23 A: I did.

24 Q: Did he return your call?

25 A: No.

1 Q: Now, Mark Kelley testified yesterday that he would never
2 return your calls. Do you think there was any way that he
3 would call you back when you told him you were working on a
4 story?

5 A: Apparently, if he says he's never gonna return my calls, I
6 guess not.

7 Q: Now, once these publications that I've asked you about
8 were published, did you hear from Brad Dean claiming that
9 there was any inaccuracy in the publication?

10 A: No.

11 Q: Did you hear from Gresham Barrett or anyone on his behalf
12 that there was anything inaccurate in the publications?

13 A: I did not.

14 Q: Did you hear from Mark Kelley at any time before this
15 lawsuit was served on you that there was anything inaccurate
16 in these publications?

17 A: I did not.

18 Q: Had you been told by Mark Kelley that there was a
19 inaccuracy, what would you have done?

20 A: I would've been happy to correct the inaccuracy.

21 Q: Do you recall how long after the publications it was
22 before you were served with the lawsuit?

23 A: It was about two years.

24 Q: So, in the two years from the time you wrote those news
25 reports and until you were served the lawsuit, you didn't hear

1 anything from anybody complaining that anything in those
2 reports was inaccurate?

3 A: That's right.

4 Q: Now, there's been some discussion about emails coming from
5 Justin Stokes, who apparently had been on the Barrett campaign
6 and then changed sides?

7 A: Right, yes.

8 Q: Were you skeptical of Justin Stokes?

9 A: I was.

10 Q: Were you skeptical of Tim Pearson?

11 A: Yes.

12 Q: Did you write anything based on what they said without
13 corroboration?

14 A: No.

15 Q: Why did you offer to protect the identity of the person
16 who sent you those emails?

17 A: The fact that he gave me the emails, you know, I didn't
18 need to know -- I don't need to say where I got the emails
19 from if the emails came -- they came from the Barrett
20 campaign.

21 Q: Did anybody on the -- you ultimately wrote a news report
22 that made reference to those emails, didn't you?

23 A: I did.

24 Q: Did you hear from anybody on the Barrett campaign that
25 those emails were fraudulent?

- 1 A: No.
- 2 Q: Did anybody in the Barrett campaign ever say you've got
3 this wrong?
- 4 A: No.
- 5 Q: Do you believe that anything you have reported in those
6 exhibits is false?
- 7 A: I do not.
- 8 Q: Was there anything that you reported that you had
9 substantial doubt about the accuracy of?
- 10 A: No.
- 11 Q: Had you had doubt about the accuracy, what would you have
12 done?
- 13 A: If I doubted the accuracy of it, I wouldn't have printed
14 it.
- 15 Q: All right. Would you have investigated further?
- 16 A: Yes.
- 17 Q: Are you still trying to figure out where this money came
18 from?
- 19 A: Yes.
- 20 Q: Wouldn't that be story?
- 21 A: I would love to know where it came from.
- 22 Q: Does it make any difference whether the meeting with
23 Gresham Barrett, Brad Dean and Mark Kelley and Drea Byars was
24 eight to ten months before you started reporting on this?
- 25 A: No.

1 Q: Did anybody in Gresham Barrett's campaign come forward to
2 tell you, oh, by the way, we've been challenged over some
3 campaign contributions?

4 A: Nobody ever told me that, no.

5 Q: Did anybody -- did Alan Clemmons come tell you, oh, by the
6 way, I've gotten campaign contributions that people are
7 raising a stink about?

8 A: No.

9 Q: How about George Hearn?

10 A: No.

11 Q: How about that other Representative who was here
12 yesterday?

13 A: Mr. Hardwick?

14 Q: Yes.

15 A: No.

16 Q: So -- and you called them and talked to them about the
17 contributions; is that correct?

18 A: I attempted to call everybody that received contributions.

19 Q: And what did they tell you?

20 A: The ones that I could get in touch with that called me
21 back, said that -- well, except for Tracy Edge, said that the
22 contributions appeared to be legal and they weren't gonna
23 return them.

24 Q: What did Cathy Hazelwood say about the contributions?

25 A: They appeared to be legal.

- 1 Q: Now, if Mark Kelley had handed Gresham Barrett an envelope
2 with \$84,000 in it, would that have been an illegal
3 contribution?
4 A: Yes.
5 Q: And Cathy Hazelwood said what with respect to that
6 transfer of funds by Brad Dean to Gresham Barrett?
7 A: There was nothing illegal about Brad Dean giving Gresham
8 Barrett campaign funds.
9 Q: But it would have been illegal if what?
10 A: If Mark Kelley had done it or if he had touched the
11 envelope.
12 Q: And you quoted Cathy Hazelwood on that issue?
13 A: I did.
14 Q: Did she ever call you to tell you that you misquoted her?
15 A: No. She stated yesterday that the quote was accurate.
16 Q: Were you out to get Mark Kelley?
17 A: No.
18 Q: If Mark Kelley had solicited a campaign contribution and
19 you learned about it, would you have reported it?
20 A: I would.
21 Q: Now, Exhibit Five is an editorial. Did you write this? I
22 have it here.
23 A: Okay.
24 Q: Did you write this?
25 A: No, I did not.

1 Q: Do you have anything to do with the preparation of
2 editorials?

3 A: No.

4 Q: Did you talk with the editorial writer who wrote that?

5 A: No.

6 Q: Do you know who wrote it?

7 A: I do.

8 Q: Who wrote it?

9 A: Robert Morris.

10 Q: Where is Robert Morris today?

11 A: I believe he's in New Orleans or somewhere, somewhere in
12 that area.

13 Q: Anybody ever call you to say there's an error in this
14 editorial?

15 A: No one ever called me about it, no.

16 Q: Anybody call you about any or send you an email or a text
17 or a letter between the time you published in May 21, 2010
18 until you got the lawsuit, that suggested you had reported
19 anything erroneous, false or incorrect?

20 A: No.

21 Q: Has anybody done anything except Mark Kelley filing a
22 lawsuit against you that suggests what you had previously
23 reported was false, inaccurate, misleading, unfair?

24 A: The lawsuit is the only thing.

25 Q: And that was two years after the first story?

- 1 A: That's right.
- 2 Q: Let's look at Plaintiff's Exhibit Thirteen-E. Is that
3 from you?
- 4 A: Yes.
- 5 Q: To whom did you send that?
- 6 A: It says an email to Tim Pearson.
- 7 Q: And what's it say?
- 8 A: It says Tim, I wanted to check back with you and see if
9 there's any way that we can use the emails from Barrett's
10 campaign that seem to show the involvement of Brad Dean and
11 Mark Kelley in raising money for Barrett and others. I can
12 definitely protect the source of the emails but would say
13 something to the effect that they've come from the Barrett
14 campaign after the AP, the Associated Press, started asking
15 questions in October. Recent events have overshadowed the
16 campaign funding issue and I'm looking for ways to move that
17 story forward.
- 18 Q: What's the word seem in there say?
- 19 A: Appears to be, I mean you're not sure, it seems that
20 something's happening.
- 21 Q: Were you trying to find the answer to that question?
- 22 A: I was.
- 23 Q: Did you ever find an answer that implicated Mark Kelley?
- 24 A: No.
- 25 Q: Did you ever report that you found an answer to that

1 question that implicated Mark Kelley?

2 A: No.

3 Q: Did you publish any news report using a biased source?

4 A: No.

5 Q: Thank you. I have no other questions. Somebody from the
6 Plaintiff's side will ---

7 THE COURT: Mr. Stevens?

8 CROSS EXAMINATION OF DAVID WREN BY MR. STEVENS:

9 Q: Have you corrected any inaccuracies since the lawsuit?

10 A: No.

11 Q: Let me ask you this. You have commenters to your online,
12 right?

13 A: That's true.

14 Q: Tell the -- isn't -- tell the Jury that ---

15 MR. BENDER: Your Honor ---

16 MR. STEVENS: Excuse me?

17 MR. BENDER: Your Honor, if he's getting into comments,
18 the comments are specifically not published by The Sun News
19 and, as a matter of federal law, have no relationship to this.

20 THE COURT: Are, are you gonna ask him about the ---

21 MR. STEVENS: I'm not gonna ask him about the content;
22 I'm gonna ask him what his, the undertone of the comments.

23 THE COURT: I'll allow that.

24 BY MR. STEVENS:

25 Q: Would it be fair to say, Mr. Wren, that the commenters to

1 your article understood you to say that Mark Kelley had given
2 campaign donations to Gresham Barrett?

3 MR. BENDER: Your Honor, I don't see how that's in any
4 way different from asking what the content is.

5 THE COURT: I'm gone allow the question.

6 MR. STEVENS: Okay.

7 THE COURT: If that was the newspaper -- the response the
8 newspaper received.

9 MR. BENDER: Okay. The newspaper is not the publisher?

10 THE COURT: I understand. I understand but was that --
11 rephrase your question.

12 MR. STEVENS: Okay. I will.

13 BY MR. STEVENS:

14 Q: You wrote the article and there were comments to your
15 articles of May the 23rd, correct?

16 A: Yes.

17 Q: Would it be fair to say that people who read your article
18 made comments under your article online that they -- that led
19 you to believe that they understood your article as being
20 accusing Mark Kelley of handing campaign donations to Gresham
21 Barrett?

22 A: I don't know what their understanding of the story was.

23 Q: Okay. Let's -- let me ask you this. Their comments
24 weren't very kind to Mark Kelley, were they?

25 A: I don't know.

- 1 Q: Come on, Mr. Wren; you read the comments?
- 2 A: Some of them were kind; some of them weren't.
- 3 Q: Some of weren't? Most of them weren't?
- 4 A: I don't know if more weren't or more were.
- 5 Q: Let me ask you this. You said nobody complained about
- 6 your inaccuracies; isn't that what you told your attorney?
- 7 A: That's what I said.
- 8 Q: Is it true?
- 9 A: Yes, sir.
- 10 Q: That what you said under oath?
- 11 A: Yes.
- 12 Q: Tell the Jury about the press conference that Mike Wooten
- 13 called to report your inaccuracies; you remember that?
- 14 A: Yes, I do.
- 15 Q: Yeah, okay. And he reported that he was calling that
- 16 press conference to report your inaccuracies to the public?
- 17 A: Not inaccuracies about this.
- 18 Q: And this is the time when you said to the public that
- 19 you're telling us that that's when you got the information
- 20 that Mark Kelley was the lobbyist for the Chamber of Commerce,
- 21 correct?
- 22 A: That's when Mike Wooten said that the Grand Strand
- 23 Business Association is the lobbying arm for the Myrtle Beach
- 24 Area Chamber of Commerce.
- 25 Q: And based upon that, you spring boarded off of that and

1 every time you were writing an article about Mark Kelley, you
2 said he was the Chamber president -- I mean Chamber lobbyist,
3 right?

4 A: He is the Chamber lobbyist.

5 Q: You said he was the Chamber lobbyist and you put it in
6 brackets.

7 A: Okay.

8 Q: Am I correct?

9 A: In some instances, yeah.

10 Q: All right. Listen to my question again -- and I hope you
11 understand it. If you tell me you don't understand, I'll
12 repeat it, okay? Mr. Mike Wooten reported about your
13 inaccuracies?

14 A: He reported about what he perceived to be inaccuracies
15 that were unrelated to this issue.

16 Q: That's when you asked him about whether Mr. Kelley was the
17 Chamber lobbyist and he told you that he was the lobbyist for
18 the Greater Myrtle Beach Business Alliance?

19 A: No, Mike Wooten made these statements during an open
20 meeting and I didn't ask him anything about that.

21 Q: Okay. And you used that, that particular statement from
22 Mr. Wooten to justify calling Mark Kelley the Chamber lobbyist
23 in your May the 23rd article, May the 25th article, and the
24 editorial, the editorial that the editors wrote that said
25 based upon your reporting?

1 A: Actually, there's an email that Brad Dean had sent to me
2 earlier, I believe this was in either 2008, early 2009, in
3 which I was trying to get a better idea of the working
4 relationship between the Grand Strand Business Association and
5 the Chamber and that's when he told me that the Chamber
6 supplies the funds to pay Mark Kelley's lobbying fee. That's
7 how he, that's how I determined that he is the Chamber's
8 lobbyist.

9 Q: Where is that email? You haven't given it to us.

10 A: My attorney disclosed it to you.

11 Q: Where is it?

12 MR. BENDER: In your file.

13 Q: It's in the file?

14 A: I don't know.

15 BY MR. STEVENS:

16 Q: When did you write that?

17 A: When did I write it?

18 Q: Yeah.

19 A: I didn't write an email.

20 Q: You're talking about the time when Brad Dean is ---

21 A: Brad Dean sent me an email.

22 Q: Huh?

23 A: Brad Dean sent me an email.

24 Q: When?

25 A: I don't recall, it was either 2008 or 2009.

1 Q: Okay. Don't you think it's important to show the Jury
2 this particular email that says Brad Dean says that Mark
3 Kelley is the Chamber lobbyist?

4 A: It's not up to me to determine what ---

5 Q: All right. Well let me, it's not up to you to determine,
6 but you report it; it's okay for you to report it and not up
7 to you to determine whether it's true or not?

8 A: According to -- that he is the Chamber lobbyist.

9 Q: Well, let me ask you this. If he's a lobbyist for the
10 Chamber of Commerce, it has to be reported to the Ethics
11 Commission, correct?

12 A: Okay.

13 Q: And he's not the Chamber lobbyist in the Ethics
14 Commission, he's not recorded there, is it?

15 A: He's recorded as the lobbyist for the Grand Strand
16 Business Association, the lobbying arm of the Myrtle Beach
17 Area Chamber of Commerce.

18 Q: And you're basing all this on this -- that he's the
19 Chamber lobbyist on the report on the press conference by Mike
20 Wooten?

21 A: No.

22 Q: Did you tell me that in your deposition?

23 A: No.

24 Q: Tell the Jury when this press conference was.

25 A: Well, the press conference that Mike Wooten held was after

1 this issue.

2 Q: That's what I wanted to get to.

3 A: The email from Brad Dean was before.

4 Q: Okay. And you didn't come, you didn't find out where all
5 this money with the LLCs came from, but you did find out it
6 did not come from Mark Kelley?

7 A: I don't know where the money came from.

8 Q: Are you telling the Jury that the money came from Mark
9 Kelley today?

10 A: No, you're asking where ---

11 Q: You got evidence the money came from Mark Kelley?

12 A: No evidence that he came from Mark Kelley.

13 Q: You got no evidence at all about Mark Kelley, do you?

14 A: The only indication that I have that he's involved with
15 the campaign contributions is the email that his, the Gresham
16 Barrett's campaign manager or spokesman said that, you know,
17 ask Mark Kelley, he'll be familiar with these contributions
18 and where they came from.

19 Q: Okay. He also said to call Alan Clemmons too, didn't he?

20 A: Or call Alan Clemmons, yeah.

21 Q: Why they're talking about is Mark Kelley had been well
22 respected as a politician and representative in Horry County
23 and he knew how things worked with regards to campaign
24 contributions and so forth and in a general sense; that's what
25 we're talking about, right?

1 A: Yeah, they said he would know the source of the
2 contributions.

3 Q: Okay.

4 A: That's what they said.

5 Q: All right. Now, you want this Jury to believe that your
6 statement that Brad Dean along with Mark Kelley, Chamber
7 lobbyist, Mark Kelley, delivered \$84,000 in campaign
8 contributions to Barrett in June, that that doesn't accuse him
9 ---

10 A: No, it does not accuse Mark Kelley.

11 Q: It does not accuse him. Let's talk about how you used
12 along with before in your other articles?

13 A: Okay.

14 Q: Do you remember the article when you wrote about, Myrtle
15 Beach family feuds over estate?

16 A: If I can see the article.

17 Q: Sure. It's dated May the 22nd, 2011.

18 A: Okay.

19 Q: It's written by you, right?

20 A: Yes.

21 Q: You see the paragraph or the line that talks about along
22 with?

23 A: Yes, I do.

24 Q: Read it to the Jury.

25 A: Dorothy Anderson was born in 1933 in Conway, the sixth

1 child in a family of fourteen siblings. She married James
2 Anderson in 1951 and moved to the beach eighteen years later
3 along with her sister, Mary Frances Tall, where she bought a
4 boarding house on Ninth Avenue North called The Welcome Mat.

5 Q: Okay. Who moved to the beach; how many people moved to
6 the beach?

7 A: Ms. Dorothy Anderson and Mary Frances Tall.

8 Q: Two people and you used the term along with.

9 A: That -- Mary Frances Tall.

10 Q: Huh?

11 A: Well, yeah, it means they moved together.

12 Q: Yeah. Okay. I've got another one here, Federal probe of
13 luxury car exports in Myrtle Beach Area guise. This is dated
14 September the 13th, 2013 and it's written by you again. I
15 want you to look at the second paragraph and read that where
16 it has along with.

17 A: The complaint was filed along with warrants to seize a
18 dozen vehicles and two bank accounts belonging to companies in
19 Charleston and Houston that intended to export the vehicles
20 according to court documents. Criminal charges have not yet
21 been filed in the case, which involves agents from the U.S.
22 Secret Service, the State Law Enforcement Division, the
23 Richland ---

24 Q: I think you've read enough. How many things were filed by
25 what you said?

1 A: Well, the complaint was filed.
2 Q: Along with what?
3 A: There were warrants that were filed to?
4 Q: Okay. How many things were filed?
5 A: I don't know how many of them.
6 Q: Two, right?
7 A: Well, the warrants were filed along with the complaints.
8 Q: Okay. All right. That ain't all.
9 A: When you brought this up yesterday, I went back to my home
10 and looked up the number of times that I ---
11 Q: Let me ask the questions, okay?
12 A: I'm answering your question. I, you know ---
13 THE COURT: Just answer the question, Mr. Wren. Wait
14 until he asks a question.
15 A: Okay.
16 Q: Let's talk about this next one written by David Wren,
17 March 19th, 2013. Give me just one second, Your Honor. This
18 one's entitled, Suspected Myrtle Beach lawyer accused of fraud
19 and forgery, dated March the 19th, 2013. Just skip to the
20 along with clause and stop at the second page. Read it out
21 loud.
22 A: Brunty, hyphen, along with business partner, Dennis
23 Dellinger, who is also named as a defendant in the Kravecass
24 lawsuit, hyphen were supposed to keep the investor's money in
25 a trust account, but instead used the money for personal

1 expenses according to court documents.

2 Q: How many lawyers are involved in that controversy?

3 A: There's one lawyer.

4 Q: One lawyer?

5 A: Uh-huh (affirmative response).

6 Q: Let me look at it. It says, Brunty along with business
7 partner Dennis Dellinger, who also is named as a defendant in
8 the Kravecas lawsuit, were supposed to keep the investor's
9 money in a trust account. How many are responsible for
10 keeping the investor's money in a trust account?

11 A: There are two people, one of them is a lawyer and one was
12 not.

13 Q: But it says two people, right?

14 A: Well, two people were.

15 Q: Okay. They're accusing two people of a crime, right?
16 Right?

17 A: That's what the FBI and the ---

18 Q: That's what you reported.

19 A: I reported what they ---

20 Q: You reported that they were accusing two people of a
21 crime?

22 A: That is what the report is about, yeah.

23 Q: Just like accused two people of a crime when you said Brad
24 Dean along with Mark Kelley -- Chamber lobbyist, Mark Kelley,
25 delivered \$84,000 in campaign contributions to Gresham

- 1 Barrett?
- 2 A: No.
- 3 Q: You deny that?
- 4 A: I deny that.
- 5 Q: Well, every time that you wrote an article, every time you
- 6 wrote an article, you had to send your article to the editor;
- 7 am I right?
- 8 A: That's correct.
- 9 Q: And the editorial staff had to approve your article to be
- 10 published to the public?
- 11 A: My editor would approve the article, yes.
- 12 Q: Did they approve your articles that we've been talking
- 13 about?
- 14 A: Which one? Are you talking about Dean's articles, the
- 15 three that you just mentioned?
- 16 Q: Mr. Wren, you know I'm asking you about the articles you
- 17 wrote about Mr. Kelley?
- 18 A: And you were just asking me about the others.
- 19 Q: Okay. I was talking about along with. We'll talk about
- 20 who approved the articles that you printed of and concerning
- 21 Mark Kelley?
- 22 A: Okay.
- 23 Q: Who did?
- 24 A: My editor.
- 25 Q: Who's your editor?

- 1 A: Patricia O'Connor; she was my editor.
- 2 Q: She was your editor?
- 3 A: Uh-huh (affirmative response).
- 4 Q: She's no longer your editor?
- 5 A: She retired from the newspaper.
- 6 Q: So, somebody in a supervisory capacity had approved your
- 7 article to be printed in The Sun News?
- 8 A: That's correct.
- 9 Q: You were the agent of the Defendant when you wrote the
- 10 articles?
- 11 A: Yes.
- 12 Q: Agent of The Sun News?
- 13 A: Yes.
- 14 Q: You were acting within the scope of your authority when
- 15 you wrote and published the articles?
- 16 A: Yeah. That's my job.
- 17 Q: You were acting within the scope of your authority when
- 18 you submitted your articles to the editor?
- 19 A: Yes.
- 20 Q: And you got The Sun News or the Sun Publishing Company's
- 21 supervisors to approve your article when it was printed?
- 22 A: I didn't get them to, to, you know, approve it, they, you
- 23 know, I turned it into my editor who had it and then approved
- 24 it.
- 25 Q: It doesn't get printed unless they approve it?

- 1 A: They approved it; I didn't tell them to.
- 2 Q: Okay. I didn't ask you that. They approved what you did?
- 3 A: I got them to approve it.
- 4 Q: Okay. And you knew these articles, did you not, Mr. Wren,
- 5 were going to affect Mr. Kelley as a lobbyist, didn't you?
- 6 A: No.
- 7 Q: Let, let's get all the dust and smoke out of here. Let's
- 8 talk about these LLCs. You knew when you were printing these
- 9 articles and all the stuff that Mark Kelley did not have
- 10 anything interest in any LLC, did you not?
- 11 A: I believe that he did not have an interest in any of the
- 12 LLCs.
- 13 Q: You could've checked the Secretary of State to look to see
- 14 who was the managing partner or who was managing an LLC?
- 15 A: You can find out who the registered agent is; you can't
- 16 necessarily determine who the partners are.
- 17 Q: You can get the articles of organization; you know that,
- 18 don't you?
- 19 A: Sometimes they tell you; sometimes they don't.
- 20 Q: Okay. Did you get the articles of organization or did you
- 21 just look on the internet?
- 22 A: I went to the Register of Deeds to find deeds that these
- 23 LLCs had filed to see who signed them and who the partners
- 24 were.
- 25 Q: Okay. And nowhere did you see Mark Kelley?

1 A: No.

2 Q: You don't have any evidence that Mark Kelley even knew
3 about these LLCs, do you?

4 A: The only evidence I have is Warren Tompkins saying that
5 Mark Kelley would know the source of the contributions that
6 these LLCs made.

7 Q: Okay. Warren Tompkins said that?

8 A: That was in the email.

9 Q: Okay. That was in an email. All he said was why don't
10 you check with somebody over in Horry County and you said who
11 is it -- well, Mark Kelley and Alan Clemmons usually know
12 what's going on in the politics in Horry County; that's what
13 they said?

14 A: I'd have to see the email to see the exact wording.

15 Q: That's what they meant and that's what they said.

16 A: That's not what they said.

17 Q: Okay.

18 A: He said he would know the source of the contributions.

19 Q: All right. And you did your investigation. You found
20 Mark Kelley had no, nothing to do with your investigation over
21 here with the LLCs, he didn't give the money to them and he
22 didn't take the money away from them, did he?

23 A: That's right, as far as I know.

24 Q: And I asked you in your deposition when you were under
25 oath, if you had any evidence that Mark Kelley had anything to

1 do with setting up a meeting, didn't I?

2 A: Yes, sir.

3 Q: And you said no?

4 A: That's right.

5 Q: And it's been a long time. You've had a lot of time to
6 investigate this, hadn't you?

7 A: That's not the only thing I investigated, but yeah, it's
8 been a long time.

9 Q: Seems like you've been devoting a lot of time to this
10 particular investigation.

11 A: It's been going on for a long time.

12 Q: Sounds like this thing is in your craw and you can't get
13 it, it's itching and you can't scratch it.

14 A: No, I'm still trying to find out where the money came
15 from, but I have other things I'm working on as well.

16 Q: And you wanted to do is you wanted to keep on talking and
17 dragging Mark Kelley, that had nothing to do with this, into
18 your articles, correct?

19 A: He did have something to do. He attended the luncheon
20 meeting where these campaign contributions were delivered by
21 Mark Dean, I mean, Brad Dean.

22 Q: You heard the testimony that everybody said he didn't even
23 know anything about any campaign contribution going to be
24 given?

25 A: Well, I guess Brad Dean did him a disservice by inviting

1 him to a luncheon where these contributions were handed.

2 Q: That was -- that was sensational for you to bring it up
3 because the meeting wouldn't have been newsworthy unless you
4 could say that Mark Kelley, a lobbyist, was over there and
5 what they did was a crime, right?

6 A: That's not what I said.

7 Q: Huh?

8 A: That's not what I said.

9 Q: So, you don't believe you were inferring to everybody who
10 read your articles that Mark Kelley was involved in a crime
11 that would violate the ethics law for lobbyists?

12 A: No, I do not.

13 Q: Okay. But you were sure trying to prove it, weren't you?

14 A: I was trying to find out if he had any involvement; that
15 was my job.

16 Q: And you sit there and you sit there and you tell these
17 people, why is everybody bending over backwards to protect
18 Mark Kelley? What did you -- who did you talk to?

19 A: Trey Walker, B.J. Bolling; they both denied, you know,
20 that there was anything going on.

21 Q: They told you they didn't know what you were talking
22 about, didn't they?

23 A: I did say Trey Walker said that he didn't know what Tracy
24 Edge was talking about.

25 Q: And so did B.J. Bolling?

- 1 A: He said he would have to check.
- 2 Q: And he called you back and he told you no?
- 3 A: He called me back and said Brad Dean set up the meeting.
- 4 Q: Okay. And you're sitting there saying everybody was
- 5 trying to protect Mark Kelley, right?
- 6 A: I guess that's what the email says.
- 7 Q: That's what you're state of mind was, wasn't it?
- 8 A: I had no state of mind. I was just trying to find out
- 9 where the money was coming from.
- 10 Q: That doesn't indicate your state of mind when you sit
- 11 there and you say why is everybody bending over backwards to
- 12 protect Mark Kelley because I know he gave them the money and
- 13 I know he set up the meeting.
- 14 A: I was curious why Warren Tompkins would say that Mark
- 15 Kelley would know the source of these campaign contributions
- 16 and then all of a sudden, people were saying he knows nothing
- 17 about it. So, yes, I was trying to find out what was going
- 18 on.
- 19 Q: But your email shows your state of mind that you didn't
- 20 believe anybody, did you?
- 21 A: I was trying to find out what, what the truth was.
- 22 Q: And they were telling you the truth and you didn't want to
- 23 believe it?
- 24 A: I don't know if they were telling me the truth or not;
- 25 that's what they told me and that's what I reported.

1 Q: You didn't know whether they were telling you the truth or
2 not.

3 A: That, that's the case.

4 Q: And you reported it. Okay.

5 A: I did not report whether they weren't telling me the
6 truth. I said I don't know whether B.J. Bolling's telling me
7 the truth, Trey Walker. And when I asked the principal people
8 that were at the meeting who was at the meeting, who gave the
9 contributions, Brad Dean and Gresham Barrett both said Brad
10 Dean gave the contributions.

11 Q: Okay. Let me ask you this. Did you read the editorial?

12 A: I have since read it, yes.

13 Q: Mr. Wren, you read the editorial. You are a reporter for
14 The Sun News and they're talking about their editorial is
15 based upon your reports.

16 A: I may have read it at the time.

17 Q: Do you read The Sun News?

18 A: Yes.

19 Q: Well, you saw the editors that said, Absence of Evidence.
20 What did that tell you in your mind?

21 A: I didn't give it any thought.

22 Q: Oh, I didn't give it any thought. Okay. So here your
23 editors are reporting they've got no evidence, Absence of
24 Evidence, and then they talk about the meeting and then they
25 put in this parenthesis -- do you remember that? Pull it out

- 1 A: The entire scope of this thing is opinion.
- 2 Q: Okay. You want it to be an opinion to escape liability in
3 this case, don't you?
- 4 A: It's not my story. It's an opinion and I don't believe
5 there is any liability.
- 6 Q: Well, they -- they based it upon your particular reports?
- 7 A: What they based on my reports was, as we now know, based
8 on David Wren's reporting is was Myrtle Beach Area Chamber of
9 Commerce President, Brad Dean, who personally handed the
10 \$84,000 in checks to Barrett with lobbyist, Mark Kelley,
11 sitting by his side.
- 12 Q: Okay. And are you telling the Jury that you weren't
13 biased or prejudiced at all against Mark Kelley because of all
14 of the emails that we've been looking at?
- 15 A: I don't know Mark Kelley. I have no bias against Mark
16 Kelley.
- 17 Q: Read on behind the parenthesis; what does it say?
- 18 A: In this editorial?
- 19 Q: Yes.
- 20 A: The Chamber's defense all along has been that the checks
21 came not from the Chamber, but from the companies under whose
22 name the donations were made. Dean now says that he simply
23 collected and delivered them. Again there is no evidence
24 disproving this statement, but the circumstances make it
25 difficult to believe.

1 Q: Circumstances make it difficult to believe. You got
2 people telling you what happened and you're sitting up there
3 saying we don't believe it and we're gone report that we don't
4 believe it; we believe it to be false. That's essentially
5 what you're saying?

6 A: I didn't report that. I didn't write this.

7 Q: That's what your editors reported, right?

8 A: I don't know what they're reporting; I'm just reading this
9 -- the editorial.

10 Q: You didn't report that Mark Kelley was just invited to the
11 luncheon, did you?

12 A: I didn't know if he'd been invited -- well, I knew he had
13 been invited to the luncheon.

14 Q: Well, you didn't report -- you didn't report that he was
15 just invited to the luncheon, did you?

16 A: He was there at the luncheon, yes.

17 Q: Do you understand my question?

18 A: I do not understand what you're trying ---

19 Q: Well, let me ask it again. Did you report to the public
20 Mark Kelley was just invited to the luncheon?

21 A: Just invited to the luncheon?

22 Q: Yeah.

23 A: Not to what?

24 Q: Just invited there as a friend?

25 A: I don't know why he was invited there.

1 Q: You didn't report that Mark Kelley didn't set up the
2 luncheon, did you?

3 A: I said that Brad Dean set up the luncheon.

4 Q: Did you report that Mark Kelley didn't set up the
5 luncheon?

6 A: I did not report that Mark Kelley didn't set up the
7 luncheon. I mean, I'm supposed to report negatives, now?

8 Q: If you accuse a person of, yes, you do, under your
9 policies. If you give the public the inference or information
10 that Mark Kelley set up the luncheon and you're wrong, are you
11 gonna withdraw it and tell the public the truth?

12 A: If I'm told that it's wrong, then I will do that. I
13 didn't say that he set up the luncheon. Sort of like saying I
14 guess there's no indication that anything illegal happened.

15 Q: You didn't report that Mark Kelley didn't know anything
16 about contributions going to be given before he got there, did
17 you?

18 A: I didn't know if he knew or not.

19 Q: Well, why didn't you ask Brad Dean; you were talking with
20 him?

21 A: That wasn't what I was writing about. That wasn't what I
22 was asking. I was asking who was at the meeting, who
23 delivered the money and where did the money come from.

24 Q: You were looking for money that was going to LLCs, right?

25 A: Trying to find out where the LLCs got the money.

1 Q: Okay. Why in the world would you think Cathy Hazelwood
2 would have had anything to do or any knowledge of where the
3 money came from?

4 A: 'I didn't ask her where the money came from. I asked her
5 if the campaign contributions appeared to be legal
6 contributions and she said they did.

7 Q: Okay. And then you began to ask her about Mark Kelley.

8 A: I don't know if that was the same conversation. I think
9 there've been -- I've had several conversations with her.

10 Q: The first time you called, you asked her if Mark Kelley
11 had given the campaign contributions or raised them, would
12 that be a crime?

13 A: I, I've been talking with Cathy Hazelwood and others at
14 the Ethics Commission for months before this and I had asked
15 her previously, do these campaign contributions appear to be
16 legal and she said yes.

17 Q: Let's talk about what I just asked you.

18 A: Well, you asked me why would I think Cathy Hazelwood would
19 think that, you know ---

20 Q: Okay.

21 A: --- she would have anything to do with the contributions.
22 Okay?

23 Q: You called Cathy Hazelwood and you asked her if it would
24 be illegal for a lobbyist to touch the campaign contributions
25 or the envelope, didn't you?

1 A: No, I asked her if it would be illegal for a lobbyist to
2 attend a luncheon where campaign contributions had been
3 delivered to a candidate.

4 Q: Why would she read -- why would you be reporting that
5 Cathy Hazelwood said that if you touch the envelope, that
6 would be illegal?

7 A: That's what she said.

8 Q: Because you asked her, didn't you?

9 A: I didn't ask her anything about touching the envelope.
10 She offered that.

11 Q: This was real important to the, your search for where
12 these LLCs got the money.

13 A: I think it's important for residents to know whether
14 somebody did something illegal or not and Cathy Hazelwood said
15 nothing illegal was coming and that's what I reported.

16 Q: That's what you say you reported?

17 A: That's what I reported.

18 Q: Okay. Was the election a hotly contested election?

19 A: I believe it was.

20 Q: And you believe a campaign manager for an opposite
21 opponent of Gresham Barrett would be biased and unprejudiced
22 and give you reliable information?

23 A: Not necessarily.

24 Q: Well, when did you decide not necessarily?

25 A: I'm saying that, you know, you've got, they can give you

1 some information, but you need to check with the source to
2 make sure that it is true, which is what I did, which is why
3 went to Gresham Barrett and I went to Brad Dean.
4 Q: You only relied on them when they gave you the information
5 you wanted?
6 A: That's the information they gave me.
7 Q: Okay. I'm looking at your May the 23rd article or email,
8 excuse me. Tell the Jury when you wrote the May the 23rd
9 article?
10 A: Is that the Sunday article?
11 Q: Yes.
12 A: It probably would have been on Thursday or Friday of that
13 week. We run them, we have to have the articles ready for the
14 Sunday edition prior to the weekend.
15 Q: Didn't you tell me in your deposition you wrote it at the
16 early part of the week?
17 A: I don't recall.
18 Q: You don't recall. Okay. If you are writing an email on
19 the day of the article, when it's come out ---
20 A: This is the Sunday article.
21 Q: Yeah. From David Wren to Justin Stokes and to Tim
22 Pearson. And I want to ask -- I'm gonna read the whole thing.
23 Everyone seems to be bending over backwards to protect Mark
24 Kelley regarding, regarding -- and I'm quoting your language,
25 his involvement in setting up the meeting -- is setting up the

1 meeting illegal?

2 A: I don't believe it's illegal. I don't know.

3 Q: Setting up the meeting with Barrett, and I quote your
4 language, handing him the money. Is that illegal?

5 A: That's illegal.

6 Q: So, you're telling Justin Stokes and Tim Pearson
7 everybody's bending over backwards regarding Mark Kelley's
8 involvement in setting up the meeting and handing him the
9 money?

10 A: Okay.

11 Q: You have already made the conclusion that that's what he
12 did?

13 A: That's not what the conclusion was. I was still trying to
14 gather information and I was trying to find out why Trey
15 Walker would say that Mark Kelley knows the source of these
16 contributions.

17 Q: Well, why are you trying to put words in Mr. Tim Pearson
18 and Justin Stokes' mouth?

19 A: I'm not.

20 Q: Okay.

21 A: None of the reports in the newspaper reflect that.

22 Q: I asked B.J. Bolling if Kelley had arranged the meeting
23 and he quickly said no; that would have been illegal. I'm
24 trying to piece together who raised all that money, how they
25 funneled through the various LLCs and why the Chamber picked

1 Barrett as a candidate they were gonna endorse, parenthesis,
2 your words, couldn't be anything beside the fact that Kelley
3 is the Chamber lobbyist and a big supporter of Barrett, your
4 words. Any help or insight you can give me would be
5 appreciated. What help and what insight were you asking
6 Justin Stokes and Tim Pearson for?

7 A: I'm asking them if they have any other further information
8 about Mark Kelley's involvement in this. Do they know whether
9 he had anything to do with raising money for these LLCs? I'm
10 just doing my job trying to ask questions and gather
11 information.

12 Q: You didn't ask whether they had any knowledge about his
13 involvement; you asked about whether they had any knowledge
14 about the involvement of setting up the meeting and handing
15 him the money. I'm reading your words.

16 A: Okay. I mean, I'm asking questions.

17 Q: You're asking questions?

18 A: That's correct.

19 Q: Sounds to me like you're trying to put words in other
20 peoples' mouth?

21 A: Not true.

22 Q: Not true. Well, words like this in any of the emails that
23 you received, are any emails accusing Mark Kelley of setting
24 up the meeting?

25 A: Of setting up the meeting, no.

1 Q: Of giving money?

2 A: No.

3 Q: As matter of fact, you don't have any evidence that that
4 ever occurred?

5 A: That he gave the money?

6 Q: Yeah.

7 A: No, or I would have written about it?

8 Q: And I asked you under oath in your deposition, do you
9 have, does anyone, has anyone told you that Mark Kelley set up
10 the meeting, raised the money or handed the campaign donations
11 to either Barrett or anyone and I said either by email,
12 telephone, letter, whatever method and you said no under oath?

13 A: That's correct. I had questions in my own mind about it
14 especially after the email from Trey Walker saying that Mark
15 Kelley would know the source of these contributions and I
16 wanted to find out why he said that and where the money came
17 from.

18 Q: When did BOOST, make their announcement on the
19 contributions?

20 A: They initially posted information about the LLCs, I guess
21 that would have been in August or September of 2009.

22 Q: Okay. And you said that they were complaining about the
23 campaign donations given that came for the purpose of
24 rewarding legislators who voted for the one percent tax?

25 A: That's what they believed that these contributions may

1 have been made as sort of a payback to legislators for their
2 support on the one percent sales tax in Myrtle Beach that
3 raises about thirty million dollars a year for the Myrtle
4 Beach Area Chamber of Commerce to advertise in this area.

5 Q: Did you call Liston Barfield and ask him if he voted for
6 the one percent sales tax?

7 A: I don't recall that, no.

8 Q: Did you know Liston Barfield voted against it?

9 A: I don't know that.

10 Q: And he got a donation from this source you've been talking
11 about.

12 A: This isn't my accusation; this is what BOOST ---

13 Q: Well, isn't that important to your story if you gone be
14 talking about it's a payoff to the legislators who voted for
15 the one percent sales tax?

16 A: I didn't allege that this was a payoff.

17 Q: That's what the undertone of your whole story is, isn't
18 it?

19 A: No.

20 Q: All right. Did you ask Senator Dick Elliott, who voted
21 for the one percent sales tax, whether he got any contribution
22 from that particular source?

23 A: I don't believe he did.

24 Q: He didn't vote for it -- or he did vote for it and he got
25 no contributions, didn't he?

- 1 A: Not that I'm aware of.
- 2 Q: Okay. That kind of shoots your organization, BOOST, in
3 the head about their complaint, doesn't it?
- 4 A: I don't think it does. I think you could have -- all the
5 City Council Members who voted for it, you've got your
6 legislators who voted for it, all of whom got cashier's checks
7 from LLCs with no assets; I think totaling \$324,500.
- 8 Q: Which had nothing to do with Mark Kelley?
- 9 A: Well, I don't know that. When Mark, Trey Walker says he
10 would know the source of the contributions, then ---
- 11 Q: You've been sitting in Myrtle Beach after this lawsuit was
12 brought and you know what the allegations of Mark Kelley was
13 and you've had enough time to prepare to tell this Jury
14 whether Mark Kelley has any involvement in it, for how long,
15 two years?
- 16 A: It's been about two years since he filed the lawsuit and
17 the lawsuit was filed two years after the stories.
- 18 Q: And your lawyer has a right to go in there and take Mark
19 Kelley's deposition and gruel him under, on cross examination,
20 find out whether he had any kind of connection to this at all,
21 didn't he?
- 22 A: He has a right to take his deposition.
- 23 Q: And he did, didn't he?
- 24 A: I believe he did.
- 25 Q: And he didn't come up with one single solitary evidence,

1 bit of evidence that Mark Kelley had anything to do with all
2 this controversy about the LLCs?

3 A: I don't have any evidence that he has anything to do with
4 it.

5 Q: Why are you trying to drag Mark Kelley into all of this?

6 A: I'm not trying to drag him into it.

7 Q: Are you sensationalizing your articles?

8 A: No.

9 Q: Are you looking in dark places and trying to write a
10 sensational story?

11 A: No.

12 Q: Isn't that what your ethics say? That we look in dark
13 places?

14 A: I don't recall that.

15 Q: Isn't that -- huh?

16 A: I don't recall anything about looking in dark places.

17 Q: Let's look at your ethics.

18 A: Okay. I know what you're referring to, you're looking ---

19 Q: I thought you did.

20 A: You look in dark places where people don't want the sun to
21 shine, is just not trying ---

22 Q: Is that what you do all the time?

23 A: That's what I try to do.

24 Q: Did you have a good enough flashlight to shine the light
25 on Mark Kelley?

1 A: I asked a lot of questions about Mark Kelley. I wanted to
2 know what his involvement was. I never wrote, wrote anything
3 that implicates him in anything.

4 Q: Okay.

5 A: Except attending a luncheon.

6 MR. STEVENS: I need to introduce the along with
7 articles, Your Honor, the along with articles that I -- the
8 three along with articles.

9 THE COURT: What are the along with articles?

10 MR. STEVENS: The three articles ---

11 THE COURT: Oh, I'm sorry, okay.

12 MR. STEVENS: --- that we talked about the along with.

13 MR. STEVENS: I recall that.

14 MR. STEVENS: Okay.

15 MR. BENDER: No objection.

16 THE COURT: Without objection.

17 PLAINTIFF'S EXHIBIT NUMBER EIGHTEEN, NINETEEN AND TWENTY

18 ADMITTED INTO EVIDENCE

19 BY MR. STEVENS:

20 Q: Your testimony here today that regardless of what you say
21 in all the emails, you had no intention of accusing Mark
22 Kelley of the crime of passing campaign donations to a
23 political candidate?

24 A: What I'm saying is I did not accuse Mark Kelley of a
25 crime.

1 Q: And you didn't intend to is what you're telling the Jury?

2 A: Did not intend to accuse him of a crime or I did not
3 accuse him of a crime?

4 Q: And none of your emails indicate that you had the mindset
5 to accuse Mark Kelley of passing money and setting up the
6 meeting?

7 A: I had the mindset of asking questions trying to get to the
8 bottom of this story and find out what the truth was. I never
9 had any mindset that I was accusing Mark Kelley of anything.

10 Q: When did you find out that -- satisfy yourself that Mark
11 Kelley didn't have anything to do with it?

12 A: I don't know. I mean, it's -- you know, the story --
13 we're still working on the story. If we find out any new
14 information, we'll continue to give a report on it.

15 Q: You weren't trying to hurt Mark Kelley?

16 A: No.

17 Q: Well, what was so important to your big investigation that
18 you had to call someone to find out whether it was a crime
19 because Mark Kelley made a donation to a county councilman?

20 A: I wanted to know. I knew that it was illegal for him to
21 make a donation to a statewide candidate. So, I saw where he
22 had made a donation to a county council person and I wanted to
23 find out if that was a crime. I'm just asking questions
24 trying to find out for a story. That's my job.

25 Q: Well, tell me how that was important to the LLCs story?

- 1 A: It wasn't important to the LLCs story.
- 2 Q: Okay. You just wanted to talk about Mark Kelley, didn't
- 3 you?
- 4 A: When I got that information, I found out about it and I
- 5 asked the question, found out it wasn't illegal, didn't do
- 6 anything with it.
- 7 Q: You found out you were wrong and you shut up, didn't you?
- 8 A: Cathy Hazelwood said it was not illegal then there's no
- 9 point in going forward with it if it's not illegal.
- 10 Q: So you found out and you shut up, didn't you?
- 11 A: I wouldn't characterize it that way. I got the answer to
- 12 my question and there was nothing more to it.
- 13 Q: It wasn't important to the public to tell them, tell
- 14 everybody he donated campaign donations to a county
- 15 councilman?
- 16 A: Not if it's not illegal.
- 17 Q: Well, you're talking about LLCs?
- 18 A: Uh-huh (affirmative response).
- 19 Q: Weren't you trying to trace the money?
- 20 A: I was trying to trace the money; still am.
- 21 Q: Are you now accusing him of giving campaign donations to a
- 22 county council member in that he funneled it through some way
- 23 to get ---
- 24 A: Those are two
- 25 Q: Let me finish my question.

1 A: Okay.

2 Q: Someway he got it into the Chamber of Commerce?

3 A: Two totally unrelated incidents.

4 Q: Okay. So, why was it so important to you to know that?

5 A: No which?

6 Q: What is -- what's so important about Mark Kelley to your
7 investigation?

8 A: There's nothing important about Mark Kelley to me. I'm
9 just asking questions trying to find out if it was somebody
10 else, if it was another lobbyist, I would ask the same
11 question about that.

12 Q: So, what you're telling this Jury is everything you've
13 found out about Mark Kelley had nothing to do with your
14 investigation at all?

15 A: Other than the fact he attended a luncheon or somebody's
16 contributions were handed over by Brad Dean to ---

17 Q: And that's newsworthy to the people of Horry County?

18 A: It is. There's great, great interest in this story about
19 these LLCs and where the money came from, especially since
20 Brad Dean had lied to me a few weeks earlier and said that he
21 had nothing to do -- the Chamber had nothing to do with these
22 contributions, he didn't deliver them, they had -- it was
23 totally unrelated to the Chamber. I find out a few weeks
24 later Brad Dean delivered the contributions.

25 Q: So, you're calling Brad Dean, the President of the Chamber

1 of Commerce a liar?

2 A: I looks like he lied to me on this occasion.

3 Q: Did you -- are you bringing him to trial?

4 A: That's not -- it's not my trial.

5 Q: Okay. I think it is.

6 A: I'm not the one ---

7 Q: I think you better be worried about it's a trial on you.

8 So my question is you're calling Brad Dean, the President of

9 the Chamber of Commerce, a liar here in open court?

10 A: I said he lied to me about his involvement in the campaign

11 contributions, yes.

12 Q: Based upon what you say, based upon what you reported that

13 he said to you?

14 A: That's what he told me; he had nothing to do with them.

15 Q: We have provided ---

16 A: That's what, that's what -- no, it's not just him. That's

17 what Brant Branham held a news conference, Brant Branham was

18 the ---

19 Q: Where's Brant Branham; is he in the courtroom?

20 A: I guess you didn't call him.

21 Q: Your attorney can call him, can't he?

22 A: Did you try to call him.

23 Q: I don't need to call Brant Branham to prove my case.

24 A: What I'm telling you is that Brant Branham also called a

25 news conference.

1 MR. STEVENS: He's going way beyond my question. He's
2 getting into hearsay.

3 THE COURT: I think he's answering your question. Stop
4 asking him if you don't want him to answer.

5 BY MR. STEVENS:

6 Q: Okay. Go ahead.

7 A: Brant Grantham held a news conference shortly after BOOST
8 came out with their allegations saying that the Chamber of
9 Commerce had nothing to do with these campaign contributions;
10 he raised the money himself from likeminded business
11 individuals within the community; and that the Chamber was
12 totally uninvolved. Brad Dean told me the same thing. Months
13 later I find out Brad Dean delivered the contributions to
14 candidates.

15 BY MR. STEVENS:

16 Q: Is it important to your defense to this case to bring up
17 all this stuff about the LLCs, Brant Grantham and the Chamber
18 of Commerce?

19 A: That's what this whole thing is about. This is, this, you
20 know, this is an isolated part of a long investigation that's
21 still ongoing and had been ongoing for months before these
22 articles appeared.

23 Q: This has something to do with Mark Kelley, who you said
24 isn't involved in this in any way. You're now saying to the
25 Jury, you're not involved in it?

1 A: Okay.

2 Q: Why are you bringing all this up to the Jury?

3 A: You asked me about the Chamber and, you know, the LLCs ---

4 Q: What does that ---

5 A: --- you're just asking me about the LLCs so I'm answering

6 your questions.

7 Q: Your lawyer asked you about it. Your lawyer's been

8 talking about it all the way through the trial?

9 A: And that's where this story stems from. It's a long

10 investigation that we've been doing about these political

11 campaign contributions, where the money came from and this is

12 just a very small part of it.

13 Q: You said that. I want to know what it has to do with Mark

14 Kelley?

15 A: He attended a luncheon where \$84,000 of the money ---

16 Q: Is that it?

17 A: --- raised by these LLCs was delivered to a candidate.

18 Q: Tell me and tell the jury whether you have any evidence

19 that Mark Kelley knew what was in the envelope and where it

20 came from.

21 A: I have no evidence that Mark Kelley knew what was in the

22 envelope or where it came from and I never said he knows

23 what's in the envelope or where it came from.

24 Q: So, it's important to the public of Horry County that you

25 report what you reported?

1 A: I believe it is.

2 Q: Based upon what you're saying in your emails behind the
3 scenes, showing your state of mind and what your editor says
4 based upon your reports?

5 A: Can you ask that again please?

6 Q: All right. You think that it's important for you to bring
7 up Mark Kelley and this so-called investigation that you're
8 doing that nobody's done with except David Wren, solely
9 because he was at a meeting with a friend. You don't have any
10 evidence he knew what was there in the envelope. You don't
11 have any evidence he set up the meeting you don't have any
12 evidence that he would take the money, but somehow Mark Kelley
13 is important to your investigative reporting?

14 A: He was important to these few stories that were part of a
15 long series of investigation that included stories over many
16 months and investigation that still continues. There were
17 dozens of more stories than just these that dealt with the
18 LLCs prior to and after this.

19 Q: Did you understand my question?

20 A: I just answered your question.

21 Q: Did you understand I asked what did Mark Kelley have other
22 than to go to a meeting in your investigation; anything he had
23 to do with other than to be there?

24 A: All I reported was that he was at the meeting where Brad
25 Dean delivered contributions to Gresham Barrett.

- 1 Q: All you reported was that he was at a meeting with Gresham
2 Barrett and Brad Dean?
3 A: That's correct.
4 Q: And you don't believe that what you said led everybody in
5 Horry County to believe that Mark Kelley was guilty of a
6 crime?
7 A: I do not believe that.
8 Q: You heard Alan Clemmons?
9 A: Uh-huh (affirmative response).
10 Q: You heard him say that he believed you accused him of a
11 crime, did you?
12 A: I heard that, that's what his opinion was.
13 Q: You heard Nelson Hardwick say it to, didn't you?
14 A: I don't know that he said that. I couldn't -- I don't
15 believe he did.
16 Q: You heard George Hearn say that he understood you accused
17 him of a crime?
18 A: Okay.
19 Q: Is that true?
20 A: That's what he says.
21 Q: You heard Dr. Lee said that based upon those reports, you
22 accused him of a crime?
23 A: That's what his opinion is.
24 Q: Okay. Have you got anybody to come up here and testify
25 besides yourself and your editor that you didn't accuse Mark

1 Kelley of a crime when you wrote the articles?

2 A: I guess the best person to testify to that would be me and
3 I can tell you I did not.

4 Q: The best person to testify to that is you?

5 A: And I can tell you I did not accuse him of a crime.

6 Q: Okay. That's all I got.

7 MR. BENDER: Briefly, Your Honor.

8 REDIRECT EXAMINATION OF DAVID WRENN BY MR. BENDER:

9 Q: Now, you've been given three news reports that you have
10 written; Exhibits Eighteen, Nineteen and Twenty in which you
11 used along with; is that correct?

12 A: That's correct.

13 Q: Does punctuation around along with have any role to play
14 in setting the context and the meaning of along with?

15 A: It certainly does.

16 Q: In those three examples, is there any one where it says
17 the subject, comma, along with, comma, the verb?

18 A: No.

19 Q: Now, if the subject is, clerk, then the verb has to be
20 plural to be appropriate; is that correct?

21 A: That's correct.

22 Q: Let's look at Exhibit Nineteen. What's the subject of
23 this sentence that starts with complaint?

24 A: The complaint.

25 Q: And what's the number of the verb; is it singular?

- 1 A: Singular.
- 2 Q: What is that verb?
- 3 A: Was filed.
- 4 Q: Now if you had written this to say the complaint and
5 warrants to seize a dozen vehicles have been filed; what verb
6 would you have used?
- 7 A: Were.
- 8 Q: So punctuation and placement in a sentence affect the
9 meaning of the phrase along with?
- 10 A: That's correct.
- 11 Q: Now, did anybody in the Chamber of Commerce ever tell you
12 before this trial started that Mark Kelley was not the
13 lobbyist for the Chamber of Commerce?
- 14 A: No.
- 15 Q: Has anybody told you that except Mark Kelley on the stand
16 here?
- 17 A: No.
- 18 Q: Thank you. I have no other questions.
- 19 RECROSS EXAMINATION OF DAVID WREN BY MR. STEVENS:
- 20 Q: Now, you say that you're not accusing Mark Kelley of a
21 crime?
- 22 A: That's correct, no.
- 23 Q: You got the pleading from Mark Kelley, did you not?
- 24 A: Correct.
- 25 Q: You were served with a complaint?

1 MR. BENDER: Your Honor, that's outside the scope of my
2 redirect.

3 THE COURT: Is it within the scope of his redirect, Mr.
4 Stevens; this is something entirely new you're bringing on, on
5 direct. Is it related to his cross?

6 MR. STEVENS: The punctuation?

7 THE COURT: Yes.

8 MR. STEVENS: Probably not. You're saying he didn't mean
9 to accuse him of a crime and I'm asking about his pleading and
10 his answer to the complaint.

11 THE COURT: I'll allow it, briefly.

12 MR. STEVENS: That's all I want to know.

13 BY MR. STEVENS:

14 Q: You knew that Mark Kelley was saying that you accused him
15 of a crime?

16 A: That's what he alleges.

17 Q: Okay. And you pled truth in your answer, did you not?

18 A: I don't, I don't know what you're talking about.

19 Q: You don't know; did you read your answer; did you read the
20 answer you gave to the complaint?

21 A: May I look at it?

22 Q: As for a third defense to all causes of action, read what
23 you said to the jury?

24 A: As for a third defense?

25 Q: Yeah.

1 A: The news reports complained of by the Plaintiff were true
2 or substantially true.

3 Q: They are?

4 A: Yes, they are true.

5 Q: You were answering the complaint and the complaint was
6 alleging that you defamed Mr. Kelley and you in your answer
7 said it's true?

8 A: That's not what that says.

9 Q: Yes, it is.

10 A: No.

11 THE COURT: All right. That's argumentative.

12 MR. BENDER: Your Honor, I would ask you to instruct the
13 jury with respect to pleadings drawn up by the lawyers.

14 THE COURT: Pleadings are documents by which the position
15 of the parties is brought to Court so that one party will know
16 what the other parties' position is and what the responses
17 might be to that position. They are not for the jury; they
18 are to put parties' on notice of the other position. You will
19 not have those, those documents and they have no place in the
20 jury room. All right.

21 MR. STEVENS: Nothing further.

22 THE COURT: All right. You may step down. I'm gonna let
23 this jury take a break. Are you ready? Okay.

24 (REPORTER'S NOTE: Jury retires to jury room. 3:46 P.M.)

25 (RECESS - 3:46 P.M.)