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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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 2 of 2

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*****OFF THE RECORD*****

(On the Record. - 3:58 P.M.)

(REPORTER'S NOTE: Jury enters courtroom. 3:59 P.M.)

CLERK: Please raise your right hand and place your left hand on the Bible.

PATRICIA O'CONNOR, HAVING BEEN SWORN

TESTIFIES AS FOLLOWS:

CLERK: Have a seat please, ma'am. State your name for the Court?

MS. O'CONNOR: Patricia O'Connor.

DIRECT EXAMINATION OF PATRICIA O'CONNOR BY MR. BENDER:

Q: Ms. O'Connor, where are you employed?

A: I work at Coastal Carolina University.

Q: What is your position at Coastal Carolina University?

A: I am the Media Executive in Residence and also the Director of the Athenaeum Press.

Q: What is the Athenaeum Press?

A: It is a University Press that we began in the Edwards College of Arts and Humanities about two years ago. It publishes a small number of projects that are both online as well as traditional book publishing and at the heart of all of our projects -- we've published three so far -- so we're students under the direction of faculty. We've published a photo book of an explorer's trip down the Waccamaw River in the 1890's in a paper canoe and that was work done by

1 photography and design students. We published a small book by
2 Jane Spillane, the widow of Mickey Spillane, and this where
3 Jane told stories about her life with Mickey to a graduate
4 student at the Edwards College and it included five chapters
5 of those stories. And we've just completed publishing a CD of
6 Music by Gullah song leaders on the St. Helena Island and that
7 was recorded and mixed and interviews were done by students in
8 our music and history departments.

9 Q: As Media Executive in Residence at Coastal Carolina, do
10 you teach a course?

11 A: I teach two courses every semester in the journalism
12 concentration.

13 Q: What do you teach?

14 A: I teach reporting and writing. I have taught twice a
15 class on media leadership and management and also this
16 semester I'm teaching a senior seminar that involves students
17 extensive reporting and writing work of original stories as
18 well as talking about news issues.

19 Q: What is your educational background after high school?

20 A: I have a Bachelor of Science in Journalism Degree from the
21 University of Tennessee in Knoxville. I graduated in 1970.

22 Q: What has your employment been in the field of journalism?

23 A: Well, I was in the professional journalism field for
24 precisely forty years. I started out working for a chain of
25 newspapers that owned weekly's and bi-weekly's in Carlton,

1 Georgia and Oxford, Alabama. I worked as a reporter and an
2 editor there. From that job, I moved to become a reporter and
3 then later an editor at the Anniston, Alabama Star, just a
4 small daily in Anniston. I got out of the daily newspaper
5 business for about eighteen months when I worked for a company
6 that produced magazines and newspapers in the show horse
7 industry. I went back into daily journalism at the Capital
8 Times in Madison, Wisconsin, where I was an editor. From
9 there I joined the Knight Ridder Corporation in Wichita,
10 Kansas, where I was the Metro Editor. And then in 19, I have
11 to stop and think, 1989 I moved to the Charlotte Observer.
12 I'm a southerner so I was ready to go home after years in the
13 Midwest and Kansas. I'm sorry, I confused myself, sir, I'm a
14 little bit nervous. Anniston, Alabama, then with the Show
15 Horse Industry then I rejoined the newspaper business in
16 Madison, Wisconsin, where I worked at the Capital Times as a
17 copy editor and then later an editor. I joined Knight Ridder
18 in Wichita, Kansas and then I moved to the Charlotte Observer
19 in 1989, where I worked as an editor. And then in 1999, I
20 became the editor and vice president of The Sun News, a
21 position I held for -- until December of 2010, when after
22 forty years, I retired from that job, that career.

23 Q: That's when you went to the University?

24 A: In January of 2011, I began teaching at Coastal, yes, and
25 I've been there ever since.

1 Q: In your journalism career, you've been a reporter. What's
2 the job of a reporter?

3 A: A reporter, under the -- generally, identifies news
4 stories or sometimes is assigned stories by editors, gets news
5 tips from people in the community and other sources, reports
6 information, and write news stories.

7 Q: What does an editor do?

8 A: An editor is, is a reporter's best friend. An editor is
9 the person who works with the reporter to make sure that the
10 stories are thoroughly reported, they're balanced and fair,
11 reads behind the reporter to make sure that the content is
12 appropriate, everything is what it should be and, and then the
13 editor, the content editor is finished with that job and then
14 the process proceeds in a news room.

15 Q: What's the process after the content editor?

16 A: Generally, at a newspaper, once the content editor has
17 completed that work, the story would then move to a designer
18 possibly who would decide -- make the decision and place the,
19 the article on the location it's going to play on the page.
20 Then a copy editor would be assigned to read the story, write
21 the headline, write cut lines or other side, other ancillary
22 content that might go with it. Then it goes to a copy desk
23 chief who makes sure that the headline is properly spelled and
24 appropriate and then it goes into the publication and it goes
25 to production.

1 Q: You used the term cut-line; what is a cut-line?

2 A: A cut-line is basically a caption; it's a newspaper term
3 for the explanation that appears below a photograph.

4 Q: In your time at The Sun News, did you have an opportunity
5 to work with David Wren?

6 A: I did.

7 Q: Were you an editor for David Wren?

8 A: I was.

9 Q: In that capacity, did you supervise David Wren?

10 A: I did.

11 Q: Were you David Wren's editor in connection with his
12 reporting on the campaign contributions made with sequentially
13 numbered cashier checks from LLCs in the 2010 election cycle?

14 A: I was.

15 Q: Did you discuss -- what did you discuss with David at the
16 start of that project?

17 A: My recollection is when David first came to me and, and
18 said he had received or had learned about some information
19 concerning some campaign contributions that involved
20 sequentially numbered checks all made out on the same day from
21 the same bank that were delivered to candidates who were
22 running for public office in Myrtle Beach as well as
23 legislative candidates that we discussed that it was an
24 important story and one we wanted to pursue and he began to
25 continue his reporting.

1 Q: What was important about that story?

2 A: Generally, and this is -- this statement is born true by
3 research done by the Knight Ridder Corporation that I worked
4 for for twenty-two years before the newspaper, Knight Ridder
5 was sold to McClatchy Corporation and other research that I've
6 read over my years as a journalist, one of the most important
7 roles that a journalist plays in society is to tell people how
8 their tax dollars are spent. And in this case, questions had
9 been raised about who contributed the money, where it came
10 from that was going -- that went as campaign contributions to
11 people who were running for either first time for political
12 office or people who were already serving in office who were
13 seeking re-election and I believe that raised questions in the
14 mind of our readers. Where did the money come from; who is,
15 who is funneling, who is sending money to, to politicians;
16 what does it mean?

17 Q: Was there any way to determine who was behind the LLCs on
18 whose accounts that these checks were drawn on?

19 A: Well, the LLCs, as I recall from David's reporting and the
20 information that he had, the LLCs were -- several of them had
21 as their registered agent a man named Shep Guyton, who had
22 served as the Chairman on the Board of Myrtle Beach Area
23 Chamber of Commerce and the bank the checks were drawn on the
24 bank for which he served as a Board Member.

25 Q: Were there allegations made publicly about a possible

1 connection between the Chamber of Commerce and these
2 contributions?

3 A: During the time that the vote was -- during the time that
4 a one penny sales tax came into being in Myrtle Beach, people
5 and groups that opposed that had raised questions about why it
6 wasn't brought to the voters in the first place for voters to
7 decide rather than for it be decided strictly by the, I
8 believe the City Council and through a legislative process.
9 And then an organization I believe called BOOST came forward
10 and began to raise questions about the LLC, the checks drawn
11 on the LLCs.

12 Q: Do you recall when that was?

13 A: When the questions were first raised?

14 Q: Yes.

15 A: I believe it was sometime in the Fall of 2009, but I, I
16 will say my, I don't have the precise memories of dates and
17 things.

18 Q: Did you review David Wren's reporting on these campaign
19 contribution stories?

20 A: I did.

21 Q: Did you discuss with David the information he had gotten
22 that led to his reporting?

23 A: I had worked with David since he came back from the Rocky
24 Mountain News. He actually worked at The Sun News when I
25 first came there as the editor and then much to my sorrow, he

1 left for a while to move to, to Denver to take a position out
2 there and when he came back to The Sun News and I was very
3 happy to hear when he called and asked if we would have a
4 position for him to come back to and we did. David served as
5 an editor for a while and then became an investigative
6 reporter and so I worked very closely with David on a wide
7 variety of stories, several investigations including a series
8 of stories about the misuse of tax dollars by the local
9 transit authority, which at that time was called Lymo or Lymo.
10 The Executive Director of that company, as a result of the
11 reporting and investigation by the District Attorney's office
12 here in the Solicitor's office, a gentleman ended up spending
13 I think a couple of years in jail. We worked several other
14 series of stories as well. So, my relationship with David as
15 our only investigative reporter at The Sun News was to work
16 closely with him about, about discussing the stories, talking
17 about what we knew, what we, what we didn't know, what we
18 would need to know before we could publish information, that
19 type of thing.

20 Q: Finding out about the transit authority financial
21 misconduct, finding the source of these campaign
22 contributions, is that the concept of looking in dark places?

23 A: I would say so, yes.

24 Q: Does that have a role in our democracy?

25 A: I believe so, absolutely.

1 Q: What's the purpose of that?

2 A: The purpose of, of the press is, is to basically serve as,
3 when citizens can't attend in all cases to find out what is
4 going on with government, with their tax dollars, for good
5 things that are happening in the their community as well as
6 things that they might need to know to make decisions about
7 how to live their lives, that's what journalists do. It is a
8 profession where you go and cover the community so that you
9 can give information to the people who live there, happy
10 things and sometimes troubling things and things they need to
11 know.

12 Q: Are there instances where the reporting makes people
13 unhappy?

14 A: Yes.

15 Q: Are their instances where the reporting may contain an
16 error?

17 A: Sometimes, yes.

18 Q: And when that happens and you have information about that,
19 what was your policy at the newspaper?

20 A: To give it top priority, to immediately find out what,
21 what is incorrect, if something is incorrect and to publish a
22 correction.

23 Q: Since May of 2010 and the publication of the news reports
24 that bring us here today, did you, as editor, ever receive any
25 communication relative to claim the errors in the reporting

1 with respect to Mark Kelley?

2 A: No.

3 Q: Did you receive any communication from or on behalf of
4 Brad Dean complaining of errors in those publications?

5 A: No.

6 Q: Did you receive a communication on or, from or on behalf
7 of Gresham Barrett relative to the reporting?

8 A: No.

9 Q: Did you receive any communication by or on behalf of Mark
10 Kelley until the lawsuit was filed?

11 A: I was unaware that a lawsuit had been filed until I was
12 subpoenaed to be deposed.

13 Q: Okay. Because you had retired?

14 A: That's correct.

15 Q: You were there how long after May of 2010?

16 A: I retired in December of 2010.

17 Q: So you were there seven months after that?

18 A: That's correct.

19 Q: And at no time in that seven-month period did you have any
20 communication by or on behalf of Mark Kelley claiming that
21 there were erroneous elements in the news reports?

22 A: No.

23 Q: Did anyone from the Chamber of Commerce or on behalf of
24 the Chamber of Commerce say there was an error in reporting
25 that they, that Mark Kelley was the lobbyist for the Chamber

1 of Commerce?

2 A: No.

3 Q: Let me show you some news reports. Some of these appear
4 to have been published in the newspaper and simultaneously on
5 the website. Is that a standard practice at Sun News?

6 A: Yes.

7 Q: Take a look, if you would, at Exhibit One with the
8 headline, Dean handed over envelope of \$84,000. Did you
9 review, that piece is written by David Wren, isn't it?

10 A: It is.

11 Q: Did you review that prior to publication?

12 A: I believe so.

13 Q: Is there anything in there that appears to you to be an
14 error?

15 A: No.

16 Q: Has anybody complained to you that that publication,
17 Plaintiff's Exhibit One, has an error in it?

18 A: No.

19 Q: Does that publication make reference to Mark Kelley in any
20 way?

21 A: Yes.

22 Q: What does it say?

23 A: Mark Kelley, a lobbyist for the Chamber of Commerce, also
24 attended that meeting according to Barrett. Kelley did not
25 return a telephone call Thursday.

1 Q: That meeting, according to Barrett, was what?

2 A: That meeting was a lunch meeting that Brad Dean arranged
3 the previous year with Gresham Barrett, who was running for --
4 as a Governor, a gubernatorial candidate, and also at that
5 meeting one of Barrett's Campaign people attended.

6 Q: What does it say about Mark Kelley?

7 A: Also attended, that meeting. Mark Kelley, a lobbyist for
8 the Chamber of Commerce also attended that meeting according
9 to Barrett.

10 Q: What's the source of the information about Mark Kelley
11 attending that meeting reflected in Exhibit One? ,

12 A: Gresham Barrett.

13 Q: Who was at the luncheon?

14 A: That's correct.

15 Q: Let's look at Exhibit Two; what's the headline on this
16 piece?

17 A: Bad debt adds to Donor's mystery. Late on bills LLC cut
18 checks to politicians.

19 Q: Did you review that news report prior to publication?

20 A: I think so. I don't remember distinctly, but I think so.

21 Q: In the ordinary course, would you have?

22 A: Yes.

23 Q: What is the mystery?

24 A: The mystery is where the money came from that funded the
25 LLC checks.

1 Q: And there are bad debts associated to the LLCs?

2 A: That's correct.

3 Q: Is there reference to Mark Kelley in that news report?

4 A: Yes.

5 Q: What does it say?

6 A: Dean, along with Chamber lobbyist Mark Kelley, delivered
7 about \$84,000 of those contributions to Barrett in June.

8 Those contributions included a \$3500 cashier's check from
9 Garden City Partners.

10 Q: What's the significance of Garden City Partners there?

11 A: Garden City Partners was one of the LLCs that upon which
12 a, a, one of the sequential checks was drawn and it says that
13 contribution included \$3500 cashier's check from Garden City
14 Partners.

15 Q: Let's go back to the start of the sentence. Brad Dean --
16 is there punctuation after Brad Dean?

17 A: Dean, comma, along with Chamber lobbyist Mark Kelley,
18 comma, delivered about \$84,000 of those contributions to
19 Barrett in June.

20 Q: What is the significance of that punctuation around that
21 clause?

22 A: It means that it's parenthetical information. It means
23 that Dean accompanied by lobbyist Mark Kelley.

24 Q: Does it say Brad Dean and Mark Kelley delivered \$84,000?

25 A: No.

1 Q: Could it have been made to say that if those were the
2 facts?

3 A: That's correct, it could have.

4 Q: How would that have been done?

5 A: It would have said Dean and Chamber lobbyist Mark Kelley
6 delivered, et cetera.

7 Q: Making reference to Exhibit One again. There is a
8 discussion of the legality of Mark Kelley attending that
9 meeting, isn't there?

10 A: Yes.

11 Q: And who is the source for the information about that?

12 A: Cathy Hazelwood, the General Counsel for the South
13 Carolina Ethics Commission.

14 Q: And what does Ms. Hazelwood say about Mark Kelley's
15 attendance?

16 A: She, she says there is, there are strict rules that forbid
17 lobbyist from facilitating campaign donations for statewide
18 candidates. However, the spokeswoman for the S.C. Ethics
19 Commission said it does not appear any laws were violated in
20 this case, quote, Just being in the same room is not a
21 violation. It happens all the time, end quote, said Cathy
22 Hazelwood, the Commission's General Counsel. Quote, He
23 (Kelley) is not supposed to touch the envelope or hand over
24 the envelope, end quote.

25 Q: Does that accuse Mark Kelley of any criminal activity?

- 1 A: No.
- 2 Q: Let me draw your attention to Exhibit -- Plaintiff's
- 3 Exhibit Four. Now, there's a photograph, here the headline is
- 4 Donations tied to MB Chamber blasted, and then there's a
- 5 photograph. Is that information under the photograph the cut-
- 6 line that you talked about before?
- 7 A: Yes.
- 8 Q: And what does that cut-line say?
- 9 A: BOOST President Robert Kelley and a group of Myrtle Beach
- 10 area business owners, citizens and taxpayers, called Monday on
- 11 Gresham Barrett and other politicians to return campaign
- 12 donations.
- 13 Q: Is there a highlighted quotation in that news report
- 14 Of the remarks of Robert Kelley?
- 15 A: Yes.
- 16 Q: And do those remarks say?
- 17 A: Quote, In the past the Chamber has denied any involvement
- 18 in this scandal but now Brad Dean admits he set up the lunch
- 19 with (Chamber) Lobbyist Mark Kelley and he handed Mr. Barrett
- 20 the envelope full of checks, end quote, said Robert Kelley,
- 21 who is not related to the lobbyist.
- 22 Q: Who is the he that Robert Kelley is referring to?
- 23 A: Brad Dean.
- 24 Q: How do we know that?
- 25 A: Brad Dean admits and then he handed Mr. Barrett. Brad

- 1 Dean is the subject.
- 2 Q: Brad Dean is the subject of that?
- 3 A: Correct.
- 4 Q: And the quotation indicates that it's Robert Kelley who's
- 5 saying it?
- 6 A: That's correct.
- 7 Q: And he's making charges on a matter of public interest?
- 8 A: Yes.
- 9 Q: Have you see any news report that accuses Mark Kelley of a
- 10 violation of state ethics or of a crime?
- 11 A: No.
- 12 Q: Let me draw your attention to Plaintiff's Exhibit Five,
- 13 which is an editorial. What is the role of an editorial in a
- 14 newspaper?
- 15 A: It is to present the opinion of the, in this case the
- 16 opinion of the institution of The Sun News.
- 17 Q: Who wrote that editorial?
- 18 A: I believe Robert Morris wrote it.
- 19 Q: And do you know where Robert Morris is now?
- 20 A: Robert, I believe, lives in New Orleans.
- 21 Q: There is a highlighted paragraph in there. Well, first,
- 22 overall, what is the editorial about?
- 23 A: The editorial is about -- it's basically an accumulation.
- 24 It's the, the newspaper had published a series of articles
- 25 about the campaign donations. It all began with the

1 controversy over the penny sales tax and then the ensuing
2 campaign contributions, questions that were raised by citizens
3 and by particularly, BOOST. This is a, a, an editorial that
4 sort of brings the whole controversy together and basically
5 states some positions, some opinion from the newspaper.

6 Q: There is a reference to Mark Kelley in that editorial; is
7 that correct?

8 A: Yes.

9 Q: And what does it say?

10 A: President Brad Dean personally handed the \$84,000 in
11 checks to Barrett with lobbyist Mark Kelley sitting by his
12 side. And then in parenthesis, if Kelley handed the money
13 over, the transaction would have been explicitly illegal.
14 Effectively ---

15 Q: Stop right there.

16 A: Okay.

17 Q: Stop right there. Do you understand that to be so?

18 A: Yes.

19 Q: And you understand that how?

20 A: I understand from David's reporting that Brad Dean handed
21 the money to Gresham Barrett and Mark Kelley was with him.

22 Q: All right. Now, go on from there after the explicitly
23 illegal?

24 A: Effectively forcing Barrett to say Kelley had no
25 involvement in pinioning the donations on Dean no matter what

1 the unprovable truth is.

2 Q: All right. What's an unprovable truth?

3 A: It's basically facts are not known so we don't know what's

4 true.

5 Q: Who doesn't know what's true?

6 A: The newspaper doesn't know what's true.

7 Q: About what?

8 A: About the campaign contributions, about how the, the what

9 was said at the lunch, an awful lot of, an awful lot of

10 information about how the money was, where the money came

11 from, how the money was handed over to political candidates,

12 who was -- who was involved in it, an awful lot of facts are

13 not -- are missing. We don't know what -- we don't know where

14 the money came from. We don't know, we don't know a lot about

15 this story even yet.

16 Q: Is there anything in there that accuses Mark Kelley of

17 violating the law?

18 A: No.

19 Q: Is there anything in there that suggests a contribution of

20 \$84,000 delivered by Brad Dean was unlawful?

21 A: No.

22 Q: Has anybody complained to you during the time you were at

23 the paper after that editorial was published about the

24 editorial?

25 A: No.

1 MR. BENDER: Excuse me just a minute, Your Honor.

2 BY MR. BENDER:

3 Q: Thank you very much. I have no other questions.

4 Plaintiff's lawyers may have questions for you.

5 CROSS EXAMINATION OF PATRICIA O'CONNOR BY MS. STEVENS-

6 GRAZIANI:

7 Q: Good afternoon, Ms. O'Connor.

8 A: Good afternoon.

9 Q: Thank you for being here. I just have a couple of
10 questions hopefully or a little bit more than a couple, but
11 I'll try to be short.

12 You said that -- well, answer this, Can along with also
13 mean and?

14 A: When it's -- not with commas that separate it as a clause.

15 Q: That wasn't my question? My question was can along with
16 also mean and?

17 A: It depends on the circumstance.

18 Q: Please answer my question. Tell me if you didn't
19 understand it. Can along with ever mean and?

20 A: It can if has a plural verb.

21 Q: Okay. Is delivered a past tense verb or a present tense
22 verb?

23 A: It's past tense.

24 Q: Right. And can deliver -- can delivered be past plural or
25 singular?

- 1 A: It can.
- 2 Q: Okay. I would refer you to Plaintiff's Exhibit Two. Do
3 you have that? And there's a section in Plaintiff's Exhibit
4 Two that's circled and that we've talked about many times. It
5 says Dean along with Chamber lobbyist Mark Kelley delivered
6 \$84,000 in contributions to Barrett in June. That didn't say
7 accompanied by, did it?
- 8 A: It says along with.
- 9 Q: It didn't say alongside, did it?
- 10 A: It says along with.
- 11 Q: Okay. It didn't say accompanied by?
- 12 A: No.
- 13 Q: It didn't say alongside?
- 14 A: No.
- 15 Q: But that's what you say it meant?
- 16 A: I say it says Dean delivered the checks and,
17 parenthetically, along with the Chamber lobbyist Mark Kelley.
- 18 Q: But you're saying that that sentence says that Mark Kelley
19 accompanied, but that's not what accompanied -- that's not
20 what it says.
- 21 A: I believe it ---
- 22 Q: It doesn't say accompanied, does it?
- 23 A: I believe it says Dean delivered the checks and Mark --
24 Chamber Lobbyist Mark Kelley was along; he was there.
- 25 Q: Okay. A sentence contains more than a subject and verb,

1 doesn't it?

2 A: It does.

3 Q: Okay. If The Sun News had sentences that only contained
4 subjects and verbs there really wouldn't be much of a story
5 for anybody to read, right?

6 A: Well, it would be boring.

7 Q: Exactly. I would like for you to look at Exhibit Twelve.
8 Can you tell the Jury what that exhibit is?

9 A: It is labeled, Ethics Policy.

10 Q: Earlier you said that it's important for the news to
11 report fair and balanced and be thorough?

12 A: That's correct.

13 Q: All right. Did The Sun News report that the emails came
14 from Nikki Haley's Campaign?

15 A: No.

16 Q: That wasn't important to the story?

17 A: No.

18 Q: But it wouldn't including that be fair and balanced if
19 this information about a lunch where Barrett attended was from
20 Nikki Haley's Campaign, that it was given to David Wren by
21 Nikki Haley's Campaign and when it was given?

22 A: The story I believe you're referring to says that the
23 lunch attendees were confirmed by Brad Dean and Gresham
24 Barrett.

25 Q: Okay. Are you under -- do you understand that David Wren

1 has testified that he has a source that has emails?

2 A: Journalists have all kinds of sources.

3 Q: Okay. Well, I'm talking about ---

4 A: Information comes from a wide variety of places.

5 Q: I'm talking about the source about, the source of the
6 email of the contributions from the LLC that is newsworthy as
7 you have testified; I am talking about that source.

8 A: What is your question?

9 Q: Are you familiar with that source, the source of the email
10 that, that -- okay. Exhibit Ten is a list of emails that talk
11 about campaign contributions that came through LLCs and the
12 emails ---

13 MR. BENDER: The witness needs the exhibit.

14 THE COURT: Please show it to her.

15 BY MS. STEVENS-GRAZIANI:

16 Q: Here's a copy.

17 A: Okay.

18 Q: The emails give a list of campaign contributions, don't
19 they?

20 A: I've never seen this email, but it appears so.

21 Q: You never saw the email?

22 A: No.

23 Q: Well, David Wren based his reporting on the emails, didn't
24 he?

25 A: He based his reporting on information that came from

1 emails, information that he gathered from interviewing people
2 who are connected to the story, from press conferences that he
3 had attended, from documents.

4 Q: Okay. Well, some of the documents were the emails, right?

5 A: That's correct.

6 Q: Okay. And you're the editorial -- you're the editor,
7 right?

8 A: That's -- I was at that time, yes.

9 Q: And you approved his investigative reporting?

10 A: I did.

11 Q: And you approved an editorial that says, Absence of
12 Evidence?

13 A: I did. Well, as I testified in my deposition, I don't
14 specifically remember editing that editorial. I didn't write
15 it, but it would have been my common practice to have read
16 them.

17 Q: Okay. Well if you're approving an editorial that says,
18 Absence of Evidence, don't you think it's important to look at
19 all the evidence?

20 A: The headline on the editorial, Absence of Evidence, was
21 intended and I believe did say to the reader, there's an awful
22 lot not known about what's going on with the LLCs, where the
23 money came from, where the, where the, how the, how the checks
24 were delivered, decided, who was going to get them, what the
25 implication was around all of that. I believe that's what

1 that headline said.

2 Q: Okay. In Exhibit Ten at the bottom it's Bates stamped
3 DWREN027. This last email, can you read starting there,
4 everyone who's listed or every entity that's listed?

5 A: I'll try. It's very small.

6 Q: Yeah, that's my copy that I got from the Defendant's.

7 A: 905 Polo Partners LLC, 1298 Professional Drive, Myrtle
8 Beach, South Carolina 29577 and then it's followed by 3500, I
9 believe that's a 6 -- it's either a 5 or a 6 -- 22, 2009.

10 Q: To speed this up, I just need the list; I don't need their
11 addresses. We know that they have the addresses in it, but
12 just give the list of the entities that are listed to the
13 left?

14 A: Okay. Noting that some of the, the addresses are
15 precisely the same and the one at the bottom is different.
16 Okay. 905 Polo Partners; LLC, I believe that's A & D and RD
17 Tele Agency; Backgate LLC; Beach Paralegal; CF Plantation
18 Partners LLC; Creekview Land Partners LLC; Deluxe Land
19 Partners, LLC; Office Park Partners; Partners of Cypress
20 Plantation LLC; Porcher Partners and all of those have the
21 same address, 1298 Professional Drive, Myrtle Beach. And then
22 the last one is Carter Studios Inc. and that has a different
23 address in Murrells Inlet.

24 Q: Okay. Are you familiar that LLCs have registered agents?

25 A: I believe that's true, yes.

1 Q: Okay. Are you familiar that a lot of times, LLCs name
2 their lawyer as the registered agent?

3 A: I would have to confess, I'm not an expert on LLCs.

4 Q: Okay. Are you familiar that Shep Guyton is a lawyer?

5 A: I believe he is, yes.

6 Q: All right. Are you familiar with the fact that LLCs can
7 be member managed or manager managed?

8 A: Once again, I'm not an expert on LLCs.

9 Q: Okay. Are you familiar with the fact that a registered
10 agent is not a member or can't -- may not be a member or may
11 not be the manager of an LLC?

12 A: Registered agent to me says someone who is operating in an
13 official capacity, they are registered and they are an agent
14 and I, I really can't speak to the, to your distinction you're
15 making because I don't know.

16 Q: The registered -- Sun Publishing Company is a company,
17 right?

18 A: That's correct.

19 Q: And do you know where the Sun Publishing Company has a
20 registered agent?

21 A: I don't.

22 Q: Okay. Do you know that the registered agent is who one
23 would serve with a complaint?

24 A: I, I assume you're telling me the truth. I honestly don't
25 know.

1 Q: Okay. Well, if this money is coming from LLCs, do you
2 think it might be important to get familiar with what an LLC
3 is and how it's made up?

4 A: In the context of the news stories ---

5 Q: Yes.

6 A: --- that we've been talking about? I did not believe it
7 was important for me to become an expert on LLCs in order to
8 publish the stories, no.

9 Q: Okay. Well, well, at least do you know that when you set
10 up an LLC, you can file an article of organization and you put
11 the members and the managers in the articles of organization?

12 A: I am aware that when you register an LLC, that there are
13 some names attached, sometimes more than with others, yes.

14 Q: Okay. And those articles of organization can be acquired
15 through requests from the Secretary of State; do you know
16 that?

17 A: I know they're registered with the Secretary of State,
18 yes.

19 Q: And that your reporter could have asked the Secretary of
20 State for the articles of organization for any of the LLCs or
21 from the Secretary of State of any of the LLCs? Are you
22 familiar or do you know that David Wren, as an investigative
23 reporter, could have contacted the Secretary of State of South
24 Carolina and obtained all of the articles of organizations for
25 all of the LLCs that are listed in that email?

1 A: Okay.

2 Q: Do you know that?

3 A: I certainly know that you can go to the Secretary of
4 State's Office and gather that information, yes.

5 Q: As an investigative reporter, don't you think that's
6 important to do if you trying to find out who came up with the
7 money?

8 A: I know that David looked into all of the LLCs that, that
9 were given to the, to the candidates that we have written
10 about, yes.

11 Q: How did he do that?

12 A: He had information from the -- I know he went to the
13 Secretary of State. I don't know that he physically went to
14 the Secretary of State's office, but he had information from
15 the Secretary of State's office. He had information from
16 Horry County.

17 Q: But that didn't go along with the accusation that Mark
18 Kelley had anything to do with compiling the campaign
19 contributions and giving them to Barrett, did it?

20 A: We didn't publish anything that said ---

21 Q: That's not what I asked you. That didn't have anything to
22 do with Mark Kelley gathering the money and giving it to
23 Barrett, did it, from the LLCs?

24 A: I'm sorry, but I'm really unclear what you're asking.

25 Q: The LLCs had nothing to do with any allegation that Mark

1 Kelley was at the meeting or delivered or set up the meeting
2 or delivered the money to Gresham Barrett, does it; the LLCs
3 have nothing to do with that accusation?

4 A: Some of the money, some of the checks that were delivered,
5 that Brad Dean delivered to Gresham Barrett that day at the
6 lunch came from the LLCs.

7 Q: Right.

8 A: Yes.

9 Q: But that has nothing to do with Mark Kelley, does it?

10 A: Mark Kelley was at the lunch.

11 Q: But the money coming from the LLCs has nothing to do with
12 Mark Kelley, does it?

13 A: That's correct.

14 Q: Okay. Thank you. This lunch did not make news until two
15 weeks before the primary, right?

16 A: The story that you have as -- in your exhibits was
17 published, the first one was published May 21st of 2010.

18 Q: Okay. When was the primary?

19 A: The primary was in early June; I don't remember the date.

20 Q: Okay. So a month?

21 A: I guess approximately.

22 Q: Okay. Do you know when the lunch happened?

23 A: The lunch happened the previous year in 2009.

24 Q: So, the fact that information about a lunch that happened
25 in a previous year that came from a -- that information coming

1 from a member of the campaign of Nikki Haley was not important
2 to report that it came from the Nikki Haley Campaign?
3 A: The fact that the original or some of the original
4 information about the lunch came from a political opponent's
5 campaign was not the point of the story. The point of the
6 story was that for several months Brad Dean had said he, the
7 Chamber was not connected nor was he connected to the
8 distribution of the checks that were in question. Then the
9 story about the lunch appeared when Brad Dean and Gresham
10 Barrett confirmed that actually -- that they were at the lunch
11 and that Brad handed the checks to Mr. Barrett.
12 Q: Will you look and see if Exhibit Number Twelve is over
13 there?
14 A: Here it is. It says Twelve.
15 Q: There's a sentence that starts with conflicts of interest.
16 Can you read that sentence?
17 A: Certainly. Conflicts of interest or the appearance
18 thereof erode the public's trust and undermine the mission of
19 our world.
20 Q: Okay. So it's important to keep the public trust?
21 A: Absolutely.
22 Q: Is it important to let the public know if anybody is
23 trying to sway the outcome of a political runoff or political
24 campaign for the Republican Primary?
25 A: People's attempts to sway the outcome and to sway

1 reporting, especially when it's near election time, is common
2 place. It, it's, you maintain the public's trust in our work
3 when what you report is fair and accurate and carefully
4 reported.

5 Q: Okay. Well, then we need to talk about carefully
6 reporting. If you are careful in reporting, shouldn't you
7 have said Brad Dean delivered the money to Gresham Barrett
8 period and Mark Kelley was there when the money was delivered
9 with Drea Byars because she was there too, right?

10 A: I believe the story does say that one of Mr. Barrett's
11 campaign aides was at the table, yes, but I also know this to
12 be true. The story is accurate.

13 Q: Okay. Exhibit Two the part that's circled. Tell me where
14 it says Drea Byars was there along with Brad Dean?

15 A: She's in the story somewhere. Would you like for me to
16 read them and tell you which one.

17 Q: No, I want you to read that one?

18 A: She's not in that paragraph.

19 Q: Okay. Well, wouldn't it have been, if you're reporting
20 news accompanying Brad Dean was Barrett and who is alongside
21 of Brad Dean and Gresham Barrett; shouldn't you put everybody
22 that was there?

23 A: No.

24 Q: Why not?

25 A: Gresham Barrett was a candidate for Governor. Brad Dean

1 was and remains the head of the Myrtle Beach Area Chamber of
2 Commerce, a, a citizen, a leader in our community who had said
3 for several months that he had nothing to do with the handling
4 or the distribution of several campaign checks. The story
5 somewhere says that one of Mr. Barrett's aides was also at the
6 meeting. It wouldn't be uncommon for a gubernatorial
7 candidate to travel with an aide. In my experience as a
8 journalist, they frequently come with someone else on their
9 staff when they come to talk to people. There's someone with
10 them to help move them along so they don't get stuck sitting
11 somewhere too long. The other person at this lunch was Mark
12 Kelley, who was a lobbyist for the Chamber. So, to explain
13 Mr. Kelley's presence there in part was to simply say there
14 were four people at the table, Brad Dean connected with the
15 Chamber, Mark Kelley connected with the Chamber and Gresham
16 Barrett, who was a gubernatorial candidate.

17 Q: My question was why didn't you say in that sentence that
18 Drea Byars was there or in that article that Drea Byars was
19 there alongside Brad Dean and Gresham Barrett; that was my
20 question? Can you please answer that question?

21 A: I'd be happy to. She's not newsworthy.

22 Q: Okay. And Mark Kelley is newsworthy why?

23 A: Mark Kelley is well known in the community. He was a
24 longtime legislator in Horry County and he, at that time,
25 served as a lobbyist for the Chamber.

1 Q: Okay. How do you know he served as a lobbyist for the
2 Chamber? Isn't it true that he didn't serve as a lobbyist for
3 the Chamber at that lunch meeting and hasn't been a lobbyist
4 for the Chamber all along?

5 A: It is my understanding that the corporation for which he
6 serves as lobbyist as a title different from the Myrtle Beach
7 Area Chamber of Commerce. However, it's also my understanding
8 that, that organization is the lobbying arm of the Chamber.

9 Q: Based on what?

10 A: Based on information and reporting done by David Wren and,
11 and his, with whom I have complete confidence.

12 Q: You said along with Chamber lobbyist Mark Kelley is a
13 parenthetical expression. Can you define what a parenthetical
14 expression is?

15 A: It sets -- this one is set off by commas.

16 Q: Isn't it true that a parenthetical expression can be taken
17 out of a sentence and for an example would be in my opinion,
18 by the way, those things can be taken out of a sentence and
19 they don't change the meaning of the sentence?

20 A: That would be correct.

21 Q: Okay. Would you please look at Exhibit Number Five, I
22 think. Isn't it true that the Absence of Evidence is The Sun
23 News' false allegation that Mark Kelley delivered the money to
24 Barrett?

25 A: Absolutely not.

1 Q: Isn't it true that the Absence of Evidence that The Sun
2 News falsely reported was that he set up the meeting?

3 A: Absolutely not.

4 Q: Isn't it true that the Absence of Evidence is The Sun News
5 -- isn't it true that in the Absence of Evidence, The Sun News
6 falsely alleged was that Mark Kelley delivered the campaign
7 contributions to Barrett in June?

8 A: No.

9 Q: Then why would Barrett be pinned from telling that he
10 didn't, that Dean delivered the money or pinioned, whichever
11 the word might be?

12 A: Would you repeat the question?

13 Q: Then why would Barrett be forced to or pinned down and
14 held back or made to say that Dean delivered the money instead
15 of Mark Kelley?

16 A: The entire sentence says, If Kelley handed the money over,
17 the transaction would have been explicitly illegal effectively
18 forcing Barrett to say Kelley had no involvement in pinioning
19 or pinning the donations on Dean no matter what the unprovable
20 truth is. It is the opinion of the newspaper that what really
21 happened there, only the people who attended could say for
22 sure.

23 Q: Okay. And it's also the opinion of The Sun News that what
24 was told by Brad Dean and what was told by Gresham Barrett
25 were un -- an unbelievable circumstance?

1 A: It creates this, what it says is basically this. If

2 Kelley had handed the money over, it would have effectively
3 been an illegal transaction. It goes on to say ---

4 Q: Thank you.

5 A: You're welcome.

6 Q: Go on, it goes on to say what?

7 A: It does not say that, that Mark Kelley ever did anything
8 illegal nor have we ever printed that Mark Kelley did anything
9 illegal. He attended a meeting and the General Counsel for
10 the South Carolina Ethics Commission very clearly stated that
11 his presence was not illegal and there you have it.

12 Q: Okay. Go on to read the next paragraph, please.

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

19 Q: But the circumstances make it difficult to believe. And
20 you think that you're not accusing Mark Kelley of delivering
21 the money when you put in there or you allow it to be put in
22 an editorial that there's no evidence disproving this
23 statement but the circumstances make it difficult to believe?

24 A: I believe this editorial overall calls into question the
25 credibility of Brad Dean.

1 Q: And not Mark Kelley?

2 A: It does not call into question the, the honesty of Mark
3 Kelley, no.

4 Q: Wasn't he looking for evidence to make Mark -- show Mark
5 Kelley delivered the money?

6 A: Who is he?

7 Q: David Wren?

8 A: David was doing reporting to find out where the money came
9 from. It was a legitimate and important in his story; it
10 remains so.

11 Q: I'm looking for Exhibit Number Eleven. Can you look and
12 see if it's over there? I'm sorry. Okay. I'll just let you
13 see my copy because I can't find the Court copy.

14 A: Okay.

15 Q: If I represent to you that that's the May 23rd email from
16 David Wren to Justin Stokes and Tim Pearson; would you agree?

17 A: I accept that, yes.

18 Q: Okay. Did you read that email before you approved the
19 Absence of Evidence article?

20 A: No.

21 Q: Did you ask to see this email?

22 A: No.

23 Q: What was the unprovable truth that your article and that
24 editorial refer to?

25 A: I don't believe any article, any news article referred to

1 unprovable truth.

2 Q: Okay. Look at Exhibit Four, Five, the one you were just
3 looking at, Absence of Evidence?

4 A: The editorial. I making the distinction the editorial is
5 opinion; that's different from the news stories.

6 Q: Doesn't the opinion mention, mention an unprovable truth?

7 A: It does say unprovable truth, yes.

8 Q: Just a moment.

9 A: Certainly.

10 Q: Did you personally ask about the source of David Wren's
11 source?

12 A: When David and I worked together as editor and reporter,
13 which we did as I testified earlier, since David came back
14 from Denver and became an investigative reporter, our common
15 practice when working on, on quite a few stories that were
16 complex and involved months and months of reporting and a lot
17 of document searching and a lot of interviewing of people from
18 a wide variety of, of sources from emails to personal
19 interviews. Our common practice was to sit down and talk
20 about the stories at various stages of development, what did
21 he know, where was the information coming from. I did not
22 read his emails. I felt no need to, in most cases, see the
23 documentation directly although occasionally I certainly did
24 in conversations with David. He would bring documents in and
25 we would go over them together. But I didn't, as a common

1 practice, read any of the reporters email exchanges, no.

2 Q: Okay. Do you know an antecedent is?

3 A: I should be able to give you a definition, but I'm
4 embarrassed that I'm at a loss right this moment.

5 Q: Do you know what a compound preposition is?

6 A: I'll give you the same answer.

7 Q: Do you know that along with is a compound preposition?

8 A: Okay.

9 Q: Do you agree with that?

10 A: I would say along with is in the case as it's used in the
11 story that we've discussed quite a lot today and yesterday, it
12 is set off by commas and it does not mean and. It means along
13 with.

14 Q: Did you understand my question?

15 A: Probably not.

16 Q: My question was, Do you know that along with is a compound
17 preposition?

18 A: All right. I'll accept that.

19 Q: Okay. I'm done. I have no further questions.

20 MR. BENDER: Nothing further, Your Honor. Thank you.

21 THE COURT: You may step down. Thank you very much.

22 Witness?

23 MR. BENDER: I move her to be excused.

24 THE COURT: Any objection?

25 MR. STEVENS: No, no objection.

1 THE COURT: You're excused from your subpoena.

2 MS. O'CONNOR: Thank you, sir.

3 THE COURT: Witness, Mr. Bender?

4 MR. BENDER: No, Your Honor. Defense rests.

5 THE COURT: Very well.

6 BY THE COURT:

7 THE COURT: Ladies and gentlemen, the Defense has rested.
8 I have some matters that I need to take up with the Jury -- or
9 that will take some time or with the attorneys, but we will
10 not need you for the balance of the evening. I'm going to
11 release you. I would like to see you back in here at 9:30 in
12 the morning and I believe we can conclude this case.

13 Mr. Ropp, would you take the Jury out.

14 Let me again give my previous admonitions not to discuss
15 the case or do any independent research or read any articles
16 that may be in the newspaper or anything online. Don't make
17 any comments about it and don't discuss it with anyone. Don't
18 allow anyone to discuss it with you. Thank you very much.

19 (REPORTER'S NOTE: Jury exits courtroom. 5:00 P.M. The
20 following takes place outside the presence of the Jury.)

21 THE COURT: All right. Gentlemen, Mr. Postal is about to
22 send you an amended charge. I have amended it substantially.
23 I've added essentially what all of you wanted. There was one
24 part that you asked for, Mr. Bender, that is editorializing.
25 It is, it was something about the First Amendment. I don't

1 feel it has any relevance at all to this case.

2 MR. BENDER: You're talking about the portion from
3 Holtzscheiter talking about -- I can't think of the ---

4 THE COURT: Yes. Let me see. I don't. I don't and I
5 say that with tongue in cheek. But look at it. We're gonna
6 nail down this charge before we leave here tonight. I will
7 expect no additional amendments or changes in the morning. I
8 want to have it printed and ready to go for this Jury. Again
9 this will be the charge for the first phase of the bifurcated
10 trial. I don't know if we'll even need one for the second
11 phase, but that will be the one for the first phase.

12 Each of you have sent verdict forms. I'm gonna send Mr.
13 Bender's over to Mr. Stevens; I'm gone send Mr. Stevens' over
14 to Mr. Bender. I'll tell you now, Mr. Stevens, I don't think
15 yours will work. You say we find for the Defendants on the
16 first cause of action, second cause of action, third cause of
17 action; how will they know? We need one verdict. We need a
18 simple verdict form. Although Mr. Benders' is not necessarily
19 simple, it would be easier to follow.

20 I also have a very serious question in my mind concerning
21 this charge and that is this. In a libel case, it's my
22 understanding that where it involves a public figure Plaintiff
23 or public official Plaintiff, the actual malice element is a
24 separate and distinct element of a libel action. The question
25 in my mind is whether or not the clear and convincing standard

1 for finding actual malice also applies to the finding of the
2 other elements of the, of libel, such as a false statement
3 about the Plaintiff unprivileged published to another person.
4 I have a question in my mind that I want you to be prepared to
5 answer and I'll give you until tomorrow morning to do that as
6 to whether or not the requirement of a clear and convincing
7 standard on actual malice also applies to those other elements
8 of common law, those traditional elements of common law. I
9 frankly don't know and I haven't seen anything that tells me
10 that. Do you have anything, Mr. Bender?

11 MR. BENDER: Your Honor, I'm thinking about Gertz and I
12 think the South Carolina Supreme Court has talked about it
13 but, at this moment, the case is not coming to mind.

14 THE COURT: Just hand me one up in the morning and we'll
15 ---

16 MR. BENDER: I will ---

17 THE COURT: And that can be an easy change.

18 I'm gonna give you about thirty minutes or so to look
19 over these things. Drew is shooting them to you or they're
20 there now. Let's look them over and let's discuss them. Let's
21 take about a half hour break and then we'll discuss it.

22 MR. BENDER: Your Honor, before you leave, I'd like to
23 renew Defendant's Motion for ---

24 THE COURT: I'm sorry. I'm sorry. I failed to give you
25 an opportunity to do that and I will hear you.

1 MR. BENDER: The arguments are as previously stated. I'm
2 anticipating a similar ruling.

3 THE COURT: And may I adopt my exact ruling. Okay?
4 Thank you.

5 MR. STEVENS: I would like to make a motion for directed
6 verdict also for the record.

7 THE COURT: And I would respectfully deny it.

8 MR. STEVENS: Thank you, Your Honor.

9 THE COURT: Thank you. Okay.

10 THE COURT: Okay.

11 (RECESS - 5:07 P.M.)

12 *****OFF THE RECORD*****

13 (On the Record - 5:38 P.M.)

14 THE COURT: Gentlemen, have we had enough time to think
15 about it?

16 MR. REDMOND: I think we have, Your Honor.

17 THE COURT: All right. Okay. Let me hear from Mr.
18 Stevens first.

19 MR. STEVENS: Your Honor, our, our objections as to the
20 public figure would run throughout.

21 THE COURT: Right. Obviously. Obviously.

22 MR. STEVENS: The only other thing that I see and I have
23 read it and I was trying to read it quickly. Did we get the
24 charge on the Erickson case where the repeating of defamation
25 is the same as defamation that ---

1 THE COURT: I did not see that. The headnote that you
2 had on Erickson said a Defendant or publisher asserting truth
3 as a defense in a defamation case must proof that the
4 statement or purported fact is true, not that the person
5 quoted actually made the statement.

6 MR. STEVENS: That's correct.

7 THE COURT: That's in there verbatim.

8 MR. STEVENS: Okay. Thank you. I'm sorry, I just didn't
9 see it.

10 THE COURT: It's in there verbatim. I'll tell you where
11 it is. Yes?

12 MR. BENDER: Page Six.

13 THE COURT: Yes.

14 MR. BENDER: While we're talking about that, we would
15 object to that on the grounds that is shifting the burden of
16 proof on the truth to the Defendant. We have pleaded truth
17 when it hasn't been established that the Plaintiff would have
18 the burden of proof of falsity. So I think ---

19 THE COURT: Say it again?

20 MR. BENDER: Certainly. Erickson is saying when you
21 plead truth, you have to prove that what was said was true,
22 not that somebody said it. I agree that that's a principal,
23 but that by injecting truth as a defense here, it's shifting
24 the burden to the Defendant to prove truth, which is not part
25 of actual malice. We had answered raising truth because when

1 the case first started, there was no indication whether it was
2 gonna be a private or public plaintiff case.

3 THE COURT: Well, I think what Erickson is saying is the
4 issue is whether or not the statement is true or not, not
5 whether or not someone else made it; what it's saying is the
6 Defendant has -- I mean, the Defendant must prove that the
7 statement is true, not that someone else said it and I just
8 repeated it.

9 MR. BENDER: I think that, that's part of the problem
10 because I think that under actual malice, the Plaintiff is
11 gonna have to prove that what was published was false and that
12 the Defendant knew it was false at the time it was published.

13 THE COURT: Well, I have instructed them fully on that.
14 In fact I have your instruction on that.

15 MR. BENDER: I understand. What I am suggesting is by
16 raising truth here, particularly saying a Defendant or
17 publisher asserted truth as a defense, but truth is not a
18 defense any longer in an actual malice case.

19 THE COURT: Well, why did you raise it?

20 MR. BENDER: Because when, when the complaint was filed,
21 I didn't know whether it was gonna be a public or private
22 Plaintiff. I had to raise it. I think once you make the
23 decision that this is a public figure Plaintiff ---

24 THE COURT: Does he not still have to prove that it's a
25 false statement?

1 MR. BENDER: Yes.

2 THE COURT: Okay. He has to prove that it's a false
3 statement. That's an element that he must prove. You have
4 had hours of testimony where your witnesses have said it is
5 the truth.

6 MR. BENDER: Sure, and that's to rebut an allegation that
7 is false and he knew it was false.

8 THE COURT: I, I don't understand the distinction.

9 MR. STEVENS: All I am saying is that if it's false, if,
10 if the statement is false, the newspaper cannot insulate
11 itself as a defense simply because that person said it and all
12 we're doing is quoting it; that's all.

13 THE COURT: I think that's what that Erickson quote says,
14 that you can't use as a defense the fact that, well, we really
15 didn't say it; somebody else said it and we just repeated it.
16 That, that's what his charge is saying.

17 MR. BENDER: Well, actually that raises another question
18 that I don't think is in this case and that would be neutral
19 reportage and there's no reason to bring in neutral reportage
20 where you have the Plaintiff with the burden to prove falsity.
21 The Plaintiff's burden here is to prove falsity and notice of
22 falsity or reckless disregard of potential falsity. I think
23 if you put this truth issue in here, that's gonna look like
24 it's shifting the burden to the Defendants to prove truth and
25 that's not ---

1 THE COURT: Well, Mr. Stevens, would it satisfy you then
2 to simply say it's not a defense for the Defendant, for the
3 publisher, to assert that he or she or it was simply quoting
4 someone else?

5 MR. STEVENS: That's fine.

6 THE COURT: Would that satisfy you?

7 MR. BENDER: I think then you have to say that the
8 Plaintiff must prove that that statement was false and that
9 the Defendant had the awareness of potential falsity or
10 reckless disregard.

11 THE COURT: And that's in there.

12 MR. STEVENS: I think you're charging that, Your Honor.

13 THE COURT: I'm charging that fully.

14 MR. BENDER: Well, I think you have to say that with
15 respect to all elements of ---

16 THE COURT: Why don't I put that where I am charging
17 actual malice?

18 MR. BENDER: I think that would be fine.

19 THE COURT: Okay.

20 MR. BENDER: What I'm trying to avoid is the notion that
21 it's not a defense to say somebody else said it. Well, it's a
22 defense if somebody else says it and in certain circumstances
23 that are not really at issue here. We have made them an issue
24 because of the actual malice obligation of the Plaintiff. I
25 think if you say if, if Plaintiff contends that someone else

1 has a made a false statement that's been published by the
2 newspaper, the Plaintiff has the burden of proving the falsity
3 of that statement and the constitutional malice on behalf of
4 the Defendant.

5 MR. STEVENS: I agree with that.

6 THE COURT: Okay. Well, then isn't that what's already
7 in my malice charge? So, why do we even need this?

8 MR. BENDER: Well, that was my thought from the
9 beginning, Your Honor.

10 THE COURT: Why do we even need it, Mr. Stevens?

11 MR. STEVENS: To save problems, I'll withdraw it.

12 THE COURT: Okay. Take that out, Drew.

13 MR. STEVENS: The only other exception -- May I proceed?

14 THE COURT: Go ahead. Go ahead.

15 MR. STEVENS: It is and I don't know what paragraph it
16 is, but it is the paragraph that deals with the words bristled
17 with ambiguities. I think that is a charge that he's -- he's
18 making it a charge where he pulled it out where the Court has
19 given their opinion about certain facts.

20 THE COURT: Commenting on the evidence, is what you're
21 saying.

22 MR. STEVENS: Yeah, and it -- for example, let me explain
23 something to you. The Supreme Court in the handbook cases
24 reversed a judge who said to the Jury quoting straight out of
25 that particular case, that a, an employer should not issue a

1 handbook requiring the employee to promise and then deviate
2 from it at its own whim. That's essentially what this is.
3 That's the kind of statement that that ---

4 THE COURT: This is what it says. If the adoption of the
5 language in question that was chosen by the Defendant in one
6 of a number of possible rational interpretations of an event
7 -- I'll take out bristled with ambiguities. I don't know that
8 that's necessary.

9 MR. BENDER: It's a direct quote from Bose, the consumer.

10 THE COURT: Why don't I just say that it was ambiguous?

11 MR. STEVENS: I think that will work. Okay.

12 THE COURT: An event that was ambiguous and descriptive
13 challenges for the writer. The choice of such language,
14 though reflecting a misconception does not place the speech
15 beyond the outer limits of the First Amendment's broad
16 protective umbrella.

17 MR. STEVENS: That's gone really confuse the Jury. The
18 don't know what the outer limits of the First Amendment's
19 broad protective umbrella means.

20 THE COURT: You want to change that to say raises
21 liability or creates liability on the part of the Plaintiff, I
22 mean the Defendant? An event that is ambiguous and presents
23 descriptive challenges for the writer. The choice of such
24 language though reflecting a misconception does not place
25 speech -- what if we say does not necessarily make this speech

1 actionable.

2 MR. BENDER: I was gonna say does not -- instead of
3 actionable because I think the Jury doesn't know what that
4 means.

5 THE COURT: And they, they can figure that better than
6 beyond the umbrella of the broad protection of the First
7 Amendment.

8 MR. BENDER: I wasn't trying -- I can't improve on the
9 writing. How about this, that instead of broad umbrella, say
10 even though that the choice of such language though reflecting
11 a misconception does not constitute actual malice.

12 THE COURT: I would go with that if I said it does not
13 necessarily.

14 MR. STEVENS: I didn't quite understand. I think -- it's
15 is a charge on -- it is the type of language from a case that
16 our Supreme Court has said that the Trial Court must avoid.

17 THE COURT: I'm just gone put in does not necessarily
18 give rise to liability.

19 MR. BENDER: I think that's fine.

20 THE COURT: Okay. How about that?

21 MR. STEVENS: Okay.

22 THE COURT: It's not necessarily -- and that way they can
23 give it such weight as they, they choose and use it for what
24 purposes they, they like.

25 Okay. What else, Mr. Stevens?

1 MR. STEVENS: That's it.

2 THE COURT: All right. Mr. Bender? You want George to
3 do this?

4 MR. BENDER: I do. He's been working the computer.

5 MR. REDMOND: The, it's on page seven, the, there was a
6 request there, request number ten regarding insinuation. Our
7 -- it needs a qualification, I believe, because this is
8 Cooper v. Laboratory was a private figure Plaintiff and the
9 first portion of this is okay. The Defendant need not be
10 accomplished in a direct manner and an insinuation may be
11 defamatory. A mere insinuation is actionable as a positive
12 assertion and their cite has if it is false and malicious and
13 malicious is common law rule not actual malice and its meaning
14 is plain, so ---

15 THE COURT: Well, why don't we take malicious out and
16 just put false and its meaning is plain.

17 MR. REDMOND: Well, I think that in order for it to be
18 defamatory, it has to be if it is false, published with actual
19 malice and its meaning is plain. So, instead of malicious ---

20 THE COURT: Okay. That's the rule. We'll put that there
21 and we'll go with that.

22 MR. STEVENS: Or reckless disregard.

23 THE COURT: Well ---

24 MR. REDMOND: That, that's included in actual malice.

25 THE COURT: I'm gonna charge actual malice and that'll

1 have that. And its meaning is plain. Okay. All right.

2 Mr. Redmond?

3 MR. REDMOND: The only other -- I think on page nine for
4 whatever disregard is missing an s, but at the, in the first
5 paragraph there, if that matters at all.

6 THE COURT: It does. We want to make it as clear as
7 possible.

8 MS. STEVENS-GRAZIANI: I'm sorry, I didn't hear what?

9 MR. REDMOND: The word disregard on page nine, the first
10 paragraph, is missing an r.

11 MS. STEVENS-GRAZIANI: I don't know what page. What ---

12 THE COURT: Disregards, with reckless disregard of
13 whether it was ---

14 MR. REDMOND: Yeah it's -- diregard is what's in there;
15 it's missing an s.

16 THE COURT: Well, that's what it should be. That is with
17 the knowledge that it was false or with reckless disregard of
18 whether it was false.

19 MR. REDMOND: You have disregard in there?

20 THE COURT: Yes, it says disregard.

21 MR. REDMOND: Okay. Mine had disregard, public figure.

22 THE COURT: Yeah.

23 MR. REDMOND: Disregard that.

24 THE COURT: Wait a minute. Wait a minute. You're -- is
25 that what you were talking about, Mr. Redmond, the sentence

1 that says ---

2 MR. REDMOND: The sentence is correct.

3 THE COURT: Oh, okay. Oh, I see where you're talking
4 about. Right at the end, reckless disregard for the truth.

5 MR. REDMOND: Mine had a misspelling in the disregard
6 that was right in the middle.

7 LAW CLERK: Diregard.

8 MR. REDMOND: Diregard; that's it. I'm sorry.

9 THE COURT: Okay. We were looking for an s at the end.

10 MR. REDMOND: I hate to be ---

11 THE COURT: All right.

12 MR. REDMOND: The only other issue, Your Honor, and I
13 understand you've made a ruling as far as the language from
14 Holtzscheiter in regard to explaining the First Amendment

15 THE COURT: I understand.

16 MR. REDMOND: Just for the record, I wanted to put forth
17 that we believe that language is -- makes it more readable as
18 a practical matter, but as a legal matter, it's important
19 because it's appropriate to mention the first law, put it in
20 the charges of this case because it is the law and it's
21 applicable in this case, the First Amendment of the United
22 States Constitution. The second point on that is it's sort of
23 necessary because it's referred to in other charges when it
24 talks about the constitutional protection. And a third matter
25 was that this was a clipping, a quote from Judge Toal, who was

1 citing the United States Supreme Court in Dunn and Bradstreet,
2 and we just think that, you know, if Judge Toal puts it in an
3 opinion so that it makes it more understandable for the bar,
4 we think it also would be -- it's not just flowery language;
5 it's important for background for the jurors to understand
6 that this is the law that we're applying and that's, that's
7 all, Judge.

8 THE COURT: All right. Thank you. Any, anything
9 further?

10 MR. STEVENS: No, sir.

11 THE COURT: Anything further, Mr. Redmond?

12 MR. REDMOND: No, Your Honor.

13 THE COURT: Okay. Gentlemen, I hate to've kept you over.
14 However, I have adopted this policy since I've been on the
15 Bench for almost seven years now. I've had juror after juror
16 come and tell me how helpful it is particularly in a complex
17 case to have a copy of the charge. I read this charge as per
18 the instructions of the Court verbatim. This is the charge
19 they will have. I have -- I don't think I've had but one time
20 where a Jury has come back or a Jury has come back and asked
21 for another explanation of law. It just doesn't happen.

22 MR. BENDER: You give each juror a copy of it?

23 THE COURT: I usually provide them with one and instruct
24 that they're welcome to as many as possible. Some juries do
25 come back and ask for twelve and we provide them if they need

1 them. But we, we have that available for them.

2 In the morning, I'd like to hear from you on the issue of
3 whether or not the common law elements and the burden of proof
4 for a public figure changes as to all elements of a libel
5 action or is it solely or is clear and convincing solely
6 applicable to the requirement they find actual malice. I,
7 don't know the answer to that question. It occurred to me
8 when I was doing this charge and I quite frankly don't know
9 the answer. Now, Mr. Bender tells me he thinks he's got
10 something and that would be wonderful.

11 MR. BENDER: I found one as to falsity. Of course,
12 there's no presumption of falsity, the Plaintiff has to prove
13 it. And I think -- I'm looking at Bose Corp v. Consumer's
14 Union.

15 THE COURT: Did that involve a public figure or ---

16 MR. BENDER: Yes, the Bose Corporation, which makes
17 speakers was held to be a public figure.

18 THE CORT: Okay.

19 MR. BENDER: And the Court says we may accept all the
20 purely factual findings. The District Court, nevertheless,
21 holds as a matter of law the record does not contain clear and
22 convincing evidence that the witness or his employer prepared
23 the loudspeaker article with knowledge that it contained a
24 false statement or with reckless disregard of the truth.

25 THE COURT: But that goes to the actual malice

1 requirement.

2 MR. BENDER: The way I, the way it seemed to be
3 structured -- and I'll be happy to give you the case -- it
4 struck me that they were talking about prove of falsity with
5 respect to ---

6 THE COURT: Well, let's be in here at 9 o'clock in the
7 morning and let's look at it.

8 Mr. Stevens, you may agree that it's a clear and
9 convincing as to all elements.

10 MR. STEVENS: No.

11 THE COURT: I know of no other case where there would be
12 a hybrid approach to the elements of an offense. I have never
13 encountered that. However, I do recognize that we do have a
14 wealth of cases involving the duty of a -- or the burden on a
15 Plaintiff in a civil case and a wealth of cases involving
16 libel and slander where the Plaintiff is a, a private figure
17 and it's clear that in those cases, the burden of proof is by
18 a preponderance. However, it is equally clear that where
19 there's a public figure at least the burden of proof as to
20 actual malice is clear and convincing as it would be for
21 punitive damages. But -- and I say there's no hybridization.
22 We do have that in cases seeking punitive damages where
23 they're tried together.

24 MR. STEVENS: I think -- I'm gonna research that also and
25 I'm gonna make some calls and get some more educated opinions.

1 But as I see it, the constitutional issue where you have a
2 First Amendment right, they put the extra burden for proving
3 actual malice. Now, where you've got a private figure, the --
4 New York Times and all the progeny always shows that you got
5 to show to a media Defendant that they have engaged in
6 something that you can prove false. But as a private figure,
7 you still have to prove that the newspaper reporter failed to
8 use due care. When it becomes a public figure, then you got
9 to show actual malice. That's all they have ever said that
10 ---

11 THE COURT: By clear and convincing evidence?

12 MR. STEVENS: Yeah. Proving a statement is false is by
13 preponderance of the evidence in my, my meager opinion. And
14 from what I have -- you know how many my dad and I have tried
15 and we have never had that come up before. And the charges we
16 have had are just like you said that the normal elements of
17 defamation, slander, proving a statement was made, proving
18 that it is false is by preponderance of the evidence. But
19 then if you can't prove actual malice, you lose.

20 THE COURT: We're gonna have to make an adjustment of the
21 charge in the morning based on whatever my ruling is. We're
22 either gonna have to put in a, add a, a preponderance of the
23 evidence charge and tell them what a preponderance of the
24 evidence charge is and explain to them that the first elements
25 of libel generally must be proved by a preponderance of the

1 evidence and then we already have one in for explaining what
2 clear and convincing is and that that is an additional
3 requirement when there's a public figure. We're either gonna
4 have to put preponderance in or we're gonna have to tell them,
5 this Jury, that they must also find these other elements by
6 clear and convincing evidence, one of the two.

7 MR. STEVENS: I believe it had it in there, by
8 preponderance of the evidence.

9 THE COURT: Well, I think it's in the Bose.

10 MR. STEVENS: Okay.

11 THE COURT: So, Mr. Redmond, go back and make David
12 Miller do this.

13 MR. REDMOND: I'll get him right on it. Yes, sir.

14 THE COURT: Make Ashley do it.

15 MR. REDMOND: I might have more luck there.

16 THE COURT: All right. Thank you.

17 MR. REDMOND: Thank you.

18 MS. STEVENS-GRAZIANI: May I say or ask a question? We
19 have exhibits for all the jurors and -- of all the
20 Plaintiff's, not all of the Plaintiff's, but One through
21 Fifteen. The articles, I think that it might be important for
22 at least them to have a copy of all of the articles -- each
23 have their own copy of the articles.

24 MR. STEVENS: Would you like the extra copies?

25 THE COURT: It might benefit both parties to have them.

1 MR. BENDER: No problem. Just the articles is what we're
2 talking about.

3 THE COURT: Just the articles.

4 MS. STEVENS-GRAZIANI: Well, this has the emails, too,
5 which also go to actual malice and it's the evidence that the
6 Plaintiff has produced.

7 THE COURT: Have you reproduced all of the exhibits?

8 MS. STEVENS-GRAZIANI: Yes.

9 THE COURT: I don't want to emphasize any particular
10 exhibits. I don't really have a problem with it. If you've
11 made up a package for every juror and it's got every exhibit
12 Plaintiff's and Defendant's in it, I have no problem doing
13 that. But I do have a problem with emphasizing Plaintiff's
14 exhibits or a portion of the exhibits by reproducing those and
15 giving those to the jurors. I think it overemphasizes those
16 particular exhibits. I don't mind you doing them all, but
17 what's good for the goose is good for the gander. You want to
18 do them all, you wouldn't have any objection to that, would
19 you, as long as they're ---

20 MS. STEVENS-GRAZIANI: Even the depositions or could we
21 exclude the depositions?

22 THE COURT: No, for goodness sake. Don't tell me you're
23 gonna do the depositions.

24 MS. STEVENS-GRAZIANI: So, if I reproduce all of them,
25 except for the depositions; that would be okay?

1 MR. BENDER: No problem.

2 THE COURT: No problem with that.

3 Gentlemen, I want to hear from you on these verdict forms
4 tomorrow. It's gonna be a very complex verdict form, okay?
5 My ruling on the standard of proof is going to have to be
6 reflected in the verdict form. The verdict form is gonna have
7 to make special interrogatories, I believe. Okay. Or contain
8 special interrogatories.

9 I find it in a case like this to be easier for the Jury.
10 This is what you got to do.

11 MR. STEVENS: May I ask the Court, are you wanting us to
12 also, are they coming back with an actual damage verdict?

13 THE COURT: That's all they can do tomorrow.

14 MR. STEVENS: Okay.

15 THE COURT: Tomorrow morning.

16 MR. STEVENS: Okay. And you want a special
17 interrogatories as to actual malice?

18 THE COURT: Just that.

19 MR. STEVENS: Okay.

20 THE COURT: No mention whatsoever of punitive damages.

21 MR. STEVENS: Okay.

22 THE COURT: Also, gentlemen, be aware of the new punitive
23 damages statute.

24 MR. STEVENS: I am.

25 THE COURT: Okay. Thank you.

1 MS. STEVENS-GRAZIANI: It's time to get that reversed.

2 (RECESS - 6:00 P.M.)

3 *****OFF THE RECORD*****

4 (END OF DAY THREE.)

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1 (MAY 8, 2014)

2 (On the Record - 9:22 A.M.)

3 CHARGE CONFERENCE

4 THE COURT: I think this morning one of the issues I
5 wanted to discuss with you is the burden of proof. The
6 question is whether or not the traditional elements of libel
7 must be proven by the Plaintiff by a preponderance of the
8 evidence and the additional element or requirement for relief
9 that has been established by case law that there must be a
10 showing of actual malice or constitutional malice in the case
11 of a public figure must be proven by clear and convincing
12 evidence or it's a requirement that all elements of the, the
13 Plaintiff's case must be proven now by clear and convincing
14 evidence.

15 Now, let me hear from you Mr. Stevens?

16 MR. STEVENS: I think it requires the Court to look back
17 to the history of defamation law. And the history of
18 defamation law as it came down from England said a false
19 statement was presumed to be false. It also said that in, in
20 proving your case ---

21 THE COURT: Presumed to be false or harmful?

22 MR. STEVENS: False and harmful.

23 THE COURT: Okay.

24 MR. STEVENS: If it was ---

25 THE COURT: Yeah.

1 MR. STEVENS: It also required that the Defendant prove
2 the truth if he pled it, in other words, the burden shifted.
3 However, when, and that remained the law and still remains the
4 law when you've got defamation between private figures.

5 Now, the constitutional issue -- and in those cases, you
6 had to prove ill will, the old malice standard. When the New
7 York Times v. Sullivan case came up, that's when the Supreme
8 Court brought out the, the additional requirement that the
9 Plaintiff had to prove by clear and convincing evidence,
10 actual malice.

11 THE COURT: But only in the case of a public official,
12 public figure ---

13 MR. STEVENS: That's correct. And they also ---

14 THE COURT: --- or otherwise.

15 MR. STEVENS: That's correct. And they also, where the
16 man was a private figure, but the Defendant was a media
17 Defendant, the private figure also has to show some fault,
18 such as the very Mary Alice Firestone vs. Time case, in which
19 Mary Alice Firestone was married to a public figure. They
20 claimed that she was a public figure, but the Court said no.
21 And in that particular case, the, the domestic case, they were
22 reported on the domestic case, and the allegations between the
23 parties was adultery. It was a big article, the articles
24 being written about it and the Final Order of the Court came
25 out and in Florida, they got, I guess you would call no fault

1 divorce, but they call it a different thing than we call it,
2 living separate and apart for a year. They are entitled to a
3 divorce if the parties are not quote/unquote domesticated.
4 Now, the news reporter had the pleadings and the order and he
5 reported that the divorce was granted on the grounds of
6 adultery. Mary Alice Firestone sued claiming that the
7 reporter libeled her because he accused her of adultery. And
8 the reporter's defense was I was not familiar -- I'm not
9 familiar with court procedure or that area of the law. It is
10 a kinda complicated area of the law. And the Court said in
11 that case that it was not the reporter's fault that he
12 misinterpreted the law in Florida. Instead of saying the
13 divorce is granted on -- the parties weren't domesticated, he
14 reported that that, that it was granted on the grounds of
15 adultery and the Court said that, that the Plaintiff did not
16 prove that the Defendant committed some negligent act.

17 Now we've got the public figure and the media Defendant
18 and we go back to the New York Times v. Sullivan and St.
19 Amant, Gertz v. Welch. And Gertz v. Welch, modified New York
20 Times v. Sullivan by stating that opinion does not excuse the
21 Defendant. Where the opinion states facts, the news media is
22 responsible if the statement is made with reckless disregard,
23 with a knowledge of its falsity or with a reckless disregard
24 of whether it was true or false and where the media has
25 serious doubts as to what they were printing.

1 So, the only thing that the U.S. Supreme Court has done
2 is add an additional hurdle to a public figure when a media
3 Defendant is being sued to prove actual malice by clear and
4 convincing evidence. The U.S. Supreme Court has never said
5 that you got to prove the ordinary elements of defamation that
6 is ---

7 THE COURT: The traditional.

8 MR. STEVENS: --- the statement that it was published and
9 that the publication was of and concerning the Defendant, that
10 if you printed it with -- you accuse somebody of a crime or
11 unfit in the trade or profession, it was not only defamation
12 per se, libel per se, but it was also actionable per se. In
13 other words, if we prove actual malice, the law goes back and
14 says that we only have to prove our damages by a preponderance
15 of the evidence. So, I've looked and I have called several
16 attorneys as I said I would, who I respect their opinions and
17 have tried defamation cases and they agree with what I just
18 stated.

19 THE COURT: Your position is that the traditional
20 elements of a libel action need only be proven by a
21 preponderance of the evidence and that the Jury should be
22 instructed that in the case of a media Defendant and a public
23 figure, there is an additional element requiring a showing of
24 constitutional or actual malice proven by clear and convincing
25 evidence.

1 MR. STEVENS: That's correct.

2 THE COURT: Am I clear?

3 MR. STEVENS: Yes. Yes, sir.

4 THE COURT: Okay. All right. Mr. Bender, let me hear
5 from you now.

6 MR. BENDER: Thank you, Your Honor.

7 As to the traditional elements, we're not contesting
8 publication. We are contesting defamation -- defamatory
9 content; they're gonna have to prove that. I think the core
10 issue you asked us about is does the Plaintiff have to prove
11 falsity by clear and convincing evidence and in South Carolina
12 Jurisprudence section on Libel, Section 67, published by the
13 Bar, the United States Supreme Court has not so held the
14 standard of clear and convincing evidence would appear to
15 apply also to the Plaintiff's burden of proving the falsity of
16 the defamatory comment. That seems to be the result reached
17 by the South Carolina Supreme Court and I'll hand up a list of
18 these cites, Haulbrooks v. Overton and Beckham v. Sun News.
19 It's also been discussed by other courts. The South Carolina
20 Supreme Court discussed it in Peeler v. Spartan Radiocasting,
21 although not as clear as perhaps it could've, but if you look,
22 it's talking about what's encompassed in actual malice and it
23 seemed to be saying -- the Court seemed to be saying there
24 that the proof of falsity required actual malice. There's
25 also, I reached a different ---

1 THE COURT: Are you combining ---

2 MR. BENDER: No, I think it's separate, but I think that
3 the falsity has to be proved by that same clear and convincing
4 standard that the actual malice has to be proven by is how I
5 read these cases. And I think that's certainly what the South
6 Carolina Jurisprudence is saying.

7 The clearest discussion of it is in a very famous U.S.
8 District Court case, Sharon, Ariel Sharon, the former Prime
9 Minister of Israel suing the Time, Inc. and that case cites
10 several other cases, but the quotation from Sharon, Plaintiff
11 bears the burden of establishing falsity and actual malice by
12 clear and convincing proof and it cites Edwards v. National
13 Audubon Society, which is the start of neutral reportage;
14 Buckley v. Littell and one other case.

15 THE COURT: Do you have a copy of the Sharon case for me?

16 MR. BENDER: I don't, but I have the cite.

17 THE COURT: All right. Could you give me the cite?

18 MR. BENDER: Yes, Your Honor, I have a list right here.

19 THE COURT: Okay.

20 MR. BENDER: I was working off my iPad and don't have a
21 printer for it. So ---

22 THE COURT: All right. What is your response to that, to
23 the Sharon case if counsel has correctly cited Sharon, in
24 quoting Sharon?

25 MR. STEVENS: I have to admit, Your Honor, I have not

1 seen nor read that case. I may have put in the query into
2 WestLaw last night, not wrong, but I couldn't find anything.

3 THE COURT: Well, I don't want to look at it, but the
4 quotation that counsel refers to would seem to say that it
5 does New York Times does extend it, the requirement of proof
6 to all the elements. I mean, doesn't it appear to say that if
7 counsel has correctly cited the case?

8 MR. STEVENS: I think what he cited was it only extended
9 to our proving falsity. We don't have to prove publication
10 and we don't have to prove damages.

11 THE COURT: Well, I don't think publication is really an
12 issue.

13 MR. STEVENS: And we don't have to prove damages by clear
14 and convincing evidence.

15 MR. BENDER: Well, we haven't -- I haven't addressed
16 that, but I think ---

17 THE COURT: Okay.

18 MR. BENDER: --- I think that is a requirement and I
19 think ---

20 THE COURT: All right. Well, let, me hear from you.

21 MR. BENDER: I think Gertz v. Robert Welch, Inc. talks
22 about that it and it gave much of the history of libel that
23 Mr. Stevens has recited this morning and it talks about how
24 imposition of constitutional malice is a burden on a public
25 Plaintiff. It was designed to protect from self-censorship

1 and its discussion, the Court talks about damages and it,
2 Gertz is a private figure case, but it's talking about the
3 requirement of proof of actual damages. And it seems to me to
4 be saying that if you don't prove, if you're a private
5 Plaintiff and you don't prove actual malice, you can only
6 recover actual damages. Well, since public plaintiffs are
7 required to prove actual malice, I think this is a suggestion
8 that that's also the requirement for a public plaintiff with
9 respect to damages because we're moving away from the concept
10 of presumed damages in a libel case. We've moved all the way
11 from strict liability to fault. We've then imposed this
12 additional constitutional requirement and I would argue that
13 the Gertz reference indicates that actual malice is related to
14 the Plaintiff's requirement for proof on damages also. The
15 clear and convincing standard is required for fault in this
16 case, actual malice or falsity and for damages.

17 THE COURT: And you cite Gertz there; is that correct?

18 MR. BENDER: Yes, sir. That's -- and the cite on Gertz
19 is 94 Supreme Court 2997. And I was looking at the, at
20 Section 4 in the decision.

21 THE COURT: You cited a, a, a South Carolina Supreme
22 Court case.

23 MR. BENDER: I have two of them here, Your Honor, I made
24 reference to them.

25 THE COURT: Peeler?

1 MR. BENDER: Well, actually I did cite Peeler and I think
2 I put the Peeler cite on that list. I also cited Haulbrooks
3 v. Overton.

4 THE COURT: What was the date of the New York Times case;
5 does anyone recall that?

6 MR. BENDER: 1964, it's Times v. Sullivan.

7 THE COURT: All right. Let me take a quick break. What
8 other issue did we have that we wanted to discuss this
9 morning; wasn't there one other?

10 MS. STEVENS-GRAZIANI: The verdict ---

11 MR. BENDER: The verdict form, Your Honor.

12 THE COURT: Oh, the verdict form, yes.

13 Have you prepared another proposed verdict form, Mr.
14 Stevens?

15 MR. STEVENS: I had and I'm in the process of doing that,
16 but let me tell you what I -- it depends on your ruling. We
17 -- our verdict form says that the, we find that the Plaintiff
18 has proven a defamatory statement, that it was false and that
19 he is -- that it injured him and his reputation by a
20 preponderance of the evidence. We also find that the
21 Plaintiff had proven by clear and convincing evidence, actual
22 malice. That is that the statement was made with knowledge of
23 its falsity or with a reckless disregard of its falsity. And
24 we have -- that's another one to each one of those. And then
25 it will say in the second one, if it's no, stop deliberating

1 on that particular issue and we're doing it as to each of the
2 articles, rather than to say first cause of action, second
3 cause of action. And then the third would be we find for the
4 Defendant. And we find for the Plaintiff actual damages and
5 we find for the Defendant or we find for the Defendant. They
6 have to answer to questions.

7 THE COURT: How will this Jury be able, able with your
8 suggested verdict form, to distinguish between the Defendants;
9 we have two Defendants here.

10 MR. STEVENS: I haven't got to that.

11 THE COURT: We have an editorial.

12 MR. STEVENS: I think they have already agreed to that.

13 THE COURT: And the evidence does not implicate Mr. Wren
14 in the publication of that.

15 MR. STEVENS: We're gonna do that to each one of them as
16 to the, the three articles. David Wren and Sun Publishing,
17 they've agreed to that. And then the four, when you get down
18 to the publication of the editorial, the verdict would only be
19 against Sun News.

20 THE COURT: Gentlemen, how do you propose to distinguish
21 then an award of damages of, of course The Sun News would be
22 joint and severally libel for an award against Mr. Wren. We
23 agree with that?

24 MR. BENDER: Yes, sir.

25 THE COURT: Okay. All right.

1 MR. BENDER: Let me say it out loud so the Court
2 Reporter can hear that. I agree with that.

3 THE COURT: But not necessarily the reverse?

4 MR. BENDER: I believe that's a yes meaning that a
5 judgment could be against The Sun News, but not against David
6 Wren?

7 THE COURT: Yes. And then you got the hybridization
8 where you have the Jury under your proposed verdict form
9 rendering a verdict against The Sun News and rendering a
10 verdict against David Wren. I could see a situation where one
11 would not be libel for the other or Mr. Wren would not be
12 libel for a judgment against The Sun News. There could be all
13 sorts of combinations in there as a result of that and
14 overlapping damages. Who would be entitled to a setoff upon
15 payment by one party or the other?

16 MR. BENDER: I don't have a readily available answer for
17 that.

18 THE COURT: But it's something we certainly need to
19 address before any verdict form is submitted to the Jury. For
20 instance, a verdict could be rendered against Mr. Wren. A
21 verdict could be rendered against The Sun News. They could be
22 for different amounts, they could involve different
23 publications. The damages may be separate and distinct for
24 each one. Say there's a judgment against The Sun News and
25 the Jury's determination was that that judgment, I mean, that

1 liability and the assessment of damages is solely for the
2 article and it may be more -- I mean, the editorial and it may
3 be more damaging than say the article that was written by Mr.
4 Wren. And then there's another judgment against him for say
5 for one article. Are they the same damages? Are they
6 different damages? If Mr. Wren were to, again, if supposing
7 there's a verdict for argument sake. Mr. Wren, the judgment
8 is paid for him, does The Sun News gets some credit for that
9 when Sun -- there may be different damages altogether. I
10 mean, how do, how do we make a distinction for this Jury?

11 MR. BENDER: I don't know how it would be possible to
12 apportion damages to -- I don't know how it would be possible
13 to apportion damages on the article by article basis. I would
14 think that maybe the issue is to find falsity, if the Jury
15 finds falsity by clear and convincing evidence, they would
16 also find actual malice by clear and convincing evidence, does
17 it find damages by clear and convincing evidence on behalf of
18 the Plaintiff. If it finds those, I don't know that it's
19 necessary to apportion them on an article by article basis.
20 If you go, if you go through each article, has Plaintiff
21 proven falsity with respect to this article; has Plaintiff
22 proven actual malice with respect to this article? Go all the
23 way down and if they answer yes to each of those and to the
24 editorial, well with the articles ---

25 THE COURT: What if they don't? What if they break it

1 out, some articles are and some articles aren't; what if none
2 of the articles are and just the editorial is or perhaps one
3 article and the editorial? How are you gonna break out the
4 damages? I mean how ---

5 MR. BENDER: I think the point I'm trying to make is, is
6 there liability with respect to the news reports? If yes, and
7 actual malice is proven. What damages is the Plaintiff
8 entitled to recover and then maybe from whom, Wren or The Sun
9 News? Then on the other side, is the editorial false,
10 defamatory, published with actual malice? If yes, do you find
11 liability against The Sun News? Yes. What damages would the
12 Plaintiff be entitled to recover for the editorial?

13 THE COURT: Well, I would think that you're gonna have to
14 do something that way.

15 MR. STEVENS: Might I offer a suggestion?

16 THE COURT: Yes.

17 MR. STEVENS: In my view, I certainly don't want to set
18 up a ground for them to appeal if we get a verdict.

19 THE COURT: I have a feeling that that's where we're
20 headed.

21 MR. STEVENS: I do, too.

22 THE COURT: Regardless of how it comes out.

23 MR. STEVENS: But let me, let me liken this to particular
24 case ---

25 THE COURT: And I have tried to be cautious in this case

1 for that reason.

2 MR. BENDER: I think you have been.

3 MR. STEVENS: Like in an automobile accident, you've got
4 somebody who's speeding, that's wrong; he's crossing the
5 center line, that's the second wrong. You can't -- the
6 damages to the Plaintiff is the same. I think that you should
7 charge the Jury just like you would in a automobile wreck
8 case. That if there is, if there is any one of the articles
9 that's defamatory and it injures him and his reputation, then
10 he is entitled to a verdict. And that we only have to prove
11 that one of them is and they have already agreed and all the
12 evidence shows that as to the articles by Wren, not only is
13 David Wren responsible, but under respondeat superior The Sun
14 News is responsible. In addition to that, they approved his
15 articles. So, you've got joint several liability there. So,
16 the verdict as to the articles has got to be joint. I don't
17 see any way to separate that.

18 THE COURT: Not as to the articles. As to the articles
19 -- and I think Mr. Bender indicated that in a comment to me
20 yesterday or the day before that there, there's no question
21 about the, the issue of respondeat superior; that's not an
22 issue.

23 MR. BENDER: That's not an issue.

24 THE COURT: That if Mr. Wren is libel, The Sun News is
25 libel jointly and severally. Okay?

1 MR. STEVENS: That's why I think we don't have to have a
2 special verdict. If you're going to charge the complete that
3 all of the elements has got to be clear and convincing
4 evidence, it's in your charge and then if they find that any
5 other or two or more, are defamatory and it injures him in his
6 occupation, trade or profession, or accuses him of a crime,
7 he's entitled to a verdict.

8 THE COURT: Well, let me ask you this and this will help
9 clear it up, Mr., Mr. Stevens. Would you agree on this record
10 that any verdict issued in this case would be jointly and
11 severally owed and would encompass the exact same damages?

12 MR. STEVENS: Yeah, I agree.

13 (REPORTER'S NOTE: Mr. Stevens confers with Ms. Stevens-
14 Graziani.)

15 MR. STEVENS: Well, but -- but the damages are the same.

16 THE COURT: What I'm trying to avoid ---

17 MS. STEVENS-GRAZIANI: I know.

18 THE COURT: --- if we end up with a, if you get a verdict
19 and again, and let me state, I don't know, but I, I'm looking
20 at this from what might happen. Would you agree that if
21 there's a verdict, there's a verdict against Sun News, there's
22 a verdict against Mr. Wren, that that's a joint and several
23 calculation of damages by the Jury and you may not collect it
24 twice.

25 MR. STEVENS: That's right. That's right.

1 THE COURT: Even if the Jury were to come back and say we
2 find that we have defamation and damages on the editorial and
3 we have damages and defamation over here on the articles, that
4 they are still the exact same damages and you may not collect
5 them twice. Do you see where I'm coming from, Mr. Bender?

6 MR. BENDER: Yes, sir.

7 THE COURT: And that's the problem I have.

8 MR. BENDER: Sure.

9 THE COURT: Are we gonna end up where we have possible,
10 possibly judgments against two Defendants, which may be
11 collected in whole on the argument that it was a set of
12 articles here, a -- for which there may be some damages and
13 there's an editorial over here from which this Defendant had
14 nothing to do with, there's no evidence to support that and
15 these damages may be entirely different. The Jury may have
16 found damages from the editorial that are different from the
17 damages in the articles and they're separately -- or each is
18 collectible against each Defendant. I mean, I, I'm a little
19 concerned about that. I don't want to see that argument down
20 the road. I want it, I'm trying to, Mr. Stevens is saying
21 it's all the same damages. Okay. Let's let it be the same
22 damages.

23 MR. BENDER: And here's a proposal on how to deal with
24 that.

25 THE COURT: Okay.

1 MR. BENDER: Verdict for Wren, yes or no; verdict for Sun
2 News, yes or no; verdict for Plaintiff, total damages; and
3 then damages that are shared, Wren's share a total, The Sun
4 News' share a total. Let the Jury apportion the total. Set
5 one total and then apportion that.

6 THE COURT: But then would that not eliminate respondeat
7 superior and joint liability?

8 MR. STEVENS: I have a very big problem with doing that,
9 separating the two Defendants. They have already agreed to
10 joint and several liability as to the articles. If you give
11 the Jury the opportunity to find against The Sun News and not
12 the, the agent, the verdicts gonna get set aside. If the
13 Supreme Court says on the articles there's no evidence that
14 The Sun News was negligent in or they weren't complicit in the
15 actual malice test and that's happened before. They've
16 already said its joint and several liability. That if David
17 Wren's articles were false and you meet the actual malice,
18 that their responsible under respondeat superior and I think
19 that takes that issue away from Your Honor. I mean, we've
20 agreed to it. So, I believe that the verdict should be a
21 general verdict and you tell the Jury that if we separate it
22 with preponderance of the evidence, you can do that. Do you
23 find actual malice, you've got to do that. If they don't find
24 actual malice against -- if you find actual malice you move to
25 damages. And then you award a verdict against the -- both

1 Defendants if you find that any of the articles met the burden
2 and you award it according to the burden of proof as to
3 damages. If you find that only the editorial is defamatory,
4 then your verdict must be only against The Sun News, but if
5 you find them all defamatory, your verdict must be against
6 both Defendants. That makes it very simple. You've got one
7 verdict from. If it's all clear and convincing, just say do
8 you find that the Plaintiff has proved his case by clear and
9 convincing evidence.

10 THE COURT: What if I were to do that, Mr. Bender, in my
11 charge and have it in my written charge where I tell the Jury
12 that there's several possible verdicts in this matter
13 depending on their view of the evidence in the case. If you
14 find that the articles were defamatory and you find that Mr.
15 Wren was the agent of The Sun News, you may award damages
16 resulting from the publication of the articles against both
17 Defendants. You may also find that there was no defamation
18 and return a verdict in favor of both Defendants as to the
19 articles. As to the editorial, if you find the same to be
20 defamatory and meeting the other elements described in my
21 charge, you may only return a verdict against The Sun News.

22 MR. BENDER: I think that's the solution.

23 THE COURT: Okay.

24 MR. BENDER: I didn't want to be reversed respondent
25 superior.

1 THE COURT: You may only return a verdict against The Sun
2 News and not Mr. Wren for any damages resulting from the
3 publication of the editorial. Okay?

4 MR. BENDER: I think that's the answer.

5 THE COURT: Okay.

6 MR. STEVENS: The only, the only thing that I would add
7 again there, if you find that he's an agent for the Defendant,
8 they have already said that -- they stipulate that he's an
9 agent of the Defendant.

10 THE COURT: Well, is Mr. Bender, is -- I mean, is that
11 stipulated that he was an agent?

12 MR. BENDER: Yes.

13 THE COURT: That if they find the articles defamatory in
14 meeting -- what I want you two gentlemen to do is sit down
15 together. You know what we're doing. I will add that right
16 at the end of my charge where it begins, there are so many
17 possible verdicts. Write what you would like and I think
18 you're in agreement now. Let's just craft the language, hand
19 it up to me and let me look at it and in the meantime, I want
20 to read Sharon. Okay?

21 MR. STEVENS: Okay. Our charge, our request would have
22 the elements of the preponderance of the evidence for the
23 normal and we, we still believe that that is the law. We
24 respect, Your Honor, if you rule in accordance with Sharon,
25 but we want to hand up our charge that if we prove ---

1 THE COURT: I really think, Mr. Stevens, for practical
2 purposes, it doesn't make a whole lot of difference ---

3 MR. STEVENS: I think it does.

4 THE COURT: --- those traditional elements are met fairly
5 clearly as far as the publication to another party, about,
6 those things are really not disputed, but I think what we're
7 gonna do in this case is probably create new law. The Supreme
8 Court is going to address the issue regardless of how this
9 goes, in my view. I think it probably will and it's probably
10 something that needs to be -- I don't think they've addressed
11 it, but we'll see and I'll do the best I can. But I do want
12 to read, particularly, Sharon and if you gentlemen would work
13 on that while I'm out of the room.

14 MR. STEVENS: Your Honor, you want me to collaborate with
15 them two on the clear and convincing all the way across?

16 THE COURT: I want to have this result in as few issues
17 as possible.

18 MR. STEVENS: Okay.

19 THE COURT: If we can agree that this is how the charge
20 should be given and this is how the verdict form is done;
21 that's one more issue we will not have to deal with down the
22 road. Okay. Thank you very much.

23 MR. BENDER: Thank you.

24 (RECESS - 9:58 A.M.)

25 *****OFF THE RECORD*****

1 (On the Record - 10:34 A.M.)

2 BY THE COURT:

3 THE COURT: You have a verdict form, gentlemen, that we
4 can live with?

5 MR. BENDER: Yes. We have it with the exception of we
6 need to figure out what your charge is gonna be with respect
7 to falsity.

8 THE COURT: All right. I have found some guidance in the
9 Sharon case as you indicated earlier and I do recall it now
10 the indictment of Ariel Sharon, who was the Defense Minister
11 for Israel by the Time Magazine. Judge -- I think it was
12 Judge Sofaer, District Court, Federal District Court, was
13 considering a motion for summary judgment actually and in his
14 discussion, although I believe it is merely dicta, I think it
15 does give us guidance. He is discussing the general concept,
16 I believe, of a summary judgment and he says as a further
17 general consideration pertinent to evaluating Time's argument
18 or a further general consideration pertinent to evaluating
19 Time's argument is the fact that Plaintiff bears the burden of
20 establishing falsity, which is one of the traditional elements
21 of libel and actual malice, which is what we all agree as a
22 clear and convincing standard, establishing falsity and actual
23 malice by clear and convincing proof. He continues on with a
24 discussion of one of the issues and he concludes by saying
25 thus the proof of Minister Sharon's denials -- and we're

1 talking about falsity generally in this whole paragraph -- the
2 proof of General Sharon's denials ultimately must depend on
3 his credibility and upon Time's proof to the contrary
4 including impeachment, which Sharon bears the burden of
5 establishing his version by clear and convincing evidence. I
6 don't think there's any doubt that that Court was applying a
7 clear and convincing standard across the board to all the
8 traditional elements of libel and I think that is probably a
9 correct assessment of the law. I see no reason to hybridize
10 the burden of proof, the Plaintiff's burden of proof in
11 establishing liability. I understand that we customarily do
12 that in any case where we're looking at such things as
13 punitive damages, but that's a different issue. Here if we do
14 not establish the standard across the board, we have
15 overlapping issues in the establishment of actual malice or
16 constitutional malice by clear and convincing and establishing
17 the traditional elements. I see where they would overlap. I
18 think it's the standard. I think it's clear and convincing
19 standard across the board. I don't think it makes a whole lot
20 of practical difference in this case, but I think that's
21 probably the issue or resolve this issue and that's how I
22 would rule. Okay.

23 MR. BENDER: Thank you, Your Honor. We'll plug that into
24 the verdict form then.

25 THE COURT: Well, I think we've got to go back. I don't

1 think I give a preponderance issue, but I do mention -- I
2 thought that there was something in the charge where I had
3 used preponderance. Under public figure, the topic, second
4 paragraph, actual malice is the subjective standard which
5 tests the Defendant's good faith, belief in the truth of his
6 or her statement to recover on a claim for defamation, the
7 constitutional actual malice standard requires proof by clear
8 and convincing evidence that the defamatory statement relating
9 to the, to matters of public concern regarding the Plaintiff's
10 status or conduct as a public figure was made with knowledge
11 of its falsity and so forth and so on. I, I think we need to
12 insert somewhere the standard of proof. I have a description
13 of the, of what clear and convincing evidence is but we need
14 to make it clear that it applies to the proof required of the
15 Plaintiff in the case.

16 MR. BENDER: It looks like it might fit at the end of
17 that clear and convincing evidence section you have, Your
18 Honor.

19 THE COURT: Okay.

20 MR. BENDER: Make it clear that it applies to falsity ---

21 THE COURT: Why if I just put there, in order to prevail
22 the Plaintiff must prove its case by clear and convincing
23 evidence. Would that suffice?

24 MR. BENDER: I would put it as to false -- as to falsity,
25 actual malice damages.

1 THE COURT: A sentence that says the Defendant, I mean
2 the Plaintiff must prove falsity or all the, or I can just say
3 all the elements of this offense, because there are others.

4 MR. BENDER: You cover all the elements.

5 THE COURT: Yes.

6 MR. BENDER: Cause, I'm just looking at this one
7 page. You've gone over the elements earlier, so I think
8 that's fine.

9 THE COURT: How about that, Mr. Stevens. That's my
10 ruling and I know you don't agree with that or probably don't
11 but let me say that ---

12 MR. STEVENS: I believe that the law provides that if we
13 do prove our damages, excuse me, we do prove our elements by
14 clear and convincing evidence of falsity, they accused him of
15 a crime, that he was unfit in his trade or profession and it
16 was done with knowledge and reckless disregard, the law then
17 presumes actual damages.

18 MR. BENDER: No, there's no presumption of damages
19 anymore.

20 THE COURT: I don't believe so, Mr. Stevens.

21 MR. STEVENS: Okay. My, my objection, of course, is that
22 I don't believe it applies to all the elements.

23 THE COURT: All right. Well, at the end of page eleven,
24 Drew, under clear and convincing evidence I want you to add
25 another paragraph. In order to prevail, the Plaintiff must

1 prove its case by clear and convincing evidence as to falsity,
2 actual malice and damages.

3 MR. BENDER: I would suggest substitute his for its?

4 THE COURT: That's what I have. I have -- you mean put
5 his?

6 MR. BENDER: His.

7 THE COURT: His. Okay.

8 MR. BENDER: Unless you're saying a Plaintiff.

9 THE COURT: Okay. All right. Anything further other
10 than what you've pointed out, Mr. Stevens, as far as any
11 modification of the charge? And that's based on your
12 disagreement as to whether or not clear and convincing
13 standard applies.

14 MR. STEVENS: Well, I agree with -- you know, I'm not
15 agreeing but I understand your charge. If I'm going to be
16 held to that high of truth, there is -- and I am not prepared
17 to give you the cite, but there is law that where the, where
18 the actions of the Defendant if we prove by clear and
19 convincing evidence, but the action makes the damages a lot
20 more difficult to prove, that the Jury can take it into
21 consideration because of the defamation case, this is the type
22 of damages that a Plaintiff will never know he sustained
23 wherein that we can go back and use the, the history of his
24 increase in clientele and show -- we've got one witness that
25 said he lost one, but that the, that the -- all we have to do

1 is show by clear and convincing evidence that we did sustain
2 damages but we don't have to prove those damages to a
3 mathematical certainty. It must be based on ---

4 THE COURT: All right. Mr. Bender.

5 MR. BENDER: Well, I think that the measure of damages is
6 always -- there's no requirement for mathematical certainty as
7 to damages but there has to be evidence of injury to support
8 the damage award.

9 THE COURT: In my charge I have here ---

10 MR. STEVENS: I didn't mean to complicate it, Your Honor.

11 THE COURT: It says, I say here actual damages need not
12 be proven to a mathematical certainty.

13 MR. STEVENS: Yes, sir.

14 THE COURT: It's in there. It's the typical language.

15 MR. STEVENS: There is language in some of the cases
16 where the actions of the Defendant in damaging the Plaintiff
17 necessarily makes it difficult for the Plaintiff to prove his
18 damages.

19 THE COURT: Okay.

20 MR. STEVENS: So that the burden is lessened to some
21 extent to take into consideration that those damages will be
22 hidden because of the, of the Defendant's actions. In other
23 words, what I'm saying is where someone is ---

24 THE COURT: I think what you're doing is making a classic
25 presumed injury or presumed damages argument; are you not?

1 Isn't that from ---

2 MR. STEVENS: No, not really. It's -- there is case law
3 on that and I was not prepared because of your ruling on it.

4 THE COURT: Well, I think the charge on damages precisely
5 tells the Jury what -- anything further, Mr. Bender?

6 MR. BENDER: I don't believe so, Your Honor ---

7 THE COURT: All right.

8 MR. BENDER: --- on the verdict form; thank you.

9 THE COURT: And do you have some agreement as to a
10 verdict form now?

11 MR. BENDER: We haven't -- we've plugged in clear and
12 convincing evidence but Mr. Stevens has not looked at it with
13 that in there to make sure we're all in agreement.

14 THE COURT: All right. Let's, let's let Mr. Stevens look
15 at it and if you will send it Drew, Drew can send it on to my
16 copier and we can get one printed out quickly.

17 MR. STEVENS: Your Honor, might I say, as to the verdict
18 form, if you charge to the jury -- you got to prove, we've got
19 to prove our case by clear and convincing evidence. It
20 doesn't need to be included in the verdict form because they
21 necessarily have to go and say he's proved it by clear and
22 convincing evidence. So the, the verdict forms will then be
23 real simple. We find for the Plaintiff, blank dollars actual
24 damages against both Defendants on one or more of the
25 articles.

1 MS. STEVENS-GRAZIANI: That's the way we have that worded
2 as to, as to -- we have it worded as to the ---

3 THE COURT: I haven't seen it.

4 MR. BENDER: We took their form and started with it and
5 the only changes we made we changed preponderance of the
6 evidence that the Plaintiff had to ---

7 THE COURT: I think that's it and it's appropriate to ---

8 MR. BENDER: To put in clear and convincing?

9 THE COURT: Do we have like first, second and third
10 causes of action? Jurors don't know what that is.

11 MS. STEVENS-GRAZIANI: No, we don't have that anymore.

12 THE COURT: Okay. All right. Somebody send it to Drew.

13 MS. STEVENS-GRAZIANI: I'll send it right now.

14 MR. STEVENS: I was just trying to make it a little bit
15 more simple because you're charging the Jury the burden of
16 proof is uniform all throughout. If you've already charged
17 them that we have to prove by clear and convincing evidence
18 ---

19 THE COURT: Let's just see what it, let me see what we've
20 got here. All right. Mr. Stevens, your only objection is if
21 we repeat the standard in it?

22 MR. STEVENS: I beg your pardon?

23 THE COURT: Is that your only objection, just repeat the
24 standard that we've charged already in it?

25 MR. STEVENS: Yes.

1 THE COURT: I'm gonna leave it in. I don't think it
2 really makes a difference..

3 MR. STEVENS: One correction you need to make, if the
4 Jury unanimously answers yes to both findings of -- well,
5 there's three findings.

6 THE COURT: There's three and as to the editorial -- go
7 back to the first page; it says three on the -- there's one
8 and -- all right. Let's change it to all three; is that
9 correct, all three?

10 MR. REDMOND: Yes, Your Honor.

11 THE COURT: All right. All three and I think it says
12 that on, on the editorial, does it not?

13 MR. REDMOND: Yes, I didn't catch it on the first one and
14 the second paragraph, if the Jury unanimously answers no, it
15 says to either -- it should say to any on both pages.

16 THE COURT: Okay.

17 MR. STEVENS: Shouldn't it say all?

18 MR. REDMOND: No, just to any.

19 THE COURT: And if you didn't prove your malice, if you
20 didn't prove damages, if you didn't prove the other elements.
21 If you didn't do any of those, if there's any of those that
22 you didn't do, then there would be a verdict for the
23 Defendants. Okay. Let me look again.

24 All right, gentlemen, thank you.

25 That's what we'll do.

1 Now. are we ready to argue?

2 MR. STEVENS: Yes..

3 MR. BENDER: Yes, sir.

4 THE COURT: Okay. Brad, if you would, bring the Jury in.

5 (REPORTER'S NOTE: Jury enters courtroom. 11:01 A.M.)

6 THE COURT: Good morning, ladies and gentlemen. I want
7 to apologize for keeping you back in your jury room so long
8 this morning, but whenever there's a case to be tried, there
9 are many legal issues that must be addressed by the Court and
10 administrative issues that also be addressed by the Court and
11 all those things need to be placed on the record so that
12 there's clarity as to what transpired during the entire case.
13 We were here well into the evening last night doing those
14 things and back again this morning and we've been busy. We
15 haven't been just wasting your time, but we do apologize for
16 the delay in bringing you back in.

17 I gave you a brief summary of how the case would proceed
18 in my preliminary remarks to you. I think I explained to you
19 that once the evidence was in and both sides had had an
20 opportunity to present their positions and had rested that
21 then the attorneys would have an opportunity to sum up, you
22 know we used to call it arguments and I guess we still do from
23 time to time, but that's not really what they are. They're
24 summations by the attorneys. I cautioned you earlier that
25 opening remarks were not evidence, things that the attorneys

1 said. The only thing that you can consider in making
2 decisions concerning this case are, of course, the things you
3 hear from the witness stand that were given under oath.
4 Likewise, whatever the attorney may say in his closing remarks
5 is not evidence either. They certainly have the right to
6 comment and a duty to comment on the evidence and talk to you
7 in terms of the evidence that was presented to you during this
8 trial to emphasize evidence that they think was significant,
9 to deemphasize evidence they do not think was significant. I
10 know both of these attorneys and know they would not mislead
11 you, but they are real busy during the trial of a case. I'm
12 certain that neither one of them would mis-state the evidence
13 in this, this trial. But remember, their view of the evidence
14 is simply that, their view of the evidence. They are
15 summarizing their position to help you understand the evidence
16 in a light most favorable to their client. If they comment
17 about evidence in such a way it were mentioned, a piece of
18 evidence that you didn't hear or don't recall, then you are
19 the trier's of fact, you will determine what weight is to be
20 given the evidence or whether the evidence existed. They also
21 have an opportunity to speak to you about the law in the case.
22 What they believe I will charge you the law is and I've in
23 fact given them a copy of my charge on the law. I told you at
24 the beginning of this case that I have a policy that's a
25 little different from most judges. I prepare a transcript of

1 my charge that I will make available to you, I will give you
2 to use during your deliberations. So, these attorneys will
3 probably talk to you about the law and how you should apply
4 the law during your deliberations. Remember though that I am
5 the -- or the determination of the law is ultimately my job.
6 I am the only one with authority to say what the law is and
7 you have to be guided by the law as I give it to you during
8 your deliberations. So keep that in, in my mind.

9 Mr. Stevens will begin by making his first summation.
10 That will be followed by Mr. Bender or Mr., or counsel with
11 him, Mr. Redmond. Following that Mr. Stevens will have one
12 more opportunity to reply to Mr. Bender's argument. If you
13 would pay close attention.

14 Mr. Stevens, are you ready?

15 MR. STEVENS: Yes.

16 THE COURT: Okay.

17 CLOSING BY MR. STEVENS:

18 MR. STEVENS: May it please the Court and may it please
19 you ladies and gentlemen of the Jury. I want to thank you for
20 your close attention. I know it's been tiring for you sitting
21 here listening to the testimony and I want to say that I won't
22 -- I spent a while introducing the evidence and I may have
23 introduced more than one time and you may have been thinking
24 you can get on with it, you've already convinced us or maybe I
25 need some more evidence, but don't, don't let what I did that

1 could've had and that opportunity to say, oh, who was that,
2 Mark Kelley? Wasn't he the one they accused of, of a crime?
3 Oh, we don't need that; let's not use him; hu-huh (negative
4 response. So what happens? The doors of opportunity for Mark
5 Kelley closed so silently he never knew the door was open in
6 the first place and they know it. They know it and then they
7 complain because we can't go out there and ask -- there's
8 40,000 readers, which one of y'all didn't hire Mark Kelley?
9 But you've got the reasonable basis to award lost income to
10 him. You know what he made at least one job. They can
11 complain all they want to but remember how they've tried this
12 case and how they've avoided the truth and return a verdict
13 for this gentleman. Give him his life back. Give him his
14 reputation back and send a message back to Sun News and tell
15 them don't report things that are false, don't, quit ruining
16 reputations and families. Speak the truth when you render
17 your verdict and that's all we ask of you. Make it a full cup
18 of justice. Thank you.

19 CHARGE TO JURY:

20 THE COURT: Ladies and gentlemen, let me remind you,
21 during this trial you and I have certain duties to perform.
22 As the Trial Judge, it's my responsibility to preside over the
23 trial of the case and I also have the duty to rule on the
24 admissibility of the evidence offered during this trial and
25 you are to consider only the evidence before you. If there

1 was any testimony ordered stricken from the record during the
2 trial, you must disregard that testimony. You are to consider
3 only the testimony which has been presented from this witness
4 stand, any exhibits which have been made a part of the record
5 in this case and any stipulations of counsel.

6 I have the additional duty to charge you the law
7 applicable to this case. It is your duty as jurors, to accept
8 and apply the law as I now state it to you. If you think you
9 have any idea as to what the law is or what the law ought to
10 be and it does not agree with what I tell you the law is, you
11 must forget that idea because you are sworn to accept the law
12 and apply the law exactly as I state it to you. In every case
13 tried in this Court before a Jury, the Jury becomes the sole
14 and exclusive judge of the facts. A Trial Judge cannot
15 comment on or make any statement about the facts in a case.
16 Since you are the sole judges of the facts, do not think by
17 anything I have said during the trial of this case, that I
18 have any opinion about the facts in the case. The law does
19 not allow me to have an opinion about the facts.

20 There are two types of evidence generally presented
21 during a trial, direct evidence and circumstantial evidence.
22 Direct evidence is the testimony of a person who claims to
23 have actual knowledge of a fact, such as an eyewitness. It is
24 the evidence which immediately establishes the main fact to be
25 proved.

1 Circumstantial evidence is proof of a chain of facts and
2 circumstances indicating the existence of some fact. It is
3 evidence which immediately establishes collateral facts from
4 which the main fact may be inferred. Circumstantial evidence
5 is based on inference and not on personal knowledge or
6 observation. It is proof that does not actually establish the
7 fact in question but that asserts or describes something else
8 from which you may either reasonably infer the truth of the
9 fact or at least reasonably infer an increase in the
10 probability that the fact is true. For circumstantial
11 evidence to be sufficient to warrant the finding of a fact,
12 the circumstances must lead to that fact with reasonable
13 certainty. The facts and circumstances should be considered
14 in light of ordinary experience and common sense. The
15 existence of a fact cannot be based on speculation, surmise or
16 conjecture.

17 The law makes absolutely no distinction between the
18 weight or value to be given to either direct or circumstantial
19 evidence nor is a greater degree of certainty required of
20 circumstantial evidence than of direct evidence.

21 Necessarily, you must determine the credibility of the
22 witnesses who have testified in this case. Credibility simply
23 means believability. It becomes your duty as jurors to
24 evaluate the evidence and determine which evidence convinces
25 you of its truth. In determining the believability of

1 witnesses who have testified in this case, you may believe one
2 witness over several witnesses or several witnesses over one
3 witness; you may believe a part of the testimony of a witness
4 and reject the remaining part of the testimony of that same
5 witness. You may believe the testimony of a witness in its
6 entirety or reject the testimony of a witness in its entirety.
7 You can consider whether a witness has an interest in the
8 results of the trial, whether the witness is prejudiced
9 towards either the Plaintiff or the Defendant. The
10 opportunity the witness may have had to see the matters and
11 things about which the witness may testify and you may
12 consider the way a witness acts on the witness stand.

13 The Rules of Evidence ordinarily do not permit witnesses
14 to testify as to opinions or conclusions. An exception to
15 this rule exists for witnesses we call expert witnesses. A
16 witness, who by education and experience, has become expert in
17 some art, science or profession, may give an opinion as to the
18 subject the witness claims to be an expert in and may also
19 give the reasons for the opinion. You should consider any
20 expert opinion given by a witness and like any other evidence,
21 give it the weight you think it deserves. If you decide that
22 an expert's opinion is not based on sufficient education and
23 experience or if you decide that the reasons given in support
24 the opinion are not sound or that the opinion is outweighed by
25 other evidence, you may disregard the opinion entirely. An

1 expert's opinion is to be given no greater weight than that of
2 other witnesses simply because the expert is -- the witness is
3 an expert and you do not have to accept an expert's opinion
4 even though it's uncontradicted.

5 The Plaintiff brings this action for libel. Libel is a
6 type of defamation. Defamation is an intentional tort or
7 civil offense. That's what tort means, a civil offense. That
8 basically means that Defendant made a false statement
9 concerning the Plaintiff to a third party and that the
10 statement or communication tends to impeach the Plaintiff's
11 honesty, integrity, virtue or reputation and to expose him or
12 her to public hatred, contempt or ridicule or to cause the
13 individual to be shunned or avoided or to be injured in his or
14 office, business or occupation. If a defamatory statement is
15 written or broadcast by the media, we refer to the defamatory
16 statement as libel.

17 The elements of defamation in this case include, number
18 one, a false and defamatory statement concerning another; two,
19 an unprivileged publication to a third party; three, actual
20 malice on the part of the publisher and for special harm
21 caused by the publication. A principal may be held libel for
22 defamatory statements made by its agent acting within the
23 scope of his employment or within the scope of his apparent
24 authority. One who publishes a defamatory statement of fact
25 is not subject to liability for defamation if the statement is

1 true. To create liability for defamation, there must be
2 publication of matter that is both -- both defamatory and
3 false. There can be no recovery in defamation for a statement
4 of fact that is true. Although the statement is made for no
5 good purpose and is inspired by ill will towards a person
6 about whom it is published and is made solely for the purpose
7 of harming him. The truth of the matter published is an
8 absolute defense and the defense is valid if the statement
9 about the Plaintiff is substantially true. The Plaintiff must
10 also prove that the alleged defamatory statement was
11 communicated or published by the Defendant to a third party.
12 A publication is defined as the communication of defamatory
13 matter to a third person or persons to render any kind of
14 defamation as action there must be a publication. The alleged
15 statement must be published to a third party. Defamation need
16 not be accomplished in a direct manner. An insinuation may be
17 defamatory. A mere insinuation is actionable as a positive
18 assertion if it is false, published with actual malice and its
19 meaning is plain.

20 If a defamation action is brought by a Plaintiff who is a
21 public figure, there are special legal requirements that you
22 must consider. In this case, a legal determination that the
23 Plaintiff, Mr. Kelley, is a public -- I have made a legal
24 determination that the Plaintiff, Mr. Kelley, is a public
25 figure. You need not consume yourselves with the issue of

1 whether the Plaintiff in this case is a public figure; I have
2 made that determination.

3 In a defamation action brought by a public figure, the
4 Plaintiff must prove the defamatory statement was made with
5 what we refer to as constitutional actual malice. To meet
6 this standard, the Plaintiff must show that Defendant made the
7 statement either with knowledge that it was false or with
8 reckless disregard for its truth, thus the Plaintiff must
9 prove constitutional actual malice where he is a public figure
10 defamed in matters of public interest or concern.

11 Actual malice is a subjective standard which tests the
12 Defendant's good faith belief in the truth of his or her
13 statement. To recover on a claim for defamation, the
14 constitutional actual malice standard requires a public figure
15 to prove by clear and convincing evidence that the defamatory
16 statement relating to matters of public concern regarding the
17 Plaintiff's status or conduct as a public figure was made with
18 knowledge of its falsity or with reckless disregard of whether
19 it was true or false. The Plaintiff must demonstrate the
20 Defendant realized his statement was false in fact,
21 entertained serious doubts as to the truth of his publication
22 or acted with a high degree of awareness of probable falsity.
23 A reckless disregard for the truth however requires more than
24 a departure from reasonably prudent conduct. There must be
25 sufficient evidence to conclude either the Defendant made the

1 statements with a high degree of awareness of probable falsity
2 or that the Defendant in fact entertained serious doubts as to
3 the truth of its publication. Mere negligence is insufficient
4 to prove actual malice. Therefore, a public figure is
5 prohibited from recovering damages for a defamatory falsehood
6 relating to a matter of public interest or concern without
7 clear and convincing proof the statement was made with actual
8 malice, that is with the knowledge that it was false or with
9 reckless disregard of whether it was false or not. A public
10 figure may recover for injury to reputation on clear and
11 convincing proof that the defamatory falsehood was made with
12 knowledge of its falsity or with reckless disregard of the
13 truth.

14 If adoption of the language in question that was chosen
15 by the Defendant was one of a number of possible, rational
16 interpretations of an event that is ambiguous and presents
17 descriptive challenges for the writer, the choice of such
18 language, though reflecting a misconception does not
19 necessarily give rise to liability.

20 Again, it is worth emphasizing that the actual malice
21 standard is not satisfied merely through a showing of ill will
22 or malice in the ordinary sense of the term. Nor can the fact
23 that the Defendant published the defamatory material in order
24 to increase its profits suffice to prove actual malice.
25 Actual malice instead requires at a minimum, that the

1 statements were made with a reckless disregard for the truth.
2 Although the concept of reckless disregard cannot be fully
3 encompassed in one infallible definition. It is clear that
4 the Defendant must have made the false publication with a high
5 degree of awareness of probable falsity or must have
6 entertained serious doubts as to the truth of its publication.
7 A reckless disregard for the truth requires more than a
8 departure from the reasonably prudent conduct or from
9 reasonably prudent conduct. There must be sufficient evidence
10 to permit the conclusion that the Defendant in fact
11 entertained serious doubts as to the proof of his publication.
12 There must be evidence that the Defendant had a high degree of
13 awareness of probable falsity. Failure to investigate before
14 publishing even when a reasonably prudent person would have
15 done so is not sufficient to establish reckless disregard.
16 Actual standard malice is not satisfied merely through a
17 showing of ill will or malice in the ordinary sense of the
18 term. It is insufficient to show the Defendant made the
19 editorial choice or simply failed to investigate or verify
20 information. There must be evidence at least that the
21 Defendant purposely avoided the truth.

22 A statement on matters of public concern must be provable
23 as false before there can be liability under state defamation
24 law where a media Defendant is involved. A statement of
25 opinion relating to matters of public concern, which does not

1 contain a provably false factual connotation will receive full
2 constitutional protection.

3 Clear and convincing evidence is an elevated standard of
4 proof which lies between the lesser standard of preponderance
5 of the evidence used in most civil cases and the higher
6 standard of beyond a reasonable doubt, which is required in
7 criminal cases. Clear and convincing evidence is that degree
8 of proof which will produce in the minds of the Jury a firm
9 belief as to the allegations sought to be established. Such
10 measure of proof is intermediate, more than a mere
11 preponderance but less than is required for beyond a
12 reasonable doubt. It does not mean clear and unequivocal.
13 Clear and convincing evidence requires that evidence must be
14 found to be credible. The facts to which the witness
15 testified must be distinctly remembered. The testimony must
16 be precise and explicit and the witness must be lacking in
17 confusion as to the facts in issue. The evidence must be of
18 such weight that it produces in the mind of the Jury a firm
19 belief or conviction without hesitancy as the truth of the
20 allegation sought to be established.

21 When the law places upon the party a burden of proof by
22 clear and convincing evidence, the law means that the evidence
23 is not ambiguous, doubtful, equivocal, or contradictory, but
24 the evidence is pointed to the issue and satisfactory in the
25 sense that the source from which it comes is one which you

1 jurors can place credence. In order to prevail, the Plaintiff
2 must prove his case by clear and convincing evidence as to
3 falsity, actual malice and damages.

4 The Plaintiff must prove that his reputation was damaged
5 by the defamatory statement. The Plaintiff must prove that
6 the damages naturally and proximately resulted from the
7 Defendant's statement. Actual damages are damages which
8 compensate the Plaintiff for the injury and put the Plaintiff
9 in the same position as he was prior to the defamatory
10 statement as much as is possible. General damages including
11 humiliation, hurt feelings, mental suffering, injury to
12 reputation and other types of injuries on which you cannot
13 place a monetary value.

14 The Plaintiff must also prove any special damages
15 resulting from the defamatory statements. Special damages are
16 monetary damages with respect to the property, business,
17 profession or occupation of the Plaintiff such as loss of a
18 job, the loss of customers or the loss of a business
19 relationship as a result of the injury to the Plaintiff's
20 reputation.

21 A Plaintiff is never entitled to recover conjectural or
22 speculative damages, but if you find the Plaintiff is entitled
23 to a verdict for actual damages, your verdict should include
24 an amount to cover any past, present and future damages which
25 were proximately caused by the Defendant. Any future damages

1 must be reasonably certain to occur in the future as a result
2 of the Defendant's act. Actual damages need not be proven to
3 a mathematical certainty or be based on evidence of the
4 precise amount of damages the Plaintiff has suffered. Instead
5 the evidence must allow you to determine what amount of
6 damages is fair, just and reasonable.

7 Now, ladies and gentlemen of the Jury, there are three
8 possible verdicts which you may return in this case. First if
9 you find that the Plaintiff has proved his case as to any of
10 the articles authored by David Wren in accordance with the
11 charge I have just given you. Your verdict must be rendered
12 against both David Wren and The Sun News.

13 Number two, if you find that the Plaintiff has only
14 proven his case as to the editorial, which is not authored by
15 David Wren, but it was published in The Sun News, in
16 accordance with the charge that I have just given you, your
17 verdict must be rendered only against The Sun News.

18 If you find that the Plaintiff has not proven his case as
19 to the articles authored by David Wren and the editorial not
20 authored by Mr. Wren, your verdict must be rendered in favor
21 of Defendants.

22 If the Plaintiff recovers damages, he is entitled only to
23 one recovery for his damages and this will be reflected on the
24 verdict form that you will be given. Now, there's no
25 significance whatsoever in which the verdict forms states

1 these possible verdicts. It is simply that I had to put one
2 before the other.

3 Let me remind you that all twelve of you must agree on
4 the verdict. Your verdict cannot be based on sympathy,
5 passion, prejudice, emotion or any other consideration not in
6 the evidence in this case.

7 Now, Madam Foreperson, when the -- I'm gonna send you
8 into your jury room and when the jury agrees on a verdict, I'm
9 gonna ask you to sign your name to the verdict form after
10 having filled it out and then knock on the jury room door and
11 let Mr. Ropp or the Deputy who would be there, know that you
12 have reached a verdict and we'll bring you back in.

13 Now, I'm gonna ask you not to begin your deliberations
14 quite yet when you first go in. There may be a further
15 instruction that I have to give you. I don't think so. The
16 attorneys and I have gone over the, the instructions, but we
17 have to gather together all of the exhibits and those things
18 so that they will be available for you during your
19 deliberation.

20 I think I told you earlier that it has always been my
21 practice to provide the jury with a transcript of my charge.
22 As you may have heard during my charge, the law is very
23 complex in this area and I don't think it would be reasonable
24 for us to expect you to remember everything that I just
25 charged you. And so I'm gonna have a copy of, of my charge

1 and any additional charge I might add available for you.

2 I do want to point out to you that I have prepared a
3 verdict form and this verdict form, because of the complexity
4 of this case, is significantly longer than the normal verdict
5 form, but I'm confident that you can handle it. I would just
6 ask you to follow all the instructions. It begins with a
7 question that says as to the May 20th, May 23rd or May 25th,
8 2010 articles authored by the Defendant, David Wren, we find
9 that the Plaintiff has proven by clear and convincing evidence
10 that the Defendants made a false statement about the
11 Plaintiff, published the statement and that said statement
12 injured the Plaintiff personally and in his occupation and
13 profession. You will answer that question yes or no. And
14 again, there's no significance whatsoever to whether I put yes
15 or no first, I just had to put one, but you will mark it.
16 Then it goes on to say if yes -- if you had answered yes to
17 that question, we also find that the Plaintiff has proven by
18 clear and convincing evidence that the statement was published
19 with actual malice, which is the state -- which is the
20 statement was made with knowledge of its falsity or reckless
21 disregard of its truth or falsity and you will answer that
22 question. If you answer that question yes, then you will move
23 down and you will be asked if yes, we also find that the
24 Plaintiff has proven by clear and convincing evidence that the
25 Defendant or the Plaintiff -- gentlemen, that should say

1 Plaintiff sustained actual damages.

2 MR. BENDER: Yes.

3 THE COURT: That's what I get for having these attorneys
4 help me prepare the verdict form. I will amend that, but it
5 should say that the Plaintiff. It asks you whether the
6 Plaintiff has sustained actual damages and then you will be
7 asked if you've answered yes to all those questions, how much
8 the damages would be if you have reached that point.

9 Then we move over to a second set of questions that asks
10 essentially the same questions in the same order, but about
11 the editorial. If you would -- have paid close attention to
12 my charge, you will see that we're talking about two
13 Defendants and two different things. One being a group of
14 articles authored, allegedly being authored by Mr. Wren, I
15 don't really think there's a question about that and then an
16 editorial written by the newspaper or published by the
17 newspaper.

18 If you have any questions about the verdict form, please
19 let me know. We will, we will address those. I think you
20 can, you can certainly follow it and answer the questions as
21 you go along.

22 Now I'm gonna send you into your jury room. I have
23 already ordered lunch for you. It should be -- it should be
24 here. I asked that it be here at one o'clock and its one
25 minute till one. So, I was estimating when we would be done.

1 So, it should be here very shortly. Make yourself comfortable
2 in your jury room. Wait for me to give you further
3 instructions. I will tell you this. If I send in my charge
4 and I send in my verdict form and we send you all the exhibits
5 in, that's the signal to begin your deliberations. Okay? If
6 I need to bring you back, I will and we will -- I'll give you
7 further instructions. All right. Thank you very much.

8 Mr. Ropp, if you would take them, gather all the
9 exhibits, give them to the Court Reporter and take the Jury
10 back into the jury room.

11 BAILIFF: Yes, sir.

12 THE COURT: And make sure that their lunch is there.

13 (REPORTER'S NOTE: Jury exits courtroom. 1:00 P.M. The
14 following takes place outside the presence of the Jury.)

15 THE COURT: Anything further?

16 MR. STEVENS: Nothing from the Plaintiff other than ---

17 THE COURT: Other than your previous objections
18 concerning the charge?

19 MR. BENDER: Nothing further, Your Honor, just the
20 reminder you failed to dismiss the alternates.

21 THE COURT: I'm not going to dismiss them because there
22 may be a punitive award.

23 MR. BENDER: Okay. Thank you.

24 THE COURT: So, I'm going to segregate them. I will
25 instruct -- Brad, if you would, before deliberations begin,

1 segregate the alternates. I know I usually release them when
2 I go in, but in this case, I'm going to need to keep them.
3 They must be kept segregated from the rest of the jury panel.

4 DEPUTY: Yes, Your Honor.

5 THE COURT: Okay. All right, gentlemen, please get with
6 Ms. Richardson here and let's make certain that we have the
7 exhibits.

8 Ms. Richardson, if you would mark this charge.

9 COURT'S EXHIBIT TWO

10 ADMITTED INTO EVIDENCE

11 (REPORTER'S NOTE: Jury deliberations begin. 1:06 P.M.)

12 (RECESS - 1:06 P.M.)

13 *****OFF THE RECORD*****

14 (On the Record - 1:42 P.M.)

15 THE COURT: All right. Please keep your seats. I have a
16 question here from the, the Forelady, says we have articles
17 for May 21st, 2010, not May 20th, 2010. Are we supposed to be
18 making a verdict on an additional article or is May 20th not
19 the correct date?

20 MR. STEVENS: May 20th is not the correct date. It
21 should be May the 21st, but, Your Honor, we have said the
22 beginning that that was not a point of -- I just completely
23 missed it.

24 THE COURT: All right, sir.

25 MR. STEVENS: If we were not claiming that that May 21st

1 article was defamatory.

2 THE COURT: All right. How do you want me to respond to
3 this Jury? Tell them that, that the wherever there is
4 reference to May 21st, 2010, they should consider ---

5 MS. STEVENS-GRAZIANI: Ignore it.

6 MR. STEVENS: Ignore it. Just say the only thing they
7 need to consider -- that was is the scrivener's error.

8 THE COURT: That May 21st is the right one?

9 MR. STEVENS: May 23rd and May 25th is the right one.

10 MS. STEVENS-GRAZIANI: Right.

11 MR. STEVENS: Now as to per quod ---

12 THE COURT: Well, they have an article for May the 21st?

13 MR. STEVENS: That's it. We just wrote it down wrong and
14 I did not pick up on it.

15 THE COURT: Well, these verdict forms say May 20th, 23rd
16 and 25th.

17 MR. BENDER: I think the 20th should be 21.

18 THE COURT: That's what they're saying. We have one for
19 May the 21st.

20 MR. STEVENS: Tell them that -- again, I misspoke. If
21 they find per quod, then the 21st will come into play.

22 THE COURT: Find for who?

23 MR. STEVENS: Per quod instead of per se.

24 THE COURT: Yeah.

25 MR. STEVENS: Just tell them it's a scrivener's error.

1 MR. REDMOND: That it should be 21st instead of 20th.

2 THE COURT: Okay. Where ever a reference is made to May
3 the 21st, it should read -- I mean 20th, it should be May the
4 21st?

5 MR. STEVENS: That's right.

6 THE COURT: I'm gonna send this note back in saying all
7 references to a May 20th article, to a May 20th, 2014 article
8 should actually read as May 21, 2010. All right, is that
9 sufficient, gentlemen? All reference, I'm writing it on a
10 note and I'm sending it back to the, to the Forelady that says
11 all references to a May 20th, 2014 article should actually
12 read as May the 21st, 2014?

13 MR. STEVENS: 2010. It should be 2010.

14 THE COURT: 2010, should be read as May 21st, 2010.

15 MR. BENDER: That's correct.

16 THE COURT: Okay. All right. Take that back to them.

17 COURT REPORTER: And mark this as ---

18 THE COURT: Yes, and mark it as an exhibit.

19 COURT REPORTER: Court's Exhibit Three.

20 COURT'S EXHIBIT NUMBER THREE

21 ADMITTED INTO EVIDENCE

22 THE COURT: We, that's gonna be on the record. We're
23 good with that.

24 Gentlemen, I wanted to ask you, in the event that there
25 is a, an actual verdict, how do you intend to proceed and how

1 much time do you anticipate you will need on a punitive phase?

2 I think the charge will be rather short. All I have to do is
3 give an additional charge on punitive damages, fairly simple.

4 MR. STEVENS: That's -- I don't anticipate any further
5 witnesses, just ---

6 THE COURT: Well, what will you do then? Will you put up
7 witnesses?

8 MR. BENDER: I don't intend to.

9 THE COURT: Or, or do you both just desire to argue once
10 again?

11 MR. STEVENS: Yes.

12 THE COURT: Just reargue and then have me charge on
13 punitive damages. You think that would be sufficient and let
14 them take it on the witnesses they have?

15 MR. BENDER: I think that's correct.

16 THE COURT: Okay. Well, this is new ground. I, quite
17 frankly have never had a Defendant who requested it. They
18 always say, well let's just do it -- and it's optional as to
19 how you do it, but we'll do it that way.

20 Also. with the new statute in place, what do you believe
21 is the Court's duty in the event of a punitive award for
22 review of the award? Is it on the statutory factors or is it
23 on the Gamble factors or both?

24 MR. REDMOND: The statute, Your Honor, says considering
25 all relevant evidence including the factors identified in the

1 statute. So, in my mind it would say both.

2 THE COURT: Okay.

3 MR. REDMOND: There is a ---

4 THE COURT: There is a lot of overlapping with Gamble and
5 the statute. I just wondered if the legislature intended for
6 the statute to replace Gamble?

7 MR. BENDER: It didn't seem to say so.

8 THE COURT: I don't know. We'll -- out of an abundance
9 of caution, we'll do it all. Okay. All right. If that's the
10 case. Thank you.

11 MR. BENDER: Thank you.

12 (RECESS - 1:47 P.M.)

13 *****OFF THE RECORD*****

14 (On the Record - 4:45 P.M.)

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

17 THE COURT: Where's Mr. Stevens?

18 MS. STEVENS-GRAZIANI: He's out of the court.

19 THE COURT: Well, find him.

20 MS. STEVENS-GRAZIANI: He said that I can handle it.

21 THE COURT: Okay.

22 MR. REDMOND: Natalie and I have been working on the
23 proposed ---

24 THE COURT: No, we've got a verdict. He don't want to be
25 here?

1 MS. STEVENS-GRAZIANI: Okay. I thought you were ---

2 MR. REDMOND: I didn't know we had a verdict. We were
3 just ---

4 THE COURT: We have a verdict. Okay. I'd like to know,
5 gentlemen, on this, we're on the record, okay?

6 It's my understanding from my Clerk now, that you do not
7 believe that the, the statute, the 2012 statute applies; is
8 that right, Ms. Stevens-Graziani?

9 MS. STEVENS-GRAZIANI: That's correct, Your Honor.

10 THE COURT: Mr. Bender, is that correct?

11 MR. BENDER: That's correct.

12 THE COURT: All right. Now, what about the fact that
13 we've bifurcated this case. I think we can try it any way we
14 want. Have you agreed to the bifurcation, Ms. Stevens-
15 Graziani?

16 MS. STEVENS-GRAZIANI: Yes.

17 THE COURT: And Mr. Bender?

18 MR. BENDER: Yes.

19 THE COURT: So, now where that leaves us is if there is
20 an award of actual damages, if there is an award of actual
21 damages, we must address the issue of punitive damages. If
22 that is the case, it's my understanding that the Plaintiff,
23 neither the Plaintiff nor the Defendant intend to place other
24 evidence in the record; is that correct?

25 MR. BENDER: That's correct.

1 THE COURT: Is that correct, Ms. Graziani?

2 MS. STEVENS-GRAZIANI: That's correct.

3 THE COURT: And you wish for me to allow you to make a
4 continued statement if it's necessary to the Jury, address, or
5 do a summation concerning punitive damages; is that right, Ms.
6 Stevens-Graziani?

7 MS. STEVENS-GRAZIANI: That's correct.

8 THE COURT: Is that right, Mr. Bender?

9 MR. BENDER: That is correct, Your Honor.

10 THE COURT: Followed by a charge on the law; is that
11 correct, as well?

12 MR. BENDER: That's correct.

13 THE COURT: All right. Now we have prepared a charge
14 based on the statute. It's my understanding that neither of
15 you wish for me to charge the statute, that you want a
16 different charge in punitive damages; is that right, Ms.
17 Stevens-Graziani?

18 MS. STEVENS-GRAZIANI: That's correct.

19 THE COURT: Is that right, Mr. Bender?

20 MR. BENDER: That's correct.

21 THE COURT: Have you prepared something for me?

22 MR. BENDER: I think it's in the process right here.

23 MS. STEVENS-GRAZIANI: I was working on it and he, he was
24 telling me that he wanted to include the Mitchell v. Fortis
25 headnote eleven, but I was reviewing it and I think that's for

1 the Court's review not the Jury's and I would ask that the
2 Gamble factors be ---

3 THE COURT: The Gamble factors and the Fortis factors are
4 for the Court's post-judgment review?

5 MS. STEVENS-GRAZIANI: Right.

6 THE COURT: Okay. I will tell you this. It's late. We
7 don't have Court tomorrow. If in fact, if, and I do not know,
8 please, if in fact there is an award, a punitive award, if
9 there is a punitive award, if there is an actual award, I
10 don't know. It's my intent to dismiss the Jury. I will allow
11 you the weekend to prepare comments to the Court concerning
12 the Gamble, Gore and Fortis factors if there is a punitive
13 award and I will allow you that time to make post-verdict
14 motions. Is that agreeable, Mr. Bender?

15 MR. BENDER: Yes, sir.

16 THE COURT: That will give you the weekend and will give
17 you the weekend, Ms. Stevens-Graziani. Do you all understand
18 that? Does everyone agree with that process?

19 MS. STEVENS-GRAZIANI: Yes, Your Honor.

20 THE COURT: Okay. Now if there is an award of actual
21 damages and if we go to punitive damages, I want to make sure
22 we're in agreement as to the charge; it seems like we are.
23 How far are we away from that, Mr. Redmond?

24 MR. REDMOND: Very close, one issue.

25 THE COURT: As to the verdict form, if that is necessary,

1 I want to be able, if there is an award of actual damages, to
2 go directly into tell the Jury that there's one other issue
3 they must decide and that would be the issue of punitive
4 damages in that the Plaintiffs have prayed for punitive
5 damages and our Court system requires that they review that
6 after an award of actual damages. And I want to go
7 immediately -- I just want to tell them what we're doing. I
8 want to go immediately then into your remarks and then I want
9 to charge and I want to be able to hand them a verdict form, a
10 separate verdict form as to punitive damages. I don't know if
11 any of this is gonna be necessary but I want to be ready for
12 it. My understanding is that we would simply -- what do you
13 want on it? What do you want it to say?

14 MR. BENDER: I'm sorry, Your Honor.

15 THE COURT: In case we need it, what do you want a
16 verdict form for punitive damages if punitive damages, if we
17 get that far, what do you want it to say?

18 MR. BENDER: I think we need to divide it again as
19 between Wren and The Sun News if it's respect to the articles
20 and The Sun News if it's respect to the editorial.

21 THE COURT: Okay. Well, what I will do then is I will
22 tell them that I will be handing into them a verdict form for
23 their use. Okay? We will prepare that quickly after the
24 charge. We will have the Deputy take it in to them for their
25 use. Okay? It will be a form that we can all agree on.

1 Okay?

2 MS. STEVENS-GRAZIANI: Okay.

3 THE COURT: Okay. All right. So, Mr. Redmond, can you
4 get that, that charge ready? I mean, do you have it about
5 ready? Let's look at it because, you know, we're not under
6 the statute anymore, we're -- let's see what we've got. Just
7 please be seated and let's work on it. Let's get it done.

8 Mr. Stevens, in that we are all in agreement now that the
9 statute does not apply.

10 MR. STEVENS: Yes, sir.

11 THE COURT: There should be a relatively simple punitive
12 damage charge; would you agree?

13 MR. STEVENS: Yes.

14 THE COURT: Okay.

15 (REPORTER'S NOTE: Brief break in record while verdict form is
16 prepared.)

17 THE COURT: All right. That is just it, the eight
18 factors? There's no -- Do we need a charge concerning the
19 amount of punitive damages and the extent of punitive damages?
20 Don't you think we need that, gentlemen?

21 All right. How about this final paragraph I have,
22 Finally, any aware of punitive damages must be limited to
23 punishment and may not affect the economic bankrupt -- the
24 Defendants' ability to pay any punitive damages award should
25 be considered. However, economic bankruptcy -- the economic

1 factor is not an absolute bar to the award of punitive
2 damages.

3 MR. STEVENS: Well, I don't think that applies because
4 did he have insurance involved ---

5 THE COURT: Okay. Is what you have said to me, what you
6 want me to charge on the issue of punitive damages?

7 MR. REDMOND: Your Honor, can the last paragraph now that
8 you have in there be edited to take out the economic
9 bankruptcy. In other words, ---

10 MS. STEVENS-GRAZIANI: Just to take out the bankruptcy
11 language.

12 THE COURT: Finally, any award of punitive damages must
13 be limited to punishment.

14 MS. STEVENS-GRAZIANI: Yeah.

15 MR. REDMOND: That part is okay. And to this end, the
16 Defendant's ability to pay should be considered and leave it
17 at that.

18 MS. STEVENS-GRAZIANI: Yeah.

19 THE COURT: Okay. Is that it?

20 MS. STEVENS-GRAZIANI: Yes.

21 THE COURT: All right. Drew, let's add that to it.
22 Okay? And then again, I'm gonna add your verdict must be
23 unanimous.

24 We do all this and may not even need it. All right.
25 Thank you.

1 Okay. All right. Very well. All right.

2 MR. BENDER: Could we get a copy of that now, please?

3 THE COURT: Yes, I have it exactly as Mr. Redmond sent it
4 with the addition these two sentences. Finally, any award of
5 punitive damages must be limited to punishment and to this
6 end, the Defendants' ability to pay any punitive damage award
7 should be considered. Your verdict must be unanimous. That's
8 the only thing that's added to it.

9 Do you agree with the charge, Mr. Stevens?

10 MR. STEVENS: Yes, Your Honor.

11 THE COURT: Do you agree with the charge, Mr. Bender?

12 MR. BENDER: Yes, sir.

13 THE COURT: All right. Then let's bring in the Jury and
14 let's see what we have.

15 (REPORTER'S NOTE: Jury enters courtroom. 5:04 P.M.)

16 THE COURT: All right. Madam Forelady, have you reached
17 a verdict?

18 JUROR 150: Yes, we have.

19 THE COURT: And was your verdict unanimous?

20 JUROR 150: Yes, Your Honor.

21 THE COURT: All right. If you would, give your verdict
22 form to the Clerk.

23 Very well. Yes, ma'am, would you publish the verdict for
24 me?

25 VERDICT OF THE JURY:

1 CLERK: The State of South Carolina, County of Horry, in
2 the Court of Common Pleas, Case Number 2012-CP-26-3804, Mark
3 Kelley, Plaintiff versus The Sun Publishing Company, Inc.
4 D/B/A/ The Sun News and David Wren, Defendants. Verdict.
5 Verdict one as to news article, number one as to May 21st,
6 2010 and May 23rd, 2010 and May 25th, 2010 articles authored
7 by the Defendant, David Wren, we find this Plaintiff has
8 proven by clear and convincing evidence that the Defendants
9 made a false statement about Plaintiff and that said statement
10 injured the Plaintiff personally and in his occupation and
11 profession. Yes.

12 We also find the Plaintiff has proven by clear and
13 convincing evidence that said statement was published with
14 actual malice, which is the statement was made by the
15 knowledge of its falsity or reckless disregard of its truth or
16 falsity. Yes.

17 We also find that the Plaintiff has proven by clear and
18 convincing evidence that Plaintiff sustained actual damages.
19 Yes.

20 If the Jury answers yes to all three findings above, we
21 find for the Plaintiff against both Defendants' actual damages
22 in the amount of \$400,000.

23 Juliet Galton, Foreperson, Conway, South Carolina May
24 8th, 2014.

25 Verdict form as to editorial. Number two, as to the

1 editorial dated May the 30th, 2010, we find that the Plaintiff
2 has proven by clear and convincing evidence that the Defendant
3 made a false statement about the Plaintiff, published that
4 statement and that said statement injured the Plaintiff's
5 reputation. No.

6 If the Jury answers no to either one of the findings
7 above, we find for the Defendant, Sun Publishing Company, Inc.
8 as to the editorial identified above.

9 Juliet Galton, Foreperson, Conway, South Carolina, May
10 8th, 2014.

11 Madam Forelady, ladies and gentlemen of the Jury, is this
12 your verdict? Please signify by raising their right hands.

13 (REPORTER'S NOTE: Jury unanimously complies.)

14 CLERK: Thank you.

15 THE COURT: Ladies and gentlemen of the Jury, again, I
16 ask you, is this your verdict?

17 (REPORTER'S NOTE: Jury unanimously responds in the
18 affirmative.)

19 THE COURT: And it's still your verdict?

20 (REPORTER'S NOTE: Jury unanimously responds in the
21 affirmative.)

22 THE COURT: Any request for individual polling from the
23 Plaintiff?

24 MR. STEVENS: None from the Plaintiff, Your Honor.

25 THE COURT: From the Defendant?

1 MR. BENDER: None, Your Honor, thank you.

2 THE COURT: Very well. Ladies and gentlemen of the Jury,
3 I know that it is late in the evening but there is one other
4 matter than we must have you address. The Plaintiff in this
5 case has requested or prayed for as we refer to it in the law,
6 for punitive damages. Those are damages in excess of actual
7 damages. I will instruct you on the law. Both the Plaintiff
8 and the Defendant at this time have an opportunity to put up
9 additional evidence. However, they have both informed me that
10 they do not wish up to put up additional evidence, that they
11 wish to submit it to you upon the record in this case. To
12 that end, they are both now entitled to a short summation
13 concerning punitive damages after which I will instruct you on
14 the law of punitive damages.

15 Mr. Stevens?

16 CLOSING BY STEVENS:

17 MR. STEVENS: Thank you, Your Honor. Ladies and
18 gentlemen of the Jury, I know it's late and it's after 5
19 o'clock and we certainly don't mean to take very long.

20 Punitive damages simply are damages ---

21 THE COURT: One second. I had kept the alternates out of
22 an abundance of caution. I usually release the alternates as
23 soon as it's given to the case. I think at this time, we can
24 release our alternates. Anyone have any objection?

25 MR. STEVENS: No, Your Honor.

1 MR. BENDER: No, Your Honor.

2 THE COURT: Mr. Ropp, you may tell the alternates that
3 they may be released. However, if they wish to stay, they
4 certainly may do so.

5 BAILIFF: Yes, sir.

6 THE COURT: But they may not participate in the
7 deliberation.

8 BAILIFF: All right.

9 THE COURT: I'm sorry, Mr. Stevens, I did not mean to
10 interrupt you.

11 MR. STEVENS: That's quite all right, Your Honor.

12 I don't plan to take much time because I know you all
13 want to get home. Since you have found actual damages, the
14 law says that the Plaintiff can't recover punitive damages
15 unless you find actual damages; that's the reason for the fact
16 that we're back here.

17 Punitive damages must be proven by clear and convincing
18 evidence just like the actual damages do. There is also some
19 elements that His Honor will charge you but the purpose of
20 punitive damages is to punish and to deter the Defendants from
21 engaging in like conduct. The, the discretion to award
22 punitive damages is solely within your discretion. You can
23 award it and or you don't have to award it. But if you feel
24 that the Defendant in its actions would continue, then you may
25 want to send them a message that we're awarding punitive

1 damages to tell you to quit engaging in that type of conduct.
2 That's all I have to say to you. I will leave it within your
3 good judgment and conscious. Thank you.

4 THE COURT: Mr. Bender.

5 CLOSING BY BENDER:

6 MR. BENDER: May it please the Court, Your Honor.
7 Forelady and members of the Jury, thank you very much for your
8 attention to this matter.

9 These damages that are being sought now are exactly what
10 they're described as by their name, punitive damages. And if
11 you feel on the basis of the charge the Judge gives you that
12 there will be a need to punish David Wren and The Sun News,
13 then it's within your power to make that decision. I would
14 ask you to consider as you debate and discuss that was there
15 anything that the Plaintiff could have done to reduce or
16 mitigate his damage. And the answer is clearly, yes, he could
17 have done so with a telephone call, an email or have someone
18 else in 2010 say you made a mistake, I was there, I didn't
19 know it was a fundraiser and I had nothing to do with it.
20 That didn't happen. Two years later, this lawsuit was filed.
21 You've made a determination on his actual injury, now the
22 question is, has the Defendant, David Wren and has The Sun
23 News engaged in sufficiently reprehensible conduct as the
24 Judge will describe it that you feel the need to punish them.
25 Thank you.

1 CHARGE TO JURY:

2 THE COURT: All right. Ladies and gentlemen of the Jury,
3 if you award and in this case you have awarded actual damages,
4 you may also consider an award of punitive damages. Punitive
5 damages are intended to punish the Defendant for extraordinary
6 and outrageous misconduct and to prevent the Defendant and
7 others from committing similar acts in the future.

8 Are you having difficulty hearing?

9 JUROR 150: Yes, sir.

10 THE COURT: Did you not hear what -- I will start again
11 if I was not speaking up and I apologize. Let me move my --
12 and let me begin again if you don't mind.

13 If you award actual damages and in this case you have
14 awarded actual damages, you may also consider an award of
15 punitive damages. Punitive damages are intended to punish the
16 Defendant for extraordinary and outrageous misconduct and to
17 prevent the Defendant and others from committing similar acts
18 in the future. Punitive damages can only be awarded when
19 conduct of the Defendant has been something more than just
20 negligent. The evidence must establish the Defendants' acts
21 were reckless, willful and wanton. Meaning there was a
22 conscious indifference to the rights of others or a reckless
23 disregard of them. If you find that the Defendants' conduct
24 was willful, wanton or reckless, you may award the Plaintiff
25 punitive damages. To support an award of punitive damages,

1 the Plaintiff must prove by clear and convincing evidence that
2 the conduct complained of included a consciousness of
3 wrongdoing at the time of the conduct.

4 Now, I have previously provided you with my charge
5 concerning the meaning of clear and convincing proof. The
6 same will apply to your determination of punitive damages.
7 Before awarding punitive damages, you must consider and weigh
8 several factors, which may be pertinent to the facts of this
9 case.

10 The first factor is reprehensibility of the actions by
11 the Defendant. This principal reflects the view that some
12 wrongs are more blameworthy than others. In considering we
13 have a reprehensibility, the Jury may consider whether one,
14 the harm caused was physical as opposed to economic. Two, the
15 tortious conduct, evidence and indifference to or a reckless
16 disregard for the health or safety of others. Three, the
17 target of the conduct had financial vulnerability. Four, the
18 conduct involved repeated actions or was an isolated incident.
19 And Five, the harm was a result of intentional malice,
20 trickery or deceit rather than a mere accident. Other factors
21 to consider are the severity of the harm caused by the
22 Defendant, the extent to which the Plaintiff, Plaintiff's own
23 conduct contributed to the harm, the profitability of the
24 conduct to the Defendant, the Defendant's ability to pay, the
25 likelihood the award would deter the Defendant and others from

1 like conduct.

2 Finally, any award of punitive damages must be limited to
3 punishment and to this end, the Defendants' ability to pay any
4 punitive damage award should be considered.

5 Again your verdict must be unanimous.

6 Now I am going to prepare and send in for your use in
7 just a moment a, an additional verdict form that you can, very
8 similar to the one that you had for actual damage. It will of
9 course be shorter. But we have not had an opportunity to
10 prepare it because we did not know what your verdict would be.
11 I'm in the process of having that done right now and I should
12 have it in to you momentarily. I have already reviewed this
13 charge with counsel and they tell me they're in agreement with
14 my charge on punitive damages. Like in your earlier
15 deliberations, you will have a copy of my charge and that
16 charge will have the factors and things that I have just
17 instructed you about. So, I will let you go in and begin your
18 deliberations. I will have a verdict form for you in just a
19 moment.

20 Brad, if you would, take the jury to the jury room. And
21 I will have that for you in just a moment.

22 Could you mark that as Court's Exhibit Number?

23 COURT REPORTER: Four.

24 THE COURT: Four.

25 COURT'S EXHIBIT NUMBER FOUR

ADMITTED INTO EVIDENCE

(REPORTER'S NOTE: Jury exits courtroom. 5:18 P.M. The following takes place outside the presence of the Jury.)

THE COURT: All right. I have prepared a verdict form or something very quickly. It's very similar to what we did earlier. Of course, it would only involve the articles and not the, not the editorial and in it I, instructions, mark the appropriate response to the following question; each response must be unanimous.

Number one, as to the May 31st, 2002, the May 23rd, 2010, excuse me or the May 25th, 2010 articles authored by the Defendant, David Wren, we find that the Plaintiff has proven by clear and convincing evidence that Defendants' publication of said article was willful, wanton or reckless. Answer, yes or no.

If the Jury unanimously answered, answered yes to the above, the finding above, we find for the Plaintiff against both Defendants, punitive damages in the amount of, blank. Write your verdict in words and figures.

Okay. And that's what I have. What else would you like added to it?

MS. STEVENS-GRAZIANI: Can we just make sure that the date was right?

THE COURT: I have the right date. I misspoke when I read it.

1 MS. STEVENS-GRAZIANI: Okay.

2 THE COURT: Anything else?

3 MR. BENDER: No, I think that's fine, Your Honor.

4 THE COURT: Okay. All right. Drew, if you'll get that
5 printed and a place for her to sign it. I'm sorry, Drew had
6 one other line down here and I didn't realize it.

7 It says, If the Jury unanimously answered no to the
8 finding above, we find for the Defendant as to the articles
9 identified above and a place for the foreman to sign and
10 initial it just like we had it and then a certification that
11 it is unanimous. We just broke down the verdict form that we
12 used earlier. Okay.

13 Anyone have any objection to that, Mr. Stevens?

14 MR. STEVENS: (Indicates affirmatively.)

15 THE COURT: Mr. Bender?

16 MR. BENDER: Yes, that's fine.

17 THE COURT: Okay. Let's run that off, Drew, and let's
18 get this into them.

19 Madam Clerk, could you take this to them first so they
20 can have it as they begin any deliberation and tell them I
21 will get the verdict form in just a moment.

22 (REPORTER'S NOTE: Jury deliberations begin. 5:21 P.M.)

23 THE COURT: All right. Mr. Stevens?

24 MR. STEVENS: Yes, sir.

25 THE COURT: I have informed other counsel a moment ago

1 that I'm going to defer post-trial motions until Monday
2 morning at 9:30. At that time, I will do a, if necessary, a
3 punitive review. If I do not have to do it, I will still give
4 both of you until Monday morning to prepare for post-trial
5 motions, okay?

6 MR. STEVENS: I have a trial on Monday.

7 THE COURT: With who? It will probably be me.

8 MR. STEVENS: Well, it's about sixteen I think. It's
9 been moving up and I haven't had the chance to see the roster
10 since Monday.

11 THE COURT: Well the last time I looked, I was the Chief.
12 So I would not worry about that.

13 MR. STEVENS: Thank you, Your Honor.

14 (RECESS - 5:22 P.M.)

15 *****OFF THE RECORD*****

16 (On the Record - 5:38 P.M.)

17 THE COURT: Please be seated. We have a verdict.
18 Would you tell Bobby to bring in the Jury, please?

19 (REPORTER'S NOTE: Jury enters courtroom. 5:39 P.M.)

20 THE COURT: All right. Madam Forelady, have you reached
21 a verdict?

22 JUROR 150: Yes, we have.

23 THE COURT: And was it unanimous?

24 JUROR 150: Yes.

25 THE COURT: Thank you very much. If you would give it to

1 the Clerk.

2 You may publish?

3 VERDICT OF THE JURY:

4 CLERK: Yes, sir. The State of South Carolina, County Of
5 Horry, in the Court of Common Pleas, Case Number 2012-CP-26-
6 3804, Mark Kelley, Plaintiff versus Sun Publishing Company,
7 Inc. D/B/A The Sun News and David Wren Defendants. Verdict
8 form as to news articles number one. As to the May 21st,
9 2010, the May 23rd, 2010 and the May 25th, 2010 articles
10 authored by Defendant, David Wren, we find that the Plaintiff
11 has proven by clear and convincing evidence that Defendants'
12 publication of said article was willful, wanton or reckless.
13 Yes.

14 If the jury answers yes to the items above, we find for
15 the Plaintiff against both Defendants' punitive damages in the
16 amount of \$250,000.

17 Juliet Galton, Foreperson, Conway, South Carolina, May
18 the 8th, 2014.

19 Madam Forelady and ladies and gentlemen of the Jury, is
20 this your verdict; if so, please signify by raising your right
21 hands.

22 Thank you.

23 THE COURT: Any need to for individual polling?

24 MR. STEVENS: None, Your Honor.

25 THE COURT: Mr. Bender?

1 MR. BENDER: None, Your Honor.

2 THE COURT: Ladies and gentlemen of the Jury, you have
3 worked very hard this week and before I, I began my service as
4 a Circuit Judge, I was an attorney and I practiced law here in
5 Horry County for many, many years and during that time, I
6 don't know what I didn't try. Anything from a malpractice to
7 contracts and all sorts of things and I will tell you, there
8 is no more difficult case to present and to deliberate than
9 this type of case. They're -- it's difficult. It's, it's
10 just basically difficult to sit in judgment and I'm sure that
11 you probably all understand that now much more than you did
12 before you were selected to sit on this, this Jury. You have
13 been very attentive during this trial. I think you have been
14 conscientious in your service and I can't tell you how much we
15 appreciate it. I know you're tired from your work this week,
16 but please leave here or I hope you leave here with a better
17 understanding of our system, how our system works and perhaps
18 with an appreciation of, of our system. I always like to tell
19 jurors that jury service is not only a civic duty, it's civic
20 right. Each and every one of you have been qualified as
21 jurors or were qualified as jurors on Monday morning and as
22 such, you have the right to come in and participate in this,
23 this procedure. You have the right to resolve issues that
24 arise between the citizens of this county and I hope that you
25 will look at your jury service in, in that way, not so much as

1 a duty that you had to perform.

2 Thank you so much for, for being here. Thank you for
3 your work. I hope that I will see some of you in the future.
4 You know, when I first started practicing law, I would come
5 down here and you couldn't draw a jury panel that I didn't
6 know someone. But I don't think that I have had the pleasure
7 of meeting any of you, but if you do encounter me out and
8 about the county, I'm all over the place, please don't
9 hesitate to approach me and speak to me. I will always love
10 to talk to jurors and tell me about your experience and what
11 you thought about it. I'd love to hear from you.

12 Thank you again for your service.

13 Mr. Ropp, would you make sure that this Jury gets back to
14 the jury room where they can collect their personal effects
15 and make sure they get out to their vehicles?

16 BAILIFF: Yes, sir.

17 THE COURT: Thank you.

18 (REPORTER'S NOTE: Jury exits courtroom. 5:43 P.M.)

19 THE COURT: All right. Gentlemen, tomorrow, as you all
20 know is a state holiday. The Court's will not be in session
21 tomorrow. It has been a long trying case. We have some
22 important matters that we're gonna have to take up in the way
23 of post-trial motions and the review of the award of punitive
24 damages. I am going to reconvene at 9:00 -- well, I have a,
25 a, I will be doing the roster meeting at 9:30 on Monday. That

1 usually doesn't take very long. I'll get some other judge to
2 qualify the Jury and I will reconvene this case at 10:30 on
3 Monday morning.

4 Let me just tell you what I anticipate and what I will
5 allow. I will, of course, hear you on any post-trial motions
6 and I will allow you to address the Court concerning the, the
7 review of the award of punitive damages. Okay.

8 Thank you, gentlemen and it's a pleasure to see you
9 again.

10 MR. BENDER: Thank you, Your Honor.

11 MS. STEVENS-GRAZIANI: Thank you.

12 MR. STEVENS: Thank you.

13 (RECESS - 5:50 P.M.)

14 *****OFF THE RECORD*****

15 (END OF DAY FOUR.)

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1 **(MAY 12, 2014)**

2 **(On the Record - 11:02 A.M)**

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

5 MOTIONS:

6 THE COURT: Thank you. Please be seated.

7 Okay. We're here today on post-trial motions.

8 Okay. Any from the Plaintiff?

9 MR. STEVENS: Nothing from the Plaintiff.

10 THE COURT: All right. From the Defense, Mr. Bender?

11 MR. BENDER: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. BENDER: Here's my Memo and Motion.

14 THE COURT: Okay. Thank you.

15 MR. BENDER: Defendant's move for judgment NOV, or for a
16 new trial absolute or new trial nisi. The standard for
17 review, I think is not was there any evidence that could be
18 construed in the Plaintiff's favor to send the case on at the
19 close of the Plaintiff's evidence addressing the JNOV issue.

20 THE COURT: Okay.

21 MR. BENDER: I think the cases support the motion that in
22 order protect the constitutional rights of the press in a case
23 such as this, the standard should have been the standard used
24 for summary judgment in a case like this, does the Plaintiff
25 have clear and convincing evidence of actual malice. That is

1 is there evidence in the Plaintiff's case that the Defendant
2 specifically, David Wren, knew at the time the decision was
3 made to publish, that what was being published was false or
4 was there a reckless disregard of potential falsity. And I
5 think the verdict in this case demonstrates conclusively why
6 the Supreme Court has said the roll of the Court in a case of
7 this nature is not the same as the roll of the Court in a car
8 wreck case. That the Court has to exercise independent
9 judgment to ascertain on a de novo review if there was clear
10 and convincing evidence to send the case beyond the motion for
11 nonsuit at the close of the Plaintiff's case. And what was
12 the evidence here? There was no evidence that David Wren
13 meant anything other than the Plaintiff was with Brad Dean.
14 Now there was a lot of testimony about writing, comma, along
15 with, comma, meant and. If unless David Wren believed that to
16 be true, I mean, if David Wren thought that's what he was
17 writing and knew it to be false because his testimony was
18 unequivocal, I had no evidence that Mark Kelley was involved
19 in passing the campaign contributions and, in fact, Exhibit
20 One has the headline, Dean Passed \$84,000. So, and if the
21 question is, what was David-Wren's state of mind, there was no
22 evidence about that in the Plaintiff's case because what you
23 have to compare is to what is published. The emails were
24 never published and one of the concerns in this case allowing
25 expert testimony on journalism practices and policies

1 introduced a much lower threshold, a negligence threshold,
2 which is clearly inappropriate in an actual malice case.

3 THE COURT: But would you not agree that the charge given
4 to the Jury, I think we all agreed that that was the adequate
5 charge. We agreed on the charge. I went to great lengths to
6 make sure that everyone felt that the charge was an
7 appropriate statement of the law.

8 MR. BENDER: I think that's an appropriate statement of
9 the law, but the obligation of the Court in a case of this
10 nature is to be a gatekeeper because it's, the role is not
11 merely to get the charge right. The role of the Court is to
12 examine the evidence critically and in the light of the
13 elevated burden of proof that the Plaintiff had, to see if
14 there is any clear and convincing evidence to move beyond the
15 nonsuit stage.

16 THE COURT: But didn't we go to great lengths to make
17 sure that the, there were special interrogatories put forward
18 to the Jury requiring them to state that they unanimously made
19 a finding of clear and convincing, to a clear and convincing
20 standard of actual malice?

21 MR. BENDER: Oh, I think that's exactly right, but I
22 think that's disregarding the role of the Court in conducting
23 the de novo review. This Court has an opportunity as
24 Appellant Court's would have the opportunity to go back and
25 examine the evidence offered by the Plaintiff in his case in

1 chief to see if there was clear and convincing -- clear and
2 convincing evidence of actual malice.

3 THE COURT: Well, well tell me, tell me about this and
4 this is just something that gave me concern as I listened to
5 the Plaintiff's case. Certainly there were contradictory
6 positions on the use of the term, along with, whether the, it
7 insinuated or actually and explicitly meant with or and, or
8 whether it was, as your client says, it just meant that Mr.
9 Kelley was there. But I looked at the emails and it became
10 very clear or I felt that it became clear in my mind and -- of
11 course, what was in my mind didn't make a whole lot of
12 difference -- but it became -- I think there was substantial
13 evidence that Mr. Wren for whatever reason, targeted Mr.
14 Kelley. Comments like, why are they protecting him and at the
15 same time thinking I don't have any evidence that he had
16 nothing to do with it -- I mean that he had anything to do
17 with illegal contributions, but why is everybody protecting
18 him. It appeared to me he's saying I can't get evidence
19 because I know he's guilty of this but people are protecting
20 him. That sort of thing in my mind, I believe, was
21 significant to this Jury. I think it shows a conscious
22 targeting for whatever reason of Mr. Kelley by Mr. Wren and I
23 think that's had a lot to do with the verdict that we got in
24 this case.

25 MR. BENDER: I think that the inquiry is not what that

1 showed. The inquiry has to be what did the publication say
2 and the publication said along with and let's suppose that
3 David Wren were motivated by ill will directed at Kelley
4 although he said he wasn't. That's not sufficient.

5 THE COURT: And I understand that.

6 MR. BENDER: And the question is in Bose, I think points
7 this out quite clearly. Where you have a reporter looking at
8 a situation and trying to describe it, his choice of words
9 alone cannot be the basis for a finding of actual malice.

10 THE COURT: And I think I gave a charge to the Jury to
11 that affect that you asked for.

12 MR. BENDER: And I agreed and I appreciate that. But
13 what I, the point I'm making is that the Court's role in this
14 case, because of the application of the First and Fourteenth
15 Amendment is dramatically different from the role of the Court
16 in an ordinary tort case.

17 THE COURT: And I understand.

18 MR. BENDER: And what I'm suggesting is that there should
19 have been a higher standard for the Plaintiff to move beyond
20 his case.

21 THE COURT: And it's clear and convincing.

22 MR. BENDER: That's right. But I think when, when that
23 motion was denied at the close of the Plaintiff's case, the
24 standard that was articulated was there is a question of
25 evidence construed in the light most favorable to the

1 Plaintiff that allows the case to go forward. That's a lower
2 standard I think than is there clear and convincing evidence
3 here.

4 THE COURT: But the standard the Court was applying was
5 still clear and convincing. This Jury -- there was a dispute
6 as to what Mr. Wren meant; what was the clear, plain, meaning
7 and I think my charge said and the plain meaning; what do you
8 mean when you look at these other things, I think obviously
9 the Jury said it's clear, it's convincing, what he intended to
10 do and what he intended to say.

11 MR. BENDER: I think that that intention is not part of
12 the clear and convincing test. I think ---

13 THE COURT: So under your scenario, unless a journalist
14 came in and said yep, that's what I did, there could never be
15 enough.

16 MR. BENDER: Well I understand that there's difficulty in
17 that regard and that's what St. Amant v. Thompson talks about.
18 It talks about how do you prove the state of mind of the
19 reporter. But making comments provocatively in an email to
20 get somebody to comment for a story is different from what has
21 been published and I think the evaluation has to be on what
22 was published and there is nothing to contradict Wren's
23 testimony that he did not intend to write that Mark Kelley
24 participated in anything illegal. That's why all of the
25 publications make the point that the contributions were not

1 illegal and it was not illegal for Mark Kelley to be in the
2 room when the money was passed. Now isn't it interesting that
3 we all thought the editorial was gonna be where the liability
4 might be in this case far more than with respect to the news
5 reports?

6 THE COURT: Again, my, what I think really doesn't make
7 any difference, but I thought that as well and I hope the Jury
8 -- well, obviously the Jury found that was protected, but
9 whether they considered it and it spilled over, I, I have no
10 idea. Considering the comment that was put in, the
11 parenthetical comment, we know what the real truth is, though.

12 MR. BENDER: My point is that with respect to JNOV, this
13 Court's obligation is to provide a de novo review of the
14 Plaintiff's evidence up through the end of the Plaintiff's
15 case to determine if there was clear and convincing evidence
16 of actual malice to move forward. Obviously, it's my position
17 that there was none. It's also my position that the allowance
18 of the expert testimony on the newspaper standards introduced
19 a question of negligence and negligence is clearly not the
20 threshold for liability in a case of this nature.

21 Moving on to the, the new trial for excessive damages,
22 the Plaintiff testified that his company had one fewer client
23 now than it had at the time of the publication. But as I
24 recall his testimony, he could not tie that to the publication
25 and he had the other unfortunate circumstance of Will McCain

1 having died. He had testimony from Alan Clemmons that
2 somebody asked him about Kelley as a lobbyist, but then didn't
3 call. Well, I suspect in your practice as in all of our
4 practices, somebody might say how about so and so as a lawyer
5 and you never get the call. It happens all the time. I don't
6 think that's a, there's anything other than speculation with
7 respect to any business loss the Plaintiff might have had.

8 THE COURT: And I would agree with you there was really
9 no number tied even to that client. I think that was offered
10 in regard to the general allegations that his reputation was
11 damaged, that he was held to some degree to public scorn in
12 his, in his business. We heard Mr. -- or Representative
13 Clemmons and Representative Hardwick, ex-Representative Hearn,
14 all testified that these matters are taken very seriously and
15 he was ridiculed as a result of it, there were jokes made
16 about it, things of that nature. What if he had put up no
17 evidence of any economic loss? Does that mean he would not
18 have been entitled to some verdict?

19 MR. BENDER: I think that's a good question. But there's
20 a footnote in Justice Toal's concurring opinion in
21 Holtzscheiter, too that suggests in South Carolina there must
22 be economic loss in a defamation case to recover.

23 THE COURT: And I'm not suggesting that there wasn't that
24 testimony. I'm just saying what if there wasn't, had never
25 been any, not a shred, not an attempt? You know, maybe

1 Justice Toal answers the questions there, I don't know.

2 MR. BENDER: But the point I'm making is that the verdict
3 \$400,000 actual damage, \$250,000 punitive damage is so
4 excessive as to indicate arbitrariness, capriciousness,
5 motivated by considerations other than the evidence, passion,
6 prejudice against the newspaper and I guess Mr. Wren.

7 THE COURT: Was there any evidence at all of anybody
8 having any or suggesting general bad conduct on the part of
9 the newspaper or, or interjecting anything of that nature into
10 the, into the testimony?

11 MR. BENDER: Oh, I think that the Plaintiff's own
12 testimony was that he would never call David Wren, he'd never
13 call the newspaper.

14 THE COURT: I think that was your client's testimony.

15 MR. BENDER: No, that was ---

16 THE COURT: It was your client who testified that ---

17 MR. BENDER: Mr. Kelley ---

18 THE COURT: --- maybe Mr. Kelley also testified that he
19 wouldn't, wasn't gonna call him back, but he gave no reason
20 for it, did he?

21 MR. BENDER: As I recall, he said he'd never call them
22 back because they never got it right.

23 THE COURT: Other than that, was there any testimony of
24 bad conduct or bad motive or anything, anything put to this
25 Jury that would suggest that they should have any prejudice or

1 bias against the Defendants?

2 MR. BENDER: I think that was the Plaintiff's entire case
3 that here they knew that this terrible newspaper, they knew
4 that they were covering this man, this fine man and they never
5 gave a retraction, never had a correction, never mind there
6 was no notice of that, and that they repeatedly said that he
7 was lobbyist for the Chamber and kept injecting this false
8 notion that calling somebody a lobbyist for the Chamber of
9 Commerce is itself defamatory.

10 THE COURT: I don't think it helped that y'all continued
11 to refer to him throughout the trial as their, as their
12 lobbyist.

13 MR. BENDER: Well, I think the facts are that he's their
14 lobbyist, it's just they use an alter ego for him. But my
15 point is, the verdict, the size of the verdict is excessive in
16 terms of any possible injury that the Plaintiff has
17 established and for that reason, a new trial should be
18 granted.

19 Coupled with that is the punitive damage review and ---

20 THE COURT: Why don't we do this, why don't we address
21 your first two motions and have Mr. Stevens respond and then
22 let's go into the punitive damage review.

23 MR. BENDER: Okay.

24 THE COURT: Would that be agreeable?

25 MR. BENDER: That would be fine. I would, and in

1 connection with, with that, I'm also moving for a new trial
2 nisi remittitur on grounds of excessive verdict and that's
3 where you play a role.

4 THE COURT: That would be tied to your, your motion for a
5 new trial?

6 MR. BENDER: That's correct.

7 THE COURT: I'm saying same arguments.

8 MR. BENDER: Yes.

9 THE COURT: I would imagine precisely.

10 MR. BENDER: The only difference would be your role in
11 that as the thirteenth juror to set aside or reduce the
12 verdict.

13 THE COURT: Mr. Stevens?

14 MR. STEVENS: Your Honor, the Court in considering motion
15 for nonsuit and also for a directed verdict still has to
16 determine based upon this elevated proof, clear and
17 convincing, is there any evidence before the Court by way of
18 testimony that would convince you from taking it away from the
19 jury. There was evidence in the Plaintiff's case, if you
20 recall, that was an email showing the reporter's state of
21 mind. There was the expert who testified that based upon his
22 examination of all the documents showed that the state of mind
23 of David Wren was that he knew it was false or he printed it
24 with a reckless disregard. Also the Court had to take into
25 consideration that at the time he wrote the first defamatory

1 article on May the 23rd, he had already written the article
2 the previous week and he was in the email asking, as Your
3 Honor pointed out, was there -- why is everybody bending over
4 backwards to protect Mark Kelley in his setting up the meeting
5 and delivering the campaign contributions. He wasn't saying
6 anything about -- it seems he was saying he did it. Why are
7 they bending over backwards to protect that, so it shows his
8 state of mind.

9 THE COURT: Let me get clear on one thing, Mr. Stevens,
10 and I've thought about this over the weekend and correct me if
11 I'm wrong, but my understanding is the way this thing
12 developed was that Mr. Wren contacted Representative Tracy
13 Edge?

14 MR. STEVENS: Correct.

15 THE COURT: And asked about generally, generally I think,
16 about campaign contributions emanating out of or allegedly
17 coming from the Myrtle Beach Chamber of Commerce and Mr. Edge
18 referred him to some other person ---

19 MR. STEVENS: Trey Walker.

20 THE COURT: Trey Walker. And said he would know all
21 about it and then Mr. Walker said I know nothing about it.

22 MR. STEVENS: Said I don't know what you're talking
23 about.

24 THE COURT: And that was the basis of it; is that
25 correct?

1 MR. STEVENS: Yeah, and that's when he wrote the email
2 saying, he says he don't know anything about it, Mr. Edge, and
3 in fact he's calling you a liar, which gave ---

4 THE COURT: He just said to ask Mr. Kelley about it.

5 MR. STEVENS: And as a matter of fact, there was an email
6 to, I believe, Tim Pearson and Tim Pearson says, Well, why
7 don't you ask Mark Kelley? And, you know, the only thing, if
8 you recall, the expert testimony was if you're gonna accuse
9 somebody of a crime, you need to do more than call them and
10 leave a message. You need to do the things that actually --
11 David Wren, in fact, did, after all the articles, he wrote a
12 letter to the Chamber of Commerce President in July and -- a
13 very long letter, it was in evidence -- and the President
14 answered it fully. Nothing came out of it about Mark Kelley
15 at all. But it boils down to this, one of the things that we
16 keep forgetting when the evidence comes in is just because the
17 evidence is in and the Defendant says I didn't mean that, the
18 Jury still has to gauge his credibility. Do they believe him?
19 Credibility is one of the kingpins of every trial. It, it,
20 you've got to give the Jury the opportunity to gauge the
21 credibility. The Court can't do that. The Court looks at the
22 evidence that you have and if there is no basis upon which the
23 Jury can return a verdict, then you grant non-suit or a
24 directed verdict, but there was a plethora of evidence in the
25 Plaintiff's case. We, we talked about the understanding of

1 all the legislators who read it. We had other people come in.
2 They, they testified as to how they understood that particular
3 statement. So, the question then becomes is David Wren's
4 characterization of his own article believable? We introduced
5 evidence of the articles that he wrote using the term, along
6 with, where he wrote about Brunty and where he said Brunty
7 along with his partner was arrested or tried. And there's
8 two people it's referring to. The one about the Anderson's
9 wife and her sister moving together to Horry County and I
10 asked him how many and it was two. The, the evidence was
11 overwhelming showing what David Wren meant and what was going
12 on in his mind when he was trying to print these articles and
13 the, one of the main questions was did he confirm sources? He
14 had sources, but the sources were telling him exactly opposite
15 of what he wrote. Also the editor didn't check the sources.
16 She didn't ask him about it. So, all we getting down to here
17 is was there a question of fact? Your Honor was the
18 gatekeeper in looking at was there clear and convincing
19 evidence at the nonsuit stage and at the directed verdict
20 stage and there was clear and convincing evidence. We had, we
21 had clear evidence of what the reporter was thinking about
22 when he wrote these articles and I think probably in this
23 situation, the Jury looked at what he wrote and listened to
24 what he was saying at trial. When you think about it, that
25 was the only defense he could take, that I didn't mean what I

1 said. And now after the fact and after he's done the damage,
2 he comes into court and he tries to alter the English
3 language. I think the Jury saw through that and it was their
4 -- it was their job to determine the credibility of the
5 witnesses. So, I believe that everything that Mr. Bender has
6 asked that you do in his brief, you did. You, you, you put
7 the burden on us. You put clear and convincing evidence as to
8 all elements of the trial, all elements of the tort, the Jury
9 could've looked at any one or more or altogether of all the
10 articles and arrived at a verdict. So, the issue is here is
11 wasn't a separation between the articles. So, we believe that
12 the, the Court looked at it properly. As to the judgment NOV,
13 I think it's the same type of test. Was there, was there some
14 ground to set it aside and I don't believe there is any
15 ground. I'll wait on the amount of damages when he argues
16 that or do you want me to go forward.

17 THE COURT: Well, we will do the punitive review if
18 necessary after we get through the new trial nisi and the JNOV
19 analysis. Okay?

20 MR. STEVENS: Okay. As to actual damages, if you aren't
21 charged not only loss of income, you charged with loss of
22 reputation, damage to the reputation; there's evidence of
23 that. You charged damage for emotional distress, damages for
24 being shunned -- and there was ample testimony that he was
25 shunned by the legislators. Alan Clemmons said he was toxic.

1 He, he lost his ability before the legislators, them thinking
2 that when they went to him and asked him the opinion, he'd
3 give both sides of the case. That of course, the articles
4 they said that made them very concerned about being see with
5 him because the allegation was that he was handing campaign
6 contributions to a gubernatorial candidate and they didn't
7 want anybody to think that they were over there being with a
8 candidate too -- I mean with a lobbyist, too. So and proof
9 like, like we said, as it deals with not only the news media,
10 but also what people see and perception is reality as you look
11 at that. And, and in determining the damages, the courts have
12 said there, there are intangible damages such as loss of
13 reputation and emotional stress, being shunned, I can't even
14 think of all the other elements, but those are intangible
15 damages, which the Jury in its good conscious and sense can
16 apply to, to the facts and arrive at a verdict, which we think
17 as well within reason. What is a man's reputation worth
18 especially where his reputation is the linchpin of his whole
19 occupation. If he loses his reputation; he loses his
20 effectiveness as a lobbyist. So, we believe that the Jury
21 could have awarded \$400,000 just as to his reputation. And,
22 Your Honor charged the Jury that they could assert any damages
23 which may result into the future and I, he's still a lobbyist
24 and is going to be as long as he can work effectively in the
25 legislature. We just believe there is no evidence to show

1 that the verdict was indicative of caprice, passion or undue
2 prejudice. So and, and the punitive damages were even less
3 than actual.

4 THE COURT: All right, Mr. Bender, I'll let you respond.

5 MR. BENDER: Thank you, Your Honor. It's interesting for
6 a toxic lobbyist that his client, Coastal Carolina's
7 President, testified he had a terrific year and he gave him an
8 \$18,000 raise. That's toxicity that a lot of people would
9 like to have, I think.

10 Bose, I think addresses this question convincingly as
11 does Elder v. Gaffney Ledger. But for Bose talking about the
12 role of the Court, the question of whether the evidence in the
13 record in a defamation case is of the convincing clarity
14 required to strip the utterance of First Amendment protection
15 is not merely a question for the trier of fact. Judges, as
16 expositors of the Constitution, must independently decide
17 whether the evidence in the record is sufficient to cross the
18 constitutional threshold that bars the entry of any judgment
19 that is not supported by clear and convincing proof of actual
20 malice. The reason that the Supreme Court of the United
21 States has raised this bar high is that if juries are allowed
22 to award damages that appear to punish speech that is
23 unpopular, that's gonna leave the self-censorship, that's
24 going to diminish the role of free expression in our society
25 and that's the protection the Court has intended by its clear

1 and convincing evidence standard. I think there was certainly
2 evidence, but I don't think it rises to the level of clear and
3 convincing and I'm, I continue to be of the mind that the
4 testimony by the expert was solely to introduce negligence
5 into the standard and as the Supreme Court of South Carolina
6 and the Supreme Court of the United States has said
7 repeatedly, even departure from, accept even a dramatic
8 departure from accepted standards of journalism are not
9 evidence of actual malice and when that Jury hears that expert
10 say this is what the journalist should've done, this is what
11 he should've known, that's negligence, that's not actual
12 malice. And I think that gave the jury a much lower
13 threshold.

14 As to the meaning, I think that the question is, what did
15 David Wren mean, and if you compare that to what was published
16 with what he meant, then asking these questions is entirely
17 consistent with his belief that he had no evidence. If he had
18 had evidence, he said I would have said and.

19 Now, let's talk about perception as reality. What's the
20 perception? We have thirty-some odd articles dealing with
21 questionable campaign contributions. The Chamber of Commerce
22 has denied having any involvement in that and then the
23 President comes back and acknowledges, yes, I did go to a
24 lunch and I was there with Mark Kelley, Gresham Barrett and a
25 campaign worker and \$84,000 changed hands. Well, what's the

1 perception there? That the role of the lobbyist somehow was
2 related to this campaign event. Would there have been
3 suspicion of the lobbyist? Was the lobbyist doing anything
4 illegal? And the publications answered that question. The
5 contributions were not illegal. Mark Kelley's presence at the
6 table was not illegal. So, it doesn't make any difference
7 what the interpretation might be of Brad Dean, along with
8 Chamber lobbyist Mark Kelley, did, the publications made it
9 clear that there was nothing illegal. Had Kelley done
10 something different and there was no proof, there was no
11 publication that Kelley did anything differently than sit at
12 the table and sitting at the table is okay, you can't make the
13 leap from along with accuses him of a crime when the
14 publication said he doesn't -- did nothing illegal. So, under
15 that circumstance, I don't see how there could possibly be
16 clear and convincing evidence that David Wren meant to say
17 that Mark Kelley participated in the delivery of the
18 contribution and that David Wren knew at the time he wrote
19 that, that it was false. Looking at the publications
20 themselves, it's clear that Wren is attempting to interpret
21 for the public a circumstance where the Chamber had initially
22 denied involvement, now the Chamber is involved and there's a
23 lobbyist there. It didn't make any difference what kind of
24 lobbyist Mark Kelley was, if he were lobbyist for Coastal
25 Carolina and handed the money over, that would've been illegal

1 conduct and the publication said he did nothing illegal and
2 quoted the expert on that. So, I think that applying the
3 clear and convincing standard, there was inadequate proof to
4 give this case to the Jury, particularly with the injection of
5 ---

6 THE COURT: I'm keenly aware of the Court's treatment of
7 the First Amendment. I can appreciate the necessity of, of
8 open debate, fair comment, free speech. There is no question
9 that that is an important right, constitutional right and that
10 there must be protection for those who provide information on
11 matters of general interest to us. There's no question about
12 that but that is why we have a heightened standard. I made a
13 determination at the beginning of this trial that Mr. Kelley
14 was a public figure, thereby embracing the heightened
15 standards as set forth by our Supreme Court in these matters.
16 That standard is a standard of clear and convincing evidence.
17 It also interjects -- my finding that he was a public figure
18 interjects into the traditional libel case the requirement
19 that there also must be a unanimous finding by the finder of
20 facts, the Jury, of actual malice. That is that he knew what
21 he was printing was not true or that he printed it with
22 reckless disregard for its truth or falsity. And in my charge
23 I went on to impress upon the Jury that that was a conscious,
24 substantial doubt in the truth of what was being printed.
25 Now, as we progressed through this trial, the issue was what

1 was printed. Was there an allegation printed that a lobbyist
2 made or delivered a campaign contribution? The Jury made that
3 finding unanimously. That was submitted to them as a special
4 interrogatory. The question now becomes whether or not in
5 doing so the Jury violated its oath and my instructions in
6 returning this verdict. I understand that I'm the gatekeeper.
7 I have to determine whether or not, whether or not the
8 Plaintiff, in his case, has produced evidence to support a
9 finding by clear and convincing -- a finding by clear and
10 convincing standard that the publication was false and that it
11 was printed with constitutional or actual malice.

12 I looked at the evidence that was presented by the
13 Plaintiff in its case in chief and I recall not only that the
14 articles were put into the record, but there were also emails
15 exchanged between the writer and several other persons. Those
16 emails, I believe, provide clear and convincing proof of the
17 writer's intent and the existence of constitutional malice in
18 printing the matters concerning Mr. Kelley.

19 Looking at the award of actual damages, I consider the
20 testimony concerning injury to Mr. Kelley's reputation. I
21 heard from several representatives, Dr. DeCenzo, who said that
22 quite frankly, we held up his pay increases and I'm unclear
23 exactly as to what was said there. I'm unclear as to whether
24 it was \$18,000 a year or it was 18,000 over three years; I'm
25 not sure. I, I became a little bit confused in that, but

1 regardless of that, that would be a -- and the Jury may not
2 have been, but that would not have been a significant factor
3 in the award of these damages. There was testimony from Mr.
4 Kelley concerning the, how it affected him, how it affected
5 his family. I am especially concerned about Representative
6 Clemmons stating that he became toxic. As a person who must
7 be elected by the legislature, I am familiar with the role of
8 lobbyist and legislators. I have many friends in the
9 legislators -- legislature and one thing that is absolutely
10 certain in my mind is their concern about even the appearance
11 of any impropriety when it comes to a lobbyist. I've heard my
12 legislator friends mention that many, many times and I think
13 they all are always guarded in their association with
14 lobbyists in that respect. They understand how serious
15 ethical violations are.

16 I believed -- I believe that the verdict is not excessive
17 or so excessive as to be shockingly disproportionate to the
18 injuries or that the Jury acted of passion, caprice, prejudice
19 or any other consideration not found in the evidence. I
20 believe that the evidence that was presented in this case does
21 support a verdict of \$400,000. When we see verdicts in the
22 millions on libel cases, this Jury appeared to me to be very
23 conscientious. They deliberated for some four hours. I think
24 that they applied the correct standard. But I do want to
25 point that I extended the clear and convincing standard to all

1 elements for the Jury and I am aware that that was the
2 standard that they should have used and it's the standard that
3 I used in my review of this, this verdict. For those reasons,
4 I would deny the motion for a JNOV and I would deny the motion
5 for a new trial nisi and for remittitur.

6 All right. Now, do we want to go on to the review of the
7 punitive damages?

8 MR. BENDER: Yes, please Your Honor.

9 THE COURT: All right.

10 MR. STEVENS: Your Honor, he had also made a motion for a
11 new trial absolute.

12 THE COURT: And I would deny it on the same ground.

13 MR. BENDER: I thought that was included in what you just
14 said.

15 THE COURT: I did too, but I want to make sure that it
16 is.

17 MR. BENDER: I'll be happy to raise it again if you
18 haven't ruled.

19 THE COURT: I have. Okay. Now let's look at the
20 punitive award.

21 Okay.

22 MR. BENDER: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. BENDER: Punitive damage award in this case raises in
25 addition to the questions for review under the most recent

1 Supreme Court question or issues on punitive, whether or not
2 the assessment of punitive damages in a case like this against
3 the media Defendant is violative on its own of the First and
4 Fourteenth Amendment giving the Jury the opportunity to assess
5 damages without there being any particular anchor to that
6 award. Now typically, punitive damage award review talks
7 about the ratio because in most instances the punitive damages
8 are some multiple of the actual; here, they're slightly over
9 half of the actual so I don't think ratio ---

10 THE COURT: Less than one.

11 MR. BENDER: I'm sorry?

12 THE COURT: Ratio of less than one.

13 MR. BENDER: So I think the ratio is not an issue. I
14 think that if we look at the guidepost established with
15 respect to reprehensibility, which I think is the question
16 here. If you decide that there is no First and Fourteenth
17 Amendment bar to the award of punitive damages against a media
18 Defendant, what are the reprehensible standards established by
19 the South Carolina Supreme Court.

20 THE COURT: In Fortis? Is that what you were looking at,
21 Fortis?

22 MR. BENDER: Yes.

23 THE COURT: Okay. Okay.

24 MR. BENDER: Let me make sure of that, yes.

25 THE COURT: Okay.

1 MR. BENDER: I would call it Mitchell, but ---

2 THE COURT: Well I think the last one ---

3 MR. BENDER: Mitchell v. Fortis Insurance Company ---

4 THE COURT: Mitchell v. Fortis, yes, I always refer to it
5 as Fortis for whatever reason but we're talking about the same
6 case.

7 MR. BENDER: We're on the same page?

8 THE COURT: Yes, sir.

9 MR. BENDER: Was the harm physical as opposed to
10 economic?

11 THE COURT: In that regard I would say that there is very
12 little testimony considering the physical injury although Mr.
13 Kelley did indicate that he had some, certainly some emotional
14 stress as a result of it and I'll hand that to you, that it
15 points more towards the physical -- I mean the economic than
16 it does the physical.

17 MR. BENDER: As I understand the standard that cuts
18 against the award.

19 THE COURT: Yes.

20 MR. BENDER: Did the conduct of the Defendants convince
21 an indifference to or a reckless disregard for the health or
22 safety of others. I don't think there was a health or safety
23 issue here specifically this is a reputational injury. So, I
24 think that's probably an irrelevant factor.

25 THE COURT: Uh-huh (affirmative response).

1 MR. BENDER: If it's a factor at all, it probably cuts
2 against the award.

3 Did the target of Defendants' conduct have financial
4 vulnerability? I think if you look at Mitchell, the financial
5 vulnerability there was this person was denied insurance and
6 as a consequence incurred out-of-pocket medical expenses that
7 in fact threatened his life because he was HIV positive and
8 needed preventive care.

9 THE COURT: And I think he -- I don't know if you would
10 find him to be financially vulnerable or not. He was taken up
11 by a charity of some kind who provided him with the care that
12 he needed I think during his sickness.

13 MR. BENDER: But here Plaintiff did not have the
14 financial vulnerability. He remained employed at Coastal
15 Carolina, had considerable other ---

16 THE COURT: Certainly not in the sense that Mitchell did.

17 MR. BENDER: Certainly. Did the conduct involve repeated
18 actions or was the conduct isolated? It was at most four
19 publications out of a string of thirty-some odd publications
20 tracking these questionable campaign contributions and the
21 citizens group challenge to those. So, I would urge that it
22 was, it was isolated. In each instance, the publication made
23 the point that nothing illegal was done by Kelley.

24 Was the harm the result of intentional malice, trickery
25 or deceit rather than a mere accident? I think the malice is

1 being discussed there is the common law malice, hatred, ill
2 will or spite, and I think that there was no testimony that
3 David Wren had any malice in that common law sense as to Mr.
4 Kelley. Trickery, there doesn't seem to have been any
5 trickery. Deceit, there is nothing deceitful here. David
6 Wren investigated an ambiguous circumstance related to
7 questionable campaign contributions, made a judgment about how
8 to convey that to the public and did so.

9 So, what I would urge here is that any punitive damage
10 award under these circumstances would be inappropriate.

11 THE COURT: All right. All right. Do you want to
12 discuss the other Mitchell v. Fortis tests? I know you
13 discussed reprehensibility and you said ratio was not an issue
14 in your, your mind. Do you want to talk about the difference
15 between the punitive award and any civil penalties? I don't
16 think they're any that would come into play here and that
17 would not be a consideration for the Court.

18 MR. BENDER: I don't know of any. And in terms of
19 comparison, the cases that have involved punitive damage
20 awards that I'm aware of Sanders v. Prince, Elder v. Gaffney
21 Ledge, Holtzscheiter v. Thompson Newspapers were all set aside
22 on other grounds.

23 THE COURT: Okay. Let me hear from you, Mr. Stevens.

24 MR. STEVENS: As to the reprehensibility -- did I
25 understand the elements we have to consider is whether it was

1 harm as opposed to economic -- physical as opposed to
2 economic, the tortious conduct -- an indifference to or
3 reckless disregard for the health and safety of others and
4 target of the conduct had financial responsibility or
5 vulnerability, that the conduct involved repeated actions or
6 was an isolated incident, and five, the harm was a result of
7 intentional malice, trickery or deceit rather than a mere
8 accident. And as it relates to that portion, what we're
9 trying to do is we're trying to use one kind of case into, put
10 into a defamation case.

11 Emotional distress is to some extent physical. The, the
12 testimony -- and Your Honor charged the Jury that they still
13 have to, to use the same test by clear and convincing evidence
14 as to the Plaintiff's burden and clear and convincing evidence
15 as to whether it was false or whether it was reckless
16 disregard for the truth or falsity as you had in the liability
17 case. The, they can't say Mr. Kelley didn't have a financial
18 vulnerability here. The testimony was that he did lose -- the
19 President of Coastal Carolina did not give him the raises
20 that, that he was giving everybody else. He kept him there
21 for three years and at ---

22 THE COURT: And I want to tell you, Mr. Stevens, that
23 there is no question that there was financial vulnerability in
24 that it involved his occupation. I think the point that Mr.
25 Bender was trying to make was his financial vulnerability was

1 not that which we would have found in the, in the Mitchell v.
2 Fortis case where a young man was denied treatment for AIDS or
3 an AIDS infection because his insurance company refused
4 wrongfully to, to say it was covered.

5 I would agree with you that there is financial
6 vulnerability here to some extent but not to that great extent
7 that we found in, in Mitchell.

8 MR. STEVENS: The question is how much financial
9 vulnerability?

10 THE COURT: And then we look at potential fault. We must
11 consider that, the potential ---

12 MR. STEVENS: The, the conduct here also was not a single
13 act. It was over nine articles, excuse me, eight articles and
14 it lasted a pretty long time. I believe the last article was
15 in November of that year. So, it started in May and ended six
16 months later and the articles continued -- and, if you recall,
17 our fourth cause of action per quod, taking all of the
18 articles together. Did it accuse Mr. Kelley of unfitness in
19 his present trade or profession per quod. In other words, the
20 inference from all the articles together excluding the, the
21 editorial, the Jury could've found a verdict based upon that.
22 Also, the harm was a result of intentional malice, trickery,
23 deceit, rather than mere accident. These are things that the
24 Court has got to apply and in some degree, and I don't think
25 you have to apply all of them if they don't apply to the case

1 then you don't apply that. But what we're talking about here
2 is Mitchell v. Fortis and Kelley v. Sun News are two different
3 separate causes -- types of cases. Would you follow what the
4 Defendant wanted you to follow in charging the Jury on actual
5 malice, constitutional burden of actual malice by clear and
6 convincing evidence. We didn't talk about ill will anywhere
7 in the trial. We didn't talk about trickery or deceit or mere
8 accident. It wasn't an accident that he wrote what he wrote.
9 In, in the considerations that Your Honor has to give to
10 determine whether to sustain the verdict of the Jury for
11 punitive damages, you also have to look at did the Jury
12 believe that the Defendant should be punished for what they
13 did and/or to hold them up as an example to deter others from
14 doing -- engaging in the same kind of conduct, of course,
15 based upon clear and convincing standard and the actual malice
16 definition and you charged the Jury all of that. It was, it
17 was substantial burden on the part of the Plaintiff, but the
18 Jury found that there was clear and convincing evidence and we
19 believe that we don't, when you apply the standard under
20 Mitchell v. Fortis, which some of the tests don't apply, you
21 don't want to compare apples with oranges. If you applied
22 intentional malice, it would be an improper application
23 because that wouldn't be constitutional malice; it would be
24 under the private figure where you have to show ill will.

25 THE COURT: Mr. Bender?

1 MR. STEVENS: Have I answered ---

2 THE COURT: Yes, sir.

3 MR. STEVENS: Okay.

4 THE COURT: Mr. Bender, you may respond.

5 MR. BENDER: One point in terms of deterrents of similar
6 conduct in the future, that's the concern of self-censorship;
7 that's a concern of the First and Fourteenth Amendments.
8 And with respect to the duration of any particular harm, had
9 the Plaintiff or anyone on his behalf contacted the newspaper
10 after any one of the news reports that he found to be false,
11 misleading, defamatory, had there been contact, the
12 clarification would have been written. I thought that
13 testimony was in the record.

14 THE COURT: Why wasn't there a clarification written then
15 after the suit was filed.

16 MR. BENDER: I'm sorry, you said what?

17 THE COURT: Why wasn't there a clarification then made
18 after the suit was filed. I heard nothing about that.

19 MR. BENDER: Because that would have been Exhibit One.
20 If they had written a clarification, clearly they were wrong.
21 You can't ---

22 THE COURT: So, they didn't want to admit they were
23 wrong?

24 MR. BENDER: You can't write a clarification after you've
25 been sued.

1 THE COURT: Well, I don't know why? Is there a rule that
2 says you can't?

3 MR. BENDER: Because the first thing that's gonna be
4 exhibited in the Plaintiff's case is here they've admitted
5 they were wrong.

6 RULING OF THE COURT:

7 THE COURT: Okay. All right. Reading Fortis or Mitchell
8 v. Fortis -- and, of course, this is a departure to some
9 extent from the new statute we have involving the case
10 accruing after -- was it January the 1st of 2012? Our
11 legislature has attempted to set out the, the factors that we
12 should consider. I think those factors though are in keeping
13 with the prior jurisprudence. Fortis, Gamble, Gore, or
14 Mitchell not Fortis, Gamble and Gore that we have become
15 accustomed to using and I think they pretty much -- the new
16 statute pretty much follows that. I do find it significant
17 here, let me say from the outset that this award of punitive
18 damages would not be offensive to the new statute. It would
19 fall within the limits that the legislature has set, has set
20 and I understand that we're not dealing with that statute
21 because this accrued before the time that the statute took,
22 came into effect, but I, I do think that that is certainly
23 worth mentioning.

24 The Mitchell case, at least in my understanding of the
25 Mitchell case, says that we still look to Gamble for, for

1 guidance. The, the Mitchell case articulated a, a, a, a four-
2 part test or a new test for conducting post-judgment review of
3 punitive damages, but it was very clear in that decision that
4 the new analysis sort of encompassed in the first four factors
5 of a Gamble review and I think it's clear that we still have
6 to look somewhat to Gamble. Gamble said that the Court could
7 -- may consider the following, may; I don't think the Court is
8 bound by any one part of the test. The Defendant's degree of
9 culpability; two, duration of the conduct; three, the
10 Defendants' awareness or concealment; and four, the existence
11 of similar past conduct.

12 Now, in the Mitchell case, the Court said the test that
13 we give you, that is reprehensibility, ratio and comparative
14 penalty award prongs of the new test, would cover the first
15 four, but I think the remaining tests under Gamble, likelihood
16 the award will deter the Defendant or others from like
17 conduct; whether the award is reasonably related to the harm
18 likely to result from such conduct; the Defendant's ability to
19 pay; and finally, any other factors the Court deems
20 appropriate.

21 We have talked about the reprehensibility. We've sort of
22 been hung up on that. But under Mitchell in any discussion
23 that in determining the reasonableness of a particular ratio
24 of actual potential harm to a public, to a punitive damage
25 award, the Court should consider the likelihood that the award

1 would deter the Defendant from like conduct whether the award
2 is reasonably related to the harm likely to result in such
3 conduct and the Defendants' ability to pay. And I think what
4 we're doing there is we're going right back to, to Gamble and
5 the Court's interjecting under a ratio type assessment those
6 other factors. I certainly think that there is a, a,
7 connection, a nexus between this award and the likelihood that
8 it will deter the Defendant from like conduct. I think that
9 it is substantial enough that it would, but I do not believe
10 that it is unreasonably high.

11 Again, the ratio is less than one to the, to the actual
12 damages. It is, I believe, reasonably related to the harm
13 that was like -- the potential harm or harm that was likely to
14 result in such conduct. It could've resulted in a total
15 spurning of Mr. Kelley and Mr. Kelley may not have been able
16 to work again as a, as a, as a lobbyist. And, of course,
17 there was some comment made during the course -- during the
18 course of the trial about The Sun News having forty or fifty
19 thousand dollars -- forty or fifty thousand readers. It's
20 well known that The Sun News is a substantial newspaper.
21 If we go to the comparative penalty award, where comparable
22 cases are to be considered, it says that the Court may
23 consider the type of harm suffered by the Plaintiff or
24 Plaintiffs. And that is harm to one's reputation and I can't
25 think of any greater harm to one's reputation. We have a

1 history in this country of reputation being protected by
2 verdicts. The reprehensibility of the Defendants' conduct,
3 the ratio of actual or potential harm to the punitive damage
4 award and the size of the award and any other factors the
5 Court may deem appropriate.

6 Looking at this award, again, the ratio was less than
7 one. It's \$250,000 compared to a \$400,000 award of actual
8 damages. I do believe based on the evidence that I have heard
9 and the findings of this Jury, we're looking at the adequacy
10 of the award. This Jury made specific findings of malice,
11 clear and convincing proof of actual malice on the part of the
12 reporter and the paper in this case and I believe that this
13 award of \$250,000 as punitive damages is justified and I will
14 deny the motion to -- or I will find that my review indicates
15 that award of punitive damages is appropriate in this case.

16 Okay, gentlemen. Thank you.

17 MR. STEVENS: Thank you, Your Honor.

18 ADJOURNED - 12:10 P.M.

19 **(END OF DAY FIVE.)**
20
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5/21/14

FRIDAY

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80

Saturday

Partly cloudy

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FORECAST | 3C

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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

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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

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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. Bolling 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 landholding 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 626-0281.



5/8/0

Bad debt adds to donor 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.

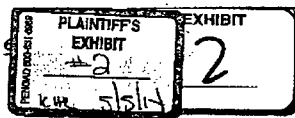
While Garden City Partners was donating thousands of dollars to politicians, it also was failing to pay a bank loan tied to the beach house, according to court documents filed earlier this month in Georgetown County.

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 take political donations instead of paying its bills.

Kelley said he also doubts whether the corporation truly is 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



CRASH

From Page 1A

remained of the Air India Express flight from Dubai to this port city. Instead, scores of burned bodies were pulled from the blackened tangle of aircraft cables, twisted metal, charred trees and mud at the crash site. Many of the dead were strapped into their seats, their bodies burned beyond recognition.

By Saturday night, rescuers

had pulled 168 bodies from the wreckage. The eight survivors were being treated in hospitals, the airline said.

Relatives of the victims, who had been waiting at the airport for the plane's arrival, stood near the wreckage weeping.

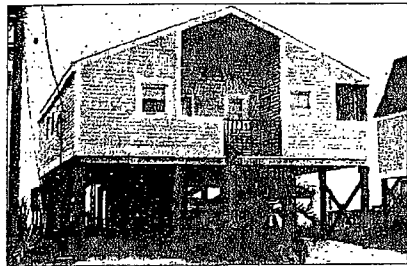
Ummar Farook Mohammed, a survivor burned on his face and hands, said it felt like a tire burst after the plane landed. "There was a loud bang, and the plane caught fire," he said.

"The plane shook with vibra-

tions and split into two," G.K. Pradeep, another survivor, told CNN-IBN television. He jumped out of the aircraft with four others into a pit, he said. Moments later, a large explosion set off a blaze that consumed the wreckage, he said.

The plane was carrying 160 passengers - all Indian - and six crew members, Air India official Anup Srivastava said. Four infants and 19 other children were among the passengers. The British pilot, who was of

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

By DAVID WREN dwren@thesunnews.com

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-

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 \$649,500 - 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

fied, because they were not permitted to speak to the media.

Civil Aviation Minister Praful Patel said that conversations with the cockpit and other records showed the flight was operating normally before the touchdown.

Indian Home Minister Palaniappan Chidambaram said the plane's pilot had more than 10,000 hours of flying experience, including 26 landings at Mangalore. The co-pilot had more than 3,750 hours of experi-

ence and 66 landings at Mangalore, he said.

External Affairs Minister S.M. Krishna said the Mangalore runway had a reputation for being difficult.

"Our worst fears have come true," he told the Press Trust of India.

The crash was the deadliest in India since the November 1996 midair collision between a Saudi airliner and a Kazakh cargo plane near New Delhi that killed 349 people.

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 \$224,500 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 Brannan, the chamber's board chairman, have insisted for months that there is no tie between the chamber and the campaign contributions. Brannan said he solicited the contributions on his own from "like-minded businessmen and women."

Brannan 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 more forthcoming about who gave 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 \$180 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

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2010-05-24

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

David Wran, dwran@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.

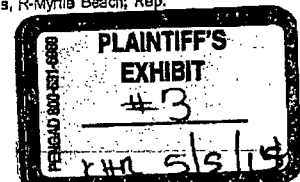
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Robert Kelley has said he suspects the contributions were payback for legislators' and council members' support of the tax.

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.



Donations tied to MB chamber blasted ⁽³⁾ Tuesday

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

By DAVID WREN
dwren@thesunnews.com

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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 Jassmore sjassmore@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

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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

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 \$84,000 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 compa-

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- Analyze
policy effects
on the
community's
long-term
health
- Hold lead-
ers account-
able to the
people

believe 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 individ-
ual 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-

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 rath-
er 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

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2010-07-15

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FBI, IRS probe Myrtle Beach campaign donations

■ MA Chamber, politicians investigated
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.

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 Talste, 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.

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."

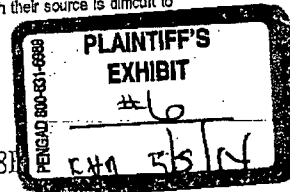
Edge and other members of Horry County's legislative delegation also received cashier's checks.

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 BOOCT, 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 corporation, 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 BOOCT 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.

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FBI, IRS probe donors

MB Chamber, politicians investigated

By DAVID WREN
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See FBI | Page 7A

FBI

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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.

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

"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 these 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 626-0281



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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 Klein, 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. Boling. Boling 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 Boling. "Want to get your head around the sources and get back to me?"

Boling 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 Boling 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.

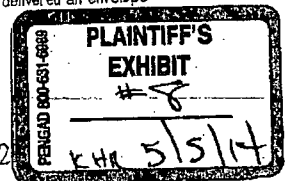
"We are not involved in that situation down there with the chamber," Plowden said. "That's the feds' show right now."

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.



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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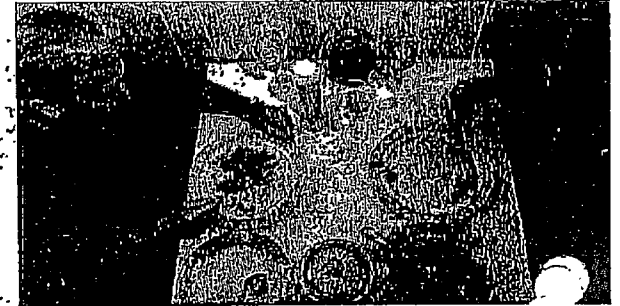


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MYRTLE BEACH, SOUTH CAROLINA | TheSunNews.com | NOVEMBER 10, 2010

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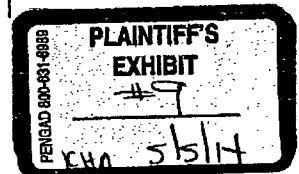
14 corporations that made \$239,500 in campaign contributions that now are the focus of criminal investigations by the FBI and the Internal Revenue Service.

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



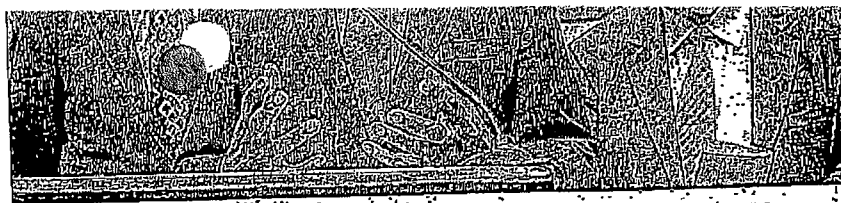
oil men to join me in opposition. In the end, I think that Starnes realized it was going nowhere and withdrew her re-zoning application," he wrote.

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 Merkley (left) and Rep. John Spratt introduce legislation March 10 in Washington.

the facility's name. But is job to consider, 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 \$8,500 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 guaranties 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 campaign contributions given to Barrett Council incumbents state legislators in t after the court me

legislators p a- lowed a 1 p it s crease in Myr e Ber

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

The tax is expect ate up to \$18 million er the 10-year l legislation.

Contact DAVID W 626-0281

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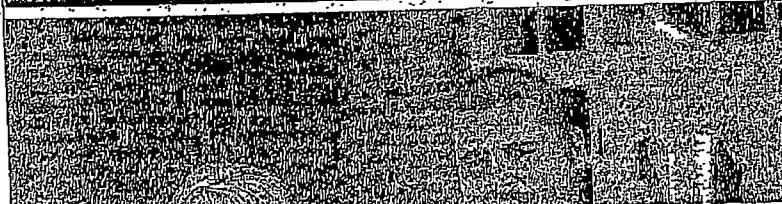
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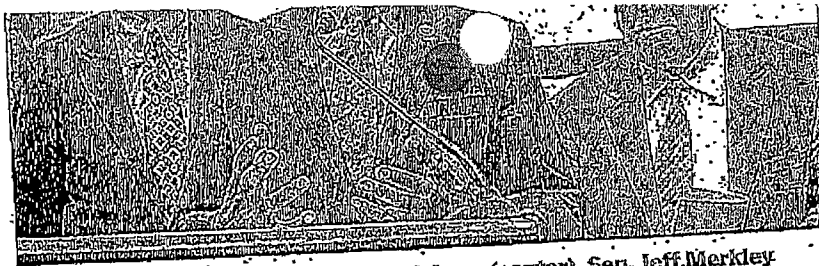
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attention and made their Council request before the council again, he in opposition, I think it was withdrawn," he said.

been a top priority County is trying to its 16 plants

the same rezoning request before the council again, 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 Merkey (left) and Rep. John Spratt introduce legislation March 10 in Washington.

members aren't really expecting any one to come forward with \$1 million for the facility name.

But it's his job to consider any proposals, he said, and in this case at least try to gauge if Conway residents' want to make the deal.

"I ain't going to sneeze at \$1 million," he said.

Contact STEVE JONES at 444-1765.

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Most of that money goes to the chamber of commerce for advertising. The city gets about 20 percent of the funds for property tax breaks and tourism infrastructure projects.

The tax is expected to generate up to \$18 million per year over the 10-year life of the legislation.

Contact DAVID WREN at 626-0281.

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Re: Fw: Brad Dean Luncheon

Tim Pearson <tpearson@gmail.com>
 Reply-To: tpearson@gmail.com
 To: "Wren, David" <dwren@thesunnews.com>

Wren, David <dwren@thesunnews.com>

Mon, Jul 19, 2010 at 5:49 PM

Not really my call, but pushed Stokes on it some. Let me know if you don't hear from him in the near future.

Tim

Sent from my Verizon Wireless BlackBerry

From: "Wren, David" <dwren@thesunnews.com>
 Date: Mon, 19 Jul 2010 17:11:20 -0400
 To: Tim Pearson <tpearson@gmail.com>
 Subject: RE: Fw: Brad Dean Luncheon

Tim,

I'm hoping to use those e-mails now that the primary is over and Barrett is out of the picture. Wanted to check with you, though. We will, of course, not identify the source of the e-mails or say how we obtained them.

Thanks,

David

From: tpearson@gmail.com [mailto:tpearson@gmail.com] On Behalf Of Tim Pearson
 Sent: Thursday, May 20, 2010 9:02 AM
 To: Wren, David
 Subject: Re: Fw: Brad Dean Luncheon

maybe go ask gresham directly who gave him the money:
http://www.ksenews.com/scp/news/politics/local_govt_politics/article/gresham_barrett_to_make_major_announcement_in_myrtle_beach_thursday/160109/

On Wed, May 19, 2010 at 9:06 PM, Wren, David <dwren@thesunnews.com> wrote:

Great. Thanks. I'll be in touch later this week.

David

From: tpearson@gmail.com on behalf of Tim Pearson
 Sent: Wed 5/19/2010 9:02 PM
 To: Wren, David
 Subject: Fwd: Fw: Brad Dean Luncheon

Luncheon details - from Barrett's schedule email. Darryl Broome is Barrett's Chief of Staff in Congress, Natalie his wife (sorry to point out the obvious), Lybans67 is Luke Byars, who is Barrett's campaign manager.

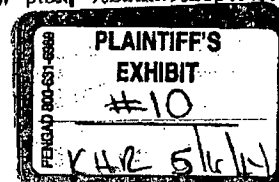
----- Forwarded Message -----
 From: "Barrett, J. Gresham" <bulldog1@mail.house.gov>
 To: "Broome, Darryl" <Darryl.Broome@mail.house.gov>; "Barrett, Natalie" <Natalie.Barrett@mail.house.gov>; Justin E. Stokes <justinc06@yahoo.com>; lbyars67@aol.com
 Sent: Monday, June 15, 2009 3:39:57 PM
 Subject: Brad Dean Luncheon

When: Saturday, June 20, 2009 1:00 PM-2:00 PM (GMT-05:00) Eastern Time (US & Canada).

Where: Sid and Roy's (Market Commons)

Note: The GMT offset above does not reflect daylight saving time adjustments.

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22tim%20pearson...> 6/6/2012





Wren, David <dwen@thesunnews.com>

Fwd: Fw: FW: Questionable donatons

Tim Pearson <tim@nklhaley.com>
 To: "Wren, David" <dwen@thesunnews.com>

Wed, May 19, 2010 at 8:11 PM

Another ...

----- Forwarded Message -----

From: Justin E. Stokes <justinc06@yahoo.com>
 To: TompkinsJW@aol.com; bj@greshambarrett.com; heath@scott-howell.com
 Sent: Wed, October 14, 2009 3:58:54 PM
 Subject: Re: FW: Questionable donatons

Talk to Mark Kelley. He would be familiar with these contributions and the connection.

From: "TompkinsJW@aol.com" <TompkinsJW@aol.com>
 To: bj@greshambarrett.com; justinc06@yahoo.com; heath@scott-howell.com
 Sent: Wed, October 14, 2009 3:51:37 PM

Subject: Re: FW: Questionable donatons

All appear to be beach developers. Cannot figure what the issue would be. Try Mark Kelley, our Horry expert or perhaps Allan Clemmons.

In a message dated 10/14/2009 3:53:24 P.M. Eastern Daylight Time, bj@greshambarrett.com writes:

Yes they are. I've asked davenport what the issue may be. Waiting to hear back.

From: TompkinsJW@aol.com [mailto:TompkinsJW@aol.com]
 Sent: Wednesday, October 14, 2009 3:47 PM
 To: bj@greshambarrett.com; justinc06@yahoo.com; heath@scott-howell.com
 Subject: Re: FW: Questionable donatons

are these to Barrett? If so, what would the issue be?

In a message dated 10/14/2009 3:48:56 P.M. Eastern Daylight Time, bj@greshambarrett.com writes:

Pls see below.

From: Davenport, Jim [mailto:jimdavenport@ed.org]
 Sent: Wednesday, October 14, 2009 3:45 PM
 To: bj@greshambarrett.com
 Subject: Questionable donatons

There may be an issue with these donations. Want to get your head around the sources and get back to me?

905 Polo Partners LLC	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
AM & RD Title Agency	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Back Gate LLC	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Beach Paralegal	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
CF Plantation Partners LLC	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Creek View Land Partners LLC	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Dekore Land Partners LLC	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Office Park Partners	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Partners of Cypress Plantation LLC	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Porcher Partners	1298 Professional Dr	Myrtle Beach SC	29577	3500	6/22/2009
Carter Studios Inc.	153 Long Ridge Dr	Murrells Inlet SC	29578	3500	6/22/2009

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22mark%20kelley...> 6/6/2012

Heather C. Carter	153 Long Ridge Dr.	Murrels Inlet	SC	29576	Business Owner	3500	6/22/2009
Jonathan H. Carter	153 Long Ridge Dr.	Murrels Inlet	SC	29576	Business Owner	3500	6/22/2009
Miller Direct Inc.	4421 Stuart Andrew Blvd., Ste. 605	Charlotte	NC	28217		3500	6/22/2009
Vista Media	4421 Stuart Andrew Blvd., Ste. 605	Charlotte	NC	28217		3500	6/22/2009
Caroline Coast Investments	4605 Cleander Dr.	Myrtle Beach	SC	29578		3500	6/22/2009
Guyton Family Investments LLC	4605 Cleander Dr.	Myrtle Beach	SC	29578		3500	6/22/2009
AMRD Real Estate	57 Bayberry Lane	Myrtle Beach	SC	29572		3500	6/22/2009
Martin Lee Enterprise LLC	7588 Enterprise Rd.	Myrtle Beach	SC	29588		3500	6/22/2009
Palmetto Advocacy Consultants LLC	7588 Enterprise Rd.	Myrtle Beach	SC	29588		3500	6/22/2009
Robert S. Guyton	8502 Lake Dr.	Myrtle Beach	SC	29572	Attorney	3500	6/22/2009

AP Associated Press

Jim Davenport
The Associated Press
Statehouse-Columbia
803-254-7870
803-917-9562
803-799-5510 (Columbia bureau)

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(17P_04_02XG)
web: dcd5895c4237a441010c4a7a7a14324



RE: Barrett

Wren, David <DWREN@thesunnews.com>
To: "Justin E. Stokes" <justinsc06@yahoo.com>

Wren, David <dwren@thesunnews.com>

Mon, Jul 12, 2010 at 6:54 PM

Thanks. These are the e-mails I was interested in:

XXXXXXXX

From: Justin E. Stokes <justinsc06@yahoo.com>

To: TompkinsJW@aol.com; bj@greshambarrett.com; heath@scott-howell.com
Sent: Wed, October 14, 2009 3:58:54 PM
Subject: Re: FW: Questionable donations

Talk to Mark Kelley. He would be familiar with these contributions and the connection.

From: "TompkinsJW@aol.com" <TompkinsJW@aol.com>
To: bj@greshambarrett.com; justinsc06@yahoo.com; heath@scott-howell.com
Sent: Wed, October 14, 2009 3:51:37 PM

Subject: Re: FW: Questionable donations

All appear to be beach developers. Cannot figure what the issue would be. Try Mark Kelley... our Henry expert or perhaps Alan Clemmons.

In a message dated 10/14/2009 3:53:24 P.M. Eastern Daylight Time, bj@greshambarrett.com writes:
Yes they are. I've asked developer what the issue may be. Waiting to hear back.

From: Justin E. Stokes <justinsc06@yahoo.com>
To: TompkinsJW@aol.com; bj@greshambarrett.com; heath@scott-howell.com
Sent: Wed, October 14, 2009 3:57:44 PM
Subject: Re: FW: Questionable donations

These are all from last quarter. These guys are tied to the Myrtle Beach Chamber of Commerce. Brad Dean, the Chamber President, worked behind the scenes to pull these together last quarter.

From: "TompkinsJW@aol.com" <TompkinsJW@aol.com>
To: bj@greshambarrett.com; justinsc06@yahoo.com; heath@scott-howell.com
Sent: Wed, October 14, 2009 3:46:33 PM

Subject: Re: FW: Questionable donations

are these to Barrett? If so, what would the issue be?

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22mark%20kelley...> 6/6/2012

In a message dated 10/14/2009 3:48:56 P.M. Eastern Daylight Time, b.j@grashambarrett.com writes:
 I'm see below

From: Davenport, Jim (mailto:jdavenport@ap.org)
 Sent: Wednesday, October 14, 2009 3:45 PM
 To: b.j@grashambarrett.com
 Subject: Questionable donations

There may be an issue with these donations. Want to get your head around the sources and get back to me?

905 Polo Partners LLC	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
AM & RD Title Agency	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Back Gate LLC	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Beach Paralegal	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
CF Plantation Partners LLC	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Creek View Land Partners LLC	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Deluxe Land Partners LLC	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Office Park Partners	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Partners of Cypress Plantation LLC	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Porcher Partners	1298 Professional Dr.	Myrtle Beach SC	29577	3500	6/22/2009
Carter Studios Inc.	153 Long Ridge Dr.	Murrells Inlet SC	29576	3500	6/22/2009
Heather C. Carter	153 Long Ridge Dr.	Murrells Inlet SC	29576 Business Owner	3500	6/22/2009
Jonathan H. Carter	153 Long Ridge Dr.	Murrells Inlet SC	29576 Business Owner	3500	6/22/2009
Miller Direct Inc.	4421 Stuart Andrew Blvd., Ste. 605	Charlotte NC	28217	3500	6/22/2009
Vista Media	4421 Stuart Andrew Blvd., Ste. 605	Charlotte NC	28217	3500	6/22/2009
Carolina Coast Investments	4605 Oleander Dr.	Myrtle Beach SC	29578	3500	6/22/2009
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Palmetto Advocacy Consultants LLC	7588 Enterprise Rd.	Myrtle Beach SC	29588	3500	6/22/2009
Robert S. Guyton	9502 Lake Dr.	Myrtle Beach SC	29572 Attorney	3500	6/22/2009

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22mark%20kelley...> 6/6/2012

Jim Davenport
The Associated Press
Sinehouse-Columbia
803-254 7670
803-917-9562
803-799 5510 (Columbia bureau)

From: Justin E. Stokes [mailto:justinsc06@yahoo.com]
Sent: Monday, July 12, 2010 5:14 PM
To: Wren, David
Subject: Re: Barrett

Let me think on it overnight - if that works. I'm beginning a new job in two weeks, which may put me in a position to not get pulled in. Which emails do you need to use?

Justin E. Stokes

From: "Wren, David" <dawren@thesunnews.com>
To: justinsc06@yahoo.com
Sent: Mon, July 12, 2010 9:45:33 AM
Subject: RE: Barrett

Justin,
Very understanding of how that primary is more valuable to me. I'll get that and use the e-mail regarding that. I'll be sure to keep you
Thanks,
David

From: Justin E. Stokes [mailto:justinsc06@yahoo.com]
Sent: Mon, July 12, 2010 9:45:33 AM
To: Wren, David
Subject: Barrett

Any help I could get for any other issues, I'd be glad to help. I'm happy to help. I'll be sure to keep you up to date on the situation.

Thanks,
Justin
Sent from my iPhone 3G

The McClatchy Company Mail - (no subject)

Page 1 of 1



Wren, David <dwren@thesunnews.com>

(no subject)

Justin E. Stokes <justinc06@yahoo.com>
To: "Wren, David" <dwren@thesunnews.com>

Thu, Jul 22, 2010 at 3:57 PM

Did you get my email earlier?

I'm fine with you using the emails as long as you don't show the actual emails to anyone and protect the source.

Thanks.

Justin E. Stokes

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22justin%20e.%20...> 6/6/2012



Wren, David <dwren@thesunnews.com>

RE: I called trey walker and he denied knowing anything about it

Wren, David <DWREN@thesunnews.com>
To: "Edge, Tracy" <Tracy.Edge@bcco.com>

Mon, May 3, 2010 at 4:09 PM

Any word back from trey or o'connor?

From: Edge, Tracy [mailto:Tracy.Edge@bcco.com]
Sent: Monday, May 03, 2010 2:51 PM
To: Wren, David
Subject: RE: I called trey walker and he denied knowing anything about it

I'm gonna call oconnor at the state and see where he is on it. My guess, and its a good one I think, is that they all think that Kelley is protected in some way by the paper. I just wanted to see how you brought me up before I call trey. This will take me some time but Richard quinn is probably the real one making this happen. If so, he will talk to you with no hesitation.

From: Wren, David <dwren@thesunnews.com>
To: Edge, Tracy
Sent: Mon May 03 14:30:13 2010
Subject: RE: I called trey walker and he denied knowing anything about it

Yeah, you told me it would be ok if I mentioned we had talked so I told him that we were talking about the checks earlier today and you had told me that Walker had some e-mails from the Barrett campaign that would show Mark Kelley distributed donations to him. I then asked him about O'Connor at The State but didn't say how I knew about him working on a story. Walker flat out denied knowing anything about anything. Basically called you a liar. Now I'm really confused. I know campaign managers have little or no ethics, but to flat out lie about something that eventually will be shown to be true isn't going to help him.

From: Edge, Tracy [mailto:Tracy.Edge@bcco.com]
Sent: Monday, May 03, 2010 2:26 PM
To: Wren, David
Subject: RE: I called trey walker and he denied knowing anything about it

Did you mention me. He is calling me now. He can wait a while.

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22mark%20kelley...> 6/6/2012

From: Wren, David <dwren@thesunnews.com>

To: Edge, Tracy

Sent: Mon May 03 14:14:39 2010

Subject: I called troy walker and he denied knowing anything about it

I told him we had talked about the chamber of commerce checks and he flat out denied ever saying anything to you and I asked him if he was working with John OConnor at The State and he denied that as well. I wonder what's up?

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Wren, David <dwren@thesunnews.com>

The Sun News articles

Wren, David <DWREN@thesunnews.com>
To: justinsc06@yahoo.com, lcpearson@gmail.com

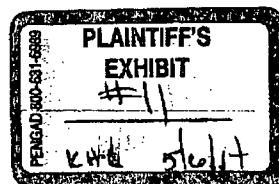
Sun, May 23, 2010 at 10:15 AM

Justin and Tim,
I wanted to pass along links to a couple of articles that have been published in The Sun News over the past few days and see if you can help me unravel this mystery a little more.
I keep hearing from several people that Katon Dawson is a key player behind the chamber of commerce donations to Barrett and others. I cannot figure out why he would be involved though. Do either of you have any insight into his involvement in this? Also, everyone seems to be bending over backward to protect Mark Kelley regarding his involvement in setting up the meeting with Barrett and handing him the money. I asked B.J. Boing if Kelley had arranged the meeting and he quickly said, "No, that would have been illegal." Then he said he had to check and see who did arrange the meeting. A little while later he called back and said it was Brad Dean.
I'm trying to piece together who raised all the money, how they were funneled through the various LLCs and why and why the chamber picked Barrett as the candidate they were going to endorse (could it be anything besides the fact that Kelley is the chamber lobbyist and a big supporter of Barrett?). Any help or insight you can give me would be appreciated. Also, if there are any e-mails or documents that show Dawson's involvement or Kelley's role in setting up the Barrett meeting would be a great help.
Thanks again. The links to the stories are below.
David

<http://www.thesunnews.com/2010/05/23/1489923/bad-debt-adds-to-donor-mystery.html?plckFindCommentKey=CommentKey:04727c81-0a7e-4a1b-815a-2007c671f9e8#none>

http://www.thesunnews.com/2010/05/21/1486805/dean-handed-over-envelope-of-84000.html#storylink=omni_popular

<https://mail.google.com/mail/u/0/?ui=2&ik=5590033f34&view=pt&q=%22mark%20kelley...> 6/6/2012



Ethics policy

Introduction

As journalists, our mission is to shine light in dark places, provide an accurate portrait of the community and tell compelling stories. Our profession was founded on the public's trust, and thus we must preserve it.

A profession that subjects people and institutions to intense and constant scrutiny must itself maintain the highest of principles. Conflicts of interest, or the appearance thereof, erode the public's trust and undermine the mission of our work.

The following code of ethics is a statement of our principles. It may not cover all situations encountered in the workplace, but it serves as a guide and a basis for discussion and further interpretation as our field evolves.

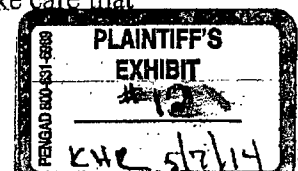
Section 1: Keeping conduct professional

-- Connections: We must never use our position at the paper to gain an advantage in commercial or personal business. We do not seek or accept special consideration from public officials, business leaders and others who are covered or may be covered by The Sun News. We must be aware of business connections and personal affiliations of immediate family members. Care should be taken to ensure such connections do not influence news coverage. We won't use our position to obtain free or discounted goods or services not available to the general public. Free-lancing: Employees of The Sun News can free-lance for organizations not in direct competition with the paper. Supervisors must be notified prior to accepting such work. While on a free-lancing assignment, employees should not represent themselves as a member of The Sun News staff. We do not use business hours or equipment and supplies of The Sun News to conduct free-lance work. Unpublished or incomplete work conducted as an employee of The Sun News may not be used for free-lancing purposes. We do not use our position at The Sun News to get out of speeding tickets or to solve personal problems. We do not use company letterhead or business cards for personal use (i.e. to make a complaint to a company.)

-- Gifts, freebies: We do not accept gifts. Doing so compromises or gives the appearance of compromising the integrity of the newspaper. There are times, however, when returning a gift isn't the best option. If declining or returning a gift would insult or embarrass the giver or if the gift is a perishable food item, give it to charity and send the giver a note explaining the paper's policy. Flowers sent to the newspaper or to an individual can be donated to a hospital or a nursing home.

-- Honorariums given to an employee for delivering a speech, for example, should be returned with an explanation of policy and a request that the giver donate it to a charity of their choice. Token, unsolicited gifts valued at \$5 or less may be accepted.

-- Image: When in the public eye, we are a reflection of The Sun News and must conduct ourselves accordingly. Behavior and appearance must be professional. Be sure to take off your work badge or identification when you're off duty, especially in social settings such as a bar. Also, our personal blogs or pages on networking sites such as myspace.com can be a reflection of us. If you are identifiable on your personal blog or site, take care that



any content is appropriate and unrelated to your work at The Sun News.

-- Information Handling: Internal information about the operations, employees, etc. of The Sun News should not be shared with members of other media organizations or the public unless management grants approval. When covering The Sun News or its employees, we report the facts in the same manner as all other subjects; no special consideration should be made, no preferential treatment should be given.

-- Meals, tickets and travel: Accepting freebies in any form can cost The Sun News its most valuable asset: credibility; therefore, as a general rule, we pay our own way.

-- Moonlighting: Additional employment outside the duties of employment at The Sun News must be approved by an editor prior to accepting such employment.

-- Relationships: Refrain from engaging in a romantic relationship with someone you work directly with, such as a source, or with someone you cover. Avoid writing or editing a story about a relative, friend, etc.

If a relationship develops with a source, notify your supervisor so a beat change can be discussed.

-- Outside Activities: We are encouraged to be involved in the community that we serve through, for example, charities and civic clubs; however, we must keep such activities separate from our job responsibilities. Never use your position at The Sun News to solicit money or services for any group. Work for political organizations is even more sensitive. Because most reporters will at some point cover an election or an elected government body, no association can exist that calls into question the objectivity of the reporter or the newspaper. When volunteering or doing work for charity, be clear upfront that your position at The Sun News is separate from your volunteer work. It may be helpful to say: "Although I work for The Sun News, this is a personal commitment I'm making to this organization. I cannot influence news coverage or advertising for the organization." Newsroom employees should not wear campaign stickers or buttons supporting a particular candidate. They should avoid other overt signs of support such as car bumper stickers or lawn signs. Employees are entitled to vote, but they must remain neutral professionally.

-- Promotion/Boosterism: The Sun News and its staff must take great care to ensure news coverage is not used as a promotional tool for goods, services or organizations.

-- Public Appearances: If invited to participate in a TV show, radio show or speaking engagement in a capacity that reflects your position at the paper, seek a supervisor's approval first. Do not make public statements on behalf of The Sun News unless authorized by management to do so.

-- Review copies: Books, compact discs, etc., send unsolicited for review by The Sun News that have not been reviewed should be donated to a charity, library or school. Materials that have been reviewed become the property of the reviewer.

Section 2: Reporting with integrity

-- Accuracy: We must strive to be completely accurate in all that we report or represent. Check and double-check the spelling of names and places, phone numbers, Internet addresses. We must never print a phone number that we have not called or a Web address we have not visited. While we do not allow sources to read stories before publication, we should verify facts with the pertinent sources. In stories involving highly technical information, we may allow the source to read our words before they go to print to ensure our presentation of the facts is correct. If erroneous information is published, immediately print a correction that accepts responsibility for the mistake and provided the correct information. See corrections for further guidelines.

-- Anonymous Sources: We do not use anonymous sources except in extraordinary cases, which must be approved by the editor or managing editor. The editor shares the reporter's obligation to protect the confidentiality of the source.

-- Community Standards: Keep in mind the general level of community sensitivity regarding all areas of news coverage. While recognizing such standards exist, never pander to them if it means compromising a story.

-- Corrections: We correct all inaccuracies immediately, whether brought to our attention by readers or sources, or whether we discover it ourselves. The corrections run on 2A and must be approved by the editor or managing editor before they are published. Each correction should include a note (that won't be published) explaining how the error occurred. We also run clarifications if in our reporting, editing or headline writing, we may have given readers the wrong impression of a person, place or event. See the corrections policy for details. All requests for a correction should be immediately forwarded to an editor. If a person calls requesting a correction, tell him or her the request will be forwarded to the appropriate person; do not promise to run a correction.

-- Fairness: We must make every effort to report all sides of every issue, no matter how mundane the subject may seem. Toward this goal, we must give each side of an issue an equal chance to speak. We must also be fair in our presentation of the issue, ensuring that both the structure and content of the story is balanced. Avoid using prejudicial terms such as "claimed" and "alleged." In the event a party is unable or unwilling to comment, we should specify that in the story.

-- Newsroom Independence: The newsroom must operate independently in news coverage decisions. We cooperate with all other divisions at The Sun News while maintaining the integrity of news coverage separate and apart from decisions made by advertisers and others who conduct business with the company. Any questions others have regarding this policy should be directed to the managing editor or editor.

-- Paying For news: We don't do it. The practice of paying for news or for access to news calls into question the validity of the news and the motives of seller and buyer.

-- Plagiarism: Plagiarism is never acceptable. All work not our own appearing in the paper, whether it originated from oral or written sources, the Internet or press releases, must be attributed. This includes work for which we have permission to cite, ideas and concepts not accepted as common knowledge, and written and visual work generated by non-Sun News staff members. The Sun News has a zero-tolerance plagiarism policy. It is acceptable to add information from wire service stories with a blanket attribution at the end. "[Name of wire service] contributed to this report." However, if the information is debated or controversial, it's helpful to attribute it where it appears in the story to give readers context. "As of Thursday afternoon, [wire service] was reporting that the death toll in Iraq had climbed to 3,000." If a local story is more than 50 percent wire information, it should not have a local byline. Instead, use a From staff and wire reports credit.

-- Privacy: In dealing with and writing about private individuals, we must always balance their right to privacy against the greater public good. Their legal and moral right to privacy is strong, and we must respect that even when their contribution to a story is desirable or necessary. We must also be sensitive to the wishes of sources who are vulnerable because their physical, mental or emotional condition. Situations requiring heightened sensitivity to privacy rights include stories involving children, people with mental disabilities and victims of tragic events.

-- Representation of self, subject: We do not use surreptitious methods of news gathering. We identify ourselves as reporters to potential sources. On rare occasions, traditional open reporting will not yield information vital to the public. In those cases, the editor or managing editor must approve the assignment, and the reporting methods used should be explained in the story.

-- Truthfulness: We are always truthful in what we report, photograph, design or otherwise represent. Overall fairness and accuracy must never be sacrificed for the sake of style, structure or drama.

Section 3: Specifics for sports, photo desks

Photo

-- Advertising: Sun News photographs are not to be used in advertisements for any organization other than The Sun News. This includes mugshots of politicians. The Sun News reserves the right to use staff photographs in house ads promoting sections of the paper and reprint sales.

-- Alteration: We do not remove objects from editorial photographs or reverse images in news photographs. Questions regarding such techniques should be directed to the photo editor.

-- Touchups, enhancements: It is acceptable to burn and dodge photos. It is also OK to remove dirt and spots from pictures. Correcting color or adding contrast is allowed as long as the image's authenticity remains intact.

--Photo illustrations: Any time the content of a photo is altered, the image should be labeled as a photo illustration. All photo illustrations should be discussed with the photo editor or the senior editor on call. Cutouts used in promos or iconically as secondary art are permitted and do not need photo illustration labels.

--Staging photographs: We do not stage or set up photographs for news stories. News photographs should document events as they occur; any manipulation of events for a photograph is misleading to readers. Portraits of story subjects are permitted, but it should be obvious to readers that the photograph is a portrait.

--Online photos: Be sure photos or mugshots taken from Web sites are not copyrighted. Get permission before using photographs or mugshots from other sites.

--Courtesy photos: We should identify the source of these photos whenever possible. (i.e. Photo courtesy of the Jones family).

--Corpses: Publication of wire and staff photographs showing dead bodies will be decided by the editor or managing editor.

--Editorial Cartoons: We do not use any software, including PhotoShop, to alter editorial cartoons. This includes removing the artist's name or the date. The cartoons may be cropped or reduced in size.

--Sale of Photographs: Reprints of photographs taken by staff members may be purchased by the public but not for the purpose of republication. Direct all inquirers and orders to the customer service department. Reprints of hand-out photographs and those taken by free-lancers are not for sale. The production editor handles all photo requests made by other media organizations.

Sports

--Freebies: Items, such as team calendars, that are available to the public and are used in reporting may be accepted. All others should be declined or given to charity.

--Free-lancing: Do not accept free-lance work for league-or team-sanctioned publications, such as media guides. This also includes work for professional, college and high-school programs and publications.

--Golf: No free golf. This goes for all newsroom staff, not just members of the sports desk.

--Judging: Judging sporting events or exhibitions could call into question the objectivity of our coverage and therefore should be avoided. Columnists judging, charitable events are permitted with okay by supervisor.

--Sources: Avoid sharing or pooling notes with members of other media organizations. If

a pooled quote is used, it should be attributed to the source from which it came.

-- Plan ahead: Eat before or after the event. Politely decline food served at sporting events. If refusing food would offend the giver, you may accept the offerings, but be sure to arrange to have The Sun News reimburse the host for the cost of the food.

-- Tickets: We do not accept free tickets to any sporting event. While press credentials do not apply to this policy, they must never be used for any purpose other than news gathering.

-- Travel: The cost of transportation supplied by sports organizations will be reimbursed by The Sun News. If the organization cannot issue a bill, estimate the cost to the best of your ability, write a check and submit the expense to the newspaper.

Credits

This code of ethics was derived from The Sun News staff discussions and other newspapers' ethics guidelines. In some instances, text was adopted in its entirety for use in The Sun News policy.

News organizations contributing to this policy include: San Jose (Calif.) Mercury News, Lincoln (Neb.) Journal Star, National Press Photographers Association, The Washington Post, Society of Professional Journalists, The Poynter Institute, The (Fort Wayne, Ind.) Journal Gazette and The Associated Press Sports Editors.

The Sun News Corrections policy

Corrections

Q. What errors require corrections?

All factual errors must be corrected. Corrections should be useful, and would not include things such as incorrect folios or promos with incorrect page numbers.

Q. When do we do clarifications?

We run clarifications in cases where our published stories leave readers confused about the facts. When in doubt, ask your editor or Carolyn.

Q. What happens after an error occurs?

The person who generated the error will write the correction and add it to the 2A story folder that includes corrections, kicks, lottery numbers for the next day. Put your name in notes along with an explanation of how it happened, and flag your editor or Carolyn so they'll know they need to edit it.

If appropriate, the reporter should call source and apologize for the error.

Q. How will corrections be written?

The correction _ written by the person responsible for the error _ is subject to an OK from Carolyn or the news editor. A correction should include a description of the story and the date and page on which the story ran. The correction should say if the error occurred in the headline, story, graphic or outline. It should state the nature of the error and provide the missing or correct information.

Examples:

Saddam Hussein's age was incorrect in a story about Iraq on Page 1A Saturday.

He is xx.

A story about the Horry County school system's end-of-year test scores on Page 1C Monday incorrectly said most students failed. Seventy percent of the system's students passed the tests.

A photo caption with a story about dogs on Page 2C Tuesday misidentified John Smith's pet dog, Fido.

Q. Should the correction repeat the error?

If possible, avoid repeating the error in the correction. There are some instances when you may need to repeat the error to make the correction clear. (i.e. A story about the Chesterfield Inn on Page 1A incorrectly listed Parkside Inn & Suites as the new owners. Parkside is leasing the property from RA & RD Investment LLC of North Myrtle Beach, which recently bought the Chesterfield Inn from Centura Bank.)

Q. Where do corrections run?

Most corrections run on Page 2A. The editor or managing editor will decide if a correction needs to run in a different place. Editorial page corrections run on the editorial page.

Q. How will we CQ names, phone numbers and e-mail addresses?

Reporters and photographers are responsible for checking name spellings, phone numbers and e-mail addresses in their work. Use the CCI notes checkmark after each unusual name and all phone numbers and e-mail addresses. The copy desk should make

sure all items are CQ'd by the reporter or photographer, and check on those items without a CQ. Copy editors should also compare all names in cutlines, stories and graphics to make sure spellings are the same. Call both the reporter and photographer or graphic artist if a discrepancy occurs.

6/23/13

The McClatchy Company Mail - FW: questions re. barrett e-mails; public funding and reports

From: Brad Dean [mailto:brad.dean@visitmyrtlebeach.com]
Sent: Friday, July 30, 2010 10:28 AM
To: Wren, David
Subject: RE: questions re. barrett e-mails; public funding and reports



David,

I'm back in the office today and reviewing your questions below; have to complete some other tasks but will have a response for you today. At first glance, I'm a little unclear on a couple of your questions — could you please clarify:

- 1) re. the "discrepancy" you suggest between the city and chamber, I do not believe there is any discrepancy. But I'm not clear on what you are referring to when you say "city's reports". Can you point me to whatever you are referring to?
- 2) re. the two-for-one program, we're happy to provide you with the requested information but it would help me to know which grant and which tax return you are referring to.

Thank you,

Brad

From: Wren, David [mailto:dwren@thesunnews.com]
Sent: Wednesday, July 28, 2010 5:38 PM
To: Brad Dean
Subject: questions re. barrett e-mails; public funding and reports

Brad,

I am working on a couple of chamber of commerce-related stories and have several questions I hope you can answer for me.

I have e-mails from Gresham Barrett's campaign staff members in which they state that you and the chamber of commerce raised the campaign donations associated with Shep Guyton's LLCs.

In one of the e-mails, dated Oct. 14, 2009, Justin Stokes — who was Barrett's deputy campaign manager — states: "These guys are tied to the Myrtle Beach Chamber of Commerce. Brad Dean, the chamber's president, worked behind the scenes to pull these together last quarter."

Why did Barrett's campaign believe that you and the chamber were raising money for his campaign?

How did the cashier's checks that you delivered to Barrett get in your possession? Did Shep Guyton deliver them to you or to the chamber of commerce?

You have previously mentioned that you were in attendance when checks were delivered to Ray Cleary. Were you in attendance when checks were delivered to any other candidates besides Barrett and Cleary? If so, which

candidates?

In another Barrett e-mail, in which his staff was trying to determine the source of the campaign donations, Warren Tompkins writes: "Try Mark Kelley, our Horry expert, or perhaps Allan Clemmons."

Stokes, in another e-mail writes: "Talk to Mark Kelley. He would be familiar with these contributions."

Why would Mark Kelley be familiar with the contributions and their funding source? Did Mark Kelley play any role in raising money for candidates or in Barrett's campaign?

Have you been interviewed by the FBI or the IRS regarding these campaign contributions?

Regarding the Tourism Development Fee and other state tourism grants:

There appears to be discrepancies in the amount of sales tax collected when comparing the chamber's public funding report with the city's reports.

The city has reported tax collections of \$9,363,734 for the period August through February.

The chamber, in its public funding report for May through March shows local funding of \$7,824,275.

The chamber is showing about \$1.5 million less in local funding than the city says it has collected. Why?

Also, an amendment to the legislation enabling the tax states that the chamber must provide a report – at least every three months – that identifies revenues received during the previous quarter and expenditures made from those revenues during the previous quarter. Those reports must be provided on the chamber's web site.

The chamber's reports, however, are an aggregate of funding and expenses since May 2009. They do not break out quarterly revenues and expenses. Why is the chamber not providing quarterly data as required by state law?

Regarding the Destination Specific Tourism Marketing Grant Program, how did the chamber raise money for the 2-for-1 matching funds? Additional donations for those matching funds do not appear to be reported on the chamber's annual tax returns.

The chamber borrowed \$5 million from Coastal Federal Bank in fiscal 07 and \$7.5 million from BB&T in fiscal 08. The chamber's tax returns indicate these loans were for "state grant funds."

Were the bank loans used to help achieve the 2-for-1 matching funds needed for the Destination Specific grants? If so, to what extent? For example, how much local money was raised from chamber members vs. the money that was borrowed from banks?

Have those two loans been repaid? If so, what funds were used to repay the money? If the loans have not been repaid, what are their balances and what funds will the chamber use to repay them?

I am working on these stories for this weekend, so it would be helpful to get responses as soon as possible.

Thanks for your help,

David Wren

Reporter

The Sun News

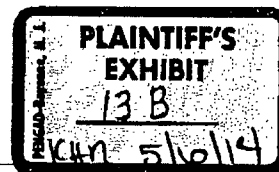
843-626-0281

6/23/13

The McClatchy Company Mail - FW: questions re. barrett e-mails; public funding and reports

Wren, David <DWREN@thesunnews.com>
To: "O'Connor, Trisha" <toconnor@thesunnews.com>

Mon, Aug 2, 2010 at 9:54 AM



From: Brad Dean [mailto:brad.dean@visitmyrtlebeach.com]
Sent: Friday, July 30, 2010 5:28 PM
To: Wren, David
Cc: Spring, Jake
Subject: RE: questions re. barrett e-mails; public funding and reports

With regards to the questions below about chamber finances and the various revenue streams, I've attached the responses to these in a word document. The simple answer is this: there are no discrepancies, we are meeting/exceeding all reporting requirements set by state law, and the credit line is used merely to account for timing differences between marketing expenditures and related revenue sources. I asked our finance staff to assist me on this, and it was easier to collaboratively answer these on a separate document. I trust these answers are sufficient but, if not, feel free to let us know if we have misinterpreted what you are trying to ask. I've copied Jake Springs on this email, as he was asking similar questions earlier this week, so perhaps he will find these answers useful, also.

Re. the emails you mention: I have not seen the emails you mention and, as such, I have no way of knowing the context of the emails nor can I know if they are authentic. If you would like to provide me with a copy of those emails, I will be pleased to review and respond accordingly. If you prefer not to provide the emails for review, perhaps you should contact one of the individuals mentioned to verify the authenticity and inquire of their impressions and insights.

Re. the other questions related to campaign checks, Mr. Guyton, Mr. Kelley, and federal agencies: According to a July 14th Sun News report, there is apparently an investigation into campaign contributions made by local businesses and as such, it is our (chamber) policy not to comment on pending legal matters based upon recent reports by The Sun News. If, at any time, you determine there is no pending legal matter, please advise and I will be pleased to answer your questions.

[Quoted text hidden]

 Sun News Questions July 30.doc
40K

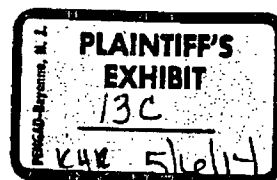
Wren, David <DWREN@thesunnews.com>
To: "O'Connor, Trisha" <toconnor@thesunnews.com>

Mon, Aug 2, 2010 at 2:31 PM

This is from today

6/23/13

The McClatchy Company Mail - FOIA request



FOIA request

7:10:00 PM

Martha Hunn <mhunn@coastal.edu>
To: "Wren, David" <dwren@thesunnews.com>

Thu, May 20, 2010 at 1:37 PM

Good afternoon David,

I have begun the process of collecting the information regarding the Nelson Mullins law firm. I will get back in touch when we've got it all together for you.

Sincerely,

Martha

Martha Hunn

Director of News and Public Affairs

Office of University Communication

Coastal Carolina University

P.O. Box 261954

Conway, SC 29528-6054

Office- 843-349-2962

Mobile- 843-251-7052

Fax- 843-349-2119

Email- mhunn@coastal.edu

www.coastal.edu

From: Edgar Dyer
Sent: Wednesday, May 19, 2010 12:52 PM
To: dwren@thesunnews.com; Martha Hunn
Subject: FW: Mark Kelley lobbying

David,

I am forwarding your request to Martha Hunn and asking her to retrieve the recently completed

-673-

6/23/13

The McClatchy Company Mail - FOIA request

contract with Nelson Mullins law firm, whom we chose to do our DC lobbying after going through the rfp process, and to forward that information to you. Nelson Mullins has offices across the state and in DC. They cover both sides of the aisle pretty well with former Ambassador David Wilkins and former Governor and Secretary of Education Dick Riley. Plus, they have a good staff with much experience on Capitol Hill. Mark Kelley was a member of the committee that selected Nelson Mullins as the best choice for us but neither Mark nor his firm responded to the rfp.

(Martha, all of the information relative to the rfp process will be in Dean Hudson's office.)

As for Mark Kelley, he is actually paid as a CCU employee, I believe. We don't have a contract with him or with KMSO, his lobbying firm in Columbia. He was put on the payroll a number of years ago and has stayed there, rather than executing a contract with his firm.

If there's any other information you need, let me know. We decided we needed a DC presence to assist us in securing funds, at least for the next few years, because of the amount of stimulus dollars and other grant monies that were coming available. We're looking at that expense as an investment. Nelson Mullins is currently trying to secure funds for us for equipment in the new Science building and to purchase a building in Litchfield Beach for our Waccamaw Neck archaeology initiative and our outreach to Sandy Island. Hopefully, we'll get both, but if they bat .500, we'll still come out way ahead.

Eddie

From: Wren, David [mailto:dwren@thesunnews.com]
Sent: Wednesday, May 19, 2010 10:34 AM
To: Edgar Dyer
Subject: Mark Kelley lobbying

Mr. Dyer,

I am trying to get some information about Coastal Carolina University's lobbying contracts with Mark Kelley. I understand the university recently chose Mr. Kelley's firm to lobby federal legislators in addition to his continuing work at the state level.

Can I get copies of Mr. Kelley's current contracts with the university as well as the names and bid amounts of other firms that competed for the federal contract?

Thanks for your help,

6/23/13

The McClatchy Company Mail - FOIA request

To: dwren@thesunnews.com

Subject: FOIA request

[Quoted text hidden]



2 attachments

Mullins Response to RFP.pdf
1072K

Nelson Mullins Law Firm Intent to Award.pdf
53K

Wren, David <DWREN@thesunnews.com>
To: Martha Hunn <mhunn@coastal.edu>

Tue, May 25, 2010 at 1:07 PM

Thanks Martha,

I was also interested in getting a copy of either Mark Kelley's contract or the contract with his lobbying firm.

I appreciate your help,

David

From: Martha Hunn [mailto:mhunn@coastal.edu]
Sent: Tuesday, May 25, 2010 12:48 PM
To: Wren, David
Subject: FW: FOIA request

[Quoted text hidden]

Martha Hunn <mhunn@coastal.edu>
To: "Wren, David" <dwren@thesunnews.com>

Wed, May 26, 2010 at 12:58 PM

Dear David,

Mark Kelley is in a temporary staff position reporting to the President. I have also confirmed that Coastal Carolina University doesn't have a contract with Mark or his lobbying firm.

Have a good day,

Martha

Martha Hunn

Director of News and Public Affairs

Office of University Communication

6/23/13

The McClatchy Company Mail - FOIA request

Coastal Carolina University
P.O. Box 261954
Conway, SC 29528-6054
Office- 843-349-2962
Mobile- 843-251-7052

Fax- 843-349-2119

Email- mhunn@coastal.edu

www.coastal.edu

From: Wren, David [mailto:dwren@thesunnews.com]
Sent: Tuesday, May 25, 2010 1:07 PM
To: Martha Hunn
Subject: RE: FOIA request

[Quoted text hidden]

Wren, David <DWREN@thesunnews.com>
To: Martha Hunn <mhunn@coastal.edu>

Wed, May 26, 2010 at 1:00 PM

Can you tell me what Mark Kelley's salary is?

From: Martha Hunn [mailto:mhunn@coastal.edu]
Sent: Wednesday, May 26, 2010 12:59 PM
To: Wren, David
Subject: RE: FOIA request

[Quoted text hidden]

Martha Hunn <mhunn@coastal.edu>
To: "Wren, David" <dwren@thesunnews.com>

Thu, May 27, 2010 at 3:01 PM

Dear David,

Mark Kelley's salary for the current temporary appointment period is \$83,875.

Martha

Martha Hunn

Director of News and Public Affairs

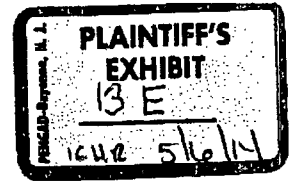
Office of University Communication

Coastal Carolina University

-676-

6/23/13

The McClatchy Company Mail - e-mails



Free to call 1-800-444-4444

e-mails

1 message

Wren, David <DWREN@thesunnews.com>
To: tim@nikkihaley.com

Thu, May 27, 2010 at 9:57 AM

Tim,

I wanted to check back with you and see if there is any way that we can use the e-mails from Barrett's campaign that seem to show the involvement of Brad Dean and Mark Kelley in raising money for Barrett and others. I can definitely protect the source of the e-mails but would say something to the effect that they came from the Barrett campaign after the AP started asking questions in October. Recent events have overshadowed the campaign funding issue and I'm looking for ways to move that story forward.

Thanks,

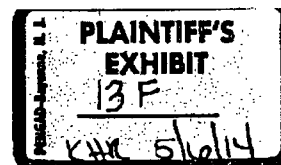
David Wren

The Sun News

843-626-0281

6/23/13

The McClatchy Company Mail - CCU lobbying



CCU lobbying

5/25/2010

Wren, David <DWREN@thesunnews.com>
To: "O'Connor, Trisha" <toconnor@thesunnews.com>

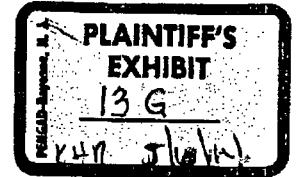
Tue, May 25, 2010 at 1:06 PM

I got the information on CCU's federal lobbying contract signed with Nelson Mullins law firm. The university is paying the firm \$120,000 per year over the next three years to lobby for federal money.

That is in addition to Mark Kelley's fee for state lobbying.

6/23/13

The McClatchy Company Mail - RE: lobbying question



RE: lobbying question

1 message

Wren, David <DWREN@thesunnews.com>
To: "Edge, Tracy" <Tracy.Edge@bccompany.com>

Wed, Mar 9, 2011 at 10:19 AM

No, might have been Dan Golden for the editorial board, though. I heard him talking to someone this morning about a bill requiring the lt gov to run on the same ticket with the gov. I think he's working on an editorial about that.

From: Edge, Tracy [mailto:Tracy.Edge@bccompany.com]
Sent: Wednesday, March 09, 2011 10:18 AM
To: Wren, David
Subject: Re: lobbying question

Did you just call me?

From: Wren, David <dwren@thesunnews.com>
To: Edge, Tracy
Sent: Wed Mar 09 09:42:00 2011
Subject: RE: lobbying question

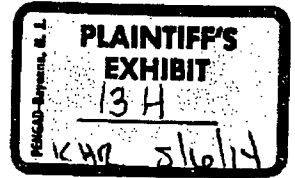
I got in touch with Cathy Hazelwood who told me lobbyists can't make contributions to state candidates but can to local candidates. So it looks like it was a legal donation, done in September so it would not show up on any reports until after the election was concluded.

From: Edge, Tracy [mailto:Tracy.Edge@bccompany.com]
Sent: Wednesday, March 09, 2011 9:26 AM
To: Wren, David
Subject: Re: lobbying question

You need any help?

6/23/13

The McClatchy Company Mail - RE: lobbying question



From: Wren, David <dwren@thesunnews.com>
To: Edge, Tracy
Sent: Wed Mar 09 08:56:17 2011
Subject: lobbying question

Tracy,

Can lobbyists make contributions to political candidates? I see Mark Kelley made a \$600 donation to John Rhodes in Sept. 2009. Is that legal? He also contributed \$500 to Marion Foxworth's campaign the previous year.

David

Confidentiality Notice

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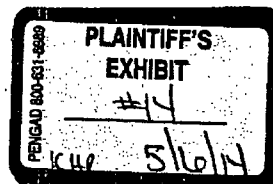
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COASTAL CAROLINA UNIVERSITY

Office of the President



REVISED

March 29, 2006

Mr. Mark S. Kelley
814 Green Bay Trail
Myrtle Beach, South Carolina 29577

Dear Mr. Kelley:

I am pleased to offer you the position of *Legislative Liaison* at Coastal Carolina University. The appointment is at a twelve-month salary of \$70,000.00, beginning April 1, 2006. The position is designated as thirty hours per week. For retirement purposes, this position is considered full-time and will earn full service credit per twelve month period.

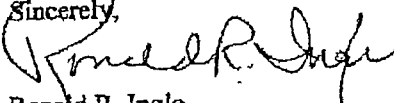
Under the South Carolina Classification System, the classification for this position is Director/Adjunct Faculty. The position is categorized as an unclassified administrative staff position. As such, it is covered by the policies for classified staff as described in the University Policies and Procedures Manual. This is the case for all matters of employment including grievance rights, reduction in force, and performance evaluations. These policies require a twelve-month probationary period for new employees in unclassified administrative staff positions.

The exception to the application of policies for classified staff to this position is in the area of salary determination. Salary adjustments for unclassified staff are treated in the same manner as for faculty and unclassified academic administrators.

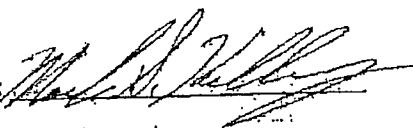
This offer is subject to any proviso enacted by the South Carolina General Assembly whether it is in effect at the time of the execution of this offer or enacted after the execution of this offer.

Please indicate your acceptance of this offer by signing this letter and returning it to us. We look forward to working with you in your new position at the University.

Sincerely,


Ronald R. Ingle
President

Offer Accepted:



Enclosure

Date:

4/03/06

cc: Janis Chesson

an affirmative action, equal opportunity institution

61900

(9)



COASTAL CAROLINA UNIVERSITY
Office of Human Resources and Equal Opportunity

June 27, 2006
Salary Information 2006/2007
Mark Stephen Kelley

Social Security Number:	052-48-1817
Classification:	Director/Adjunct Faculty
Department:	President's Office
Status:	12-Month, Full-Time
Salary as of 5/30/2006	\$70,000.00
Merit Increase	\$3,500.00
Salary After Merit Increase	\$73,500.00
Salary Effective 7/1/2006	\$73,500.00 ✓

ENTERED

AUG 28 2006

STATE

WS

D-306250 P88

(B2) ✓

Please direct any questions regarding your Salary Statement to the
Office of Human Resources and Equal Opportunity.

PO Box 261954 • Conway, SC 29528-6054 • (843) 349-2036 • Fax: (843) 349-2045 • www.coastal.edu

61900

✓



COASTAL CAROLINA UNIVERSITY

Office of Human Resources and Equal Opportunity

July 1, 2007

Salary Information 2007/2008

Mark Stephen Kelley

Classification: Director/Adjunct Faculty
Department: President's Office
Status: 12 Month; Full Time

Salary as of 6/30/2007	\$73,500.00
Merit Increase	\$2,205.00
Salary After Merit Increase	\$75,705.00
Salary Effective 7/1/2007	\$75,705.00

\$3,154.88

ENTERED

AUG 10 2007

STATE

ENTERED

JUL 03 2007

DATATEL

Please direct any questions regarding your Salary Statement to the
Office of Human Resources and Equal Opportunity.



July 1, 2008
Salary Information 2008/2009
Mark Stephen Kelley

Classification: Director/Adjunct Faculty
Department: President's Office
Status: 12 Month; Full Time

Salary as of 6/30/2008	\$75,705.00
General Increase	\$757.00
Salary After General Increase	\$76,462.00
Salary Effective 7/1/2008	\$76,462.00

\$ 3,135.92 490

ENTERED

JUL 14 2008

STATE

ENTERED

JUL 18 2008

DATATEL

Please direct any questions regarding your Salary Statement to the
Office of Human Resources and Equal Opportunity.



CAROLINA

Office of Human Resources and Equal Opportunity

REQUEST TO HIRE A TEMPORARY EMPLOYEE

New Position (attach justification Memorandum) Replacement for

Department	Account	Category
President's Office	10-6112	Executive

Start Date: 11/23/09 End Date: 11/22/10
Cannot exceed 12 months

Name: Mark S. Kelley SSN: [REDACTED]

Supervisor: David DeCenzo

Hourly Rate:

Hours per Week:

Due to budget constraints, temporary employee hours may be reduced at the discretion of the university.

Proposed Salary: \$83,875.00

Please note that this rate will be subject to review and approval to ensure University compliance.

Normal Work Schedule (Days/Times)

Times From To

Work Days:

M T W Th Fr Sa Su

OR

Days vary based on university need

Description of Work:

Legislative Liaison

Employment References Verified

Yes

No

On file

Employment reference checks are attached

Previously employed by the Department?

No

Yes

Employee may not be rehired without a 15-calendar day break in service following any 12-month period.

This section to be completed only if "Yes" is marked.

Date of first appointment:

Date most recent appointment ended:

Has the hourly rate changed?

No

Yes - If "Yes", why?

The above work cannot be performed by another employee. Funds are budgeted and available.
Signature below certifies that there is no violation of the University's nepotism policy.

Cost Center Director

[Signature]

Administrative Unit Head / Dean

Vice President / Provost / AD

Route to Office of Human Resources and Equal Opportunity

HREO Approval

Budget Approval



COASTAL CAROLINA
UNIVERSITY

PERSONNEL ACTION FORM

Form must be typed
PRINT AND SIGN

Check One:
☒ Reappointment
☐ Separation

Hire
Change
Other

Name: Kelley Mark SSN: [REDACTED] Date of ID: 3/02/00

Last First MI
Title/Rank: Legislative Liaison Dept: President's Office Effective date: 11/23/10 End date: 06/30/11

Status: Basis: HREO ONLY
Faculty 12mo Hours per week: TSRJ
Temporary Faculty 11mo Salary \$ \$50,808.92
Classified 10.5mo Hourly rate \$
☒ Temporary Staff 9mo Supervisor David DeCenzo
Other

3494.25 ppp

(check one) and COMPLETE "FROM" AND "TO" SECTION

Account number Base pay/Hourly rate Hours Basis from to

Title from to

Supervisor from to

FROM: SOURCE	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT
[REDACTED]					
[REDACTED]					

Sm/R/1
\$ 1881.94
Lpd 12-1510

TO: SOURCE	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT	FROM	TO
[REDACTED]	10	6112	5061	\$50,808.92	100.00	11/23/10	06/30/11
[REDACTED]							

Serves as Legislative Liaison. WS

For teaching faculty only: Verified by: [REDACTED] (initials) Institution

Official transcript attached: Highest degree

Satisfies 18 hour rule YES NO If 'NO' approved justification form must be attached

SIGNATURES	DATE	SIGNATURES	DATE
Department		Other required signatures	
Dean/Division		HR signature	Pat West / KS 12/7/10
Grants Approval		ALL AUTHORIZATION/SUPPORT DOCUMENTATION MUST BE ATTACHED.	

DO NOT COMPLETE THIS SECTION (HREO)

☐ HAM	☐ RELATION	RC	PN#	ST	☐ Y	☐ N
☐ WORK	☐ EPMS	MB	BD	FICA	☐ Y	☐ N
☐ UNMP	☐ STATE	DOB	LVL	FED	☐ Y	☐ N
☐ SCRS/OP Pending	☐ ORG CHART	LA DATE	EEO	WGCP	☐ Y	☐ N
☐ PPOS	☐ DIRECTORY	VET ☐ Y ☐ N	EN	JE	☐ Y	☐ N

HREO 10/02



PERSONNEL ACTION FORM

Form must be typed
PRINT AND SIGN

Check One: ☐ Hire
☒ Reappointment ☐ Change
☐ Separation ☐ Other
Send receipt to:

Name: Kelley Mark
Last First MI
Title/Rank: Legislative Liaison Dept: President's Office
Effective date: 07/01/11 End date: 06/30/12
Status: Basis: Hours per week: 83.875
Facility 12mo Salary \$ 50,808.92
Temporary Faculty 11mo
Classified 10.5mo Hourly rate \$
Temporary Staff 9mo Supervisor
Other Authorized Processor

Datatel ID# 560256

Check one and complete "FROM" and "TO" section

Account number Base pay/Hourly rate
Title from
Supervisor from

FROM:

SOURCE	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT

TO:

SOURCE	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT
	10	6112	5061	50,808.92	100.00

FROM 07/01/11 TO 06/30/12

ENTERED

Serves as legislative liaison

OCT 07 2011

For teaching faculty only:

Official transcript:

attached

on file

DATATEL

(Initials)

Highest degree:

Institution:

Satisfies 18 hour rule

YES NO

If 'NO' approved justification form must be attached.

SIGNATURES

DATE

SIGNATURES

DATE

By signing below, I certify that this transaction is not a violation of the nepotism policy.

☐ Nepotism policy does not apply

☐ Nepotism policy applies - Approved Request for Exception to the Nepotism Policy Form is attached.

Department

Other required signatures

Dean/Division

HR signature

Grants Approval

ALL AUTHORIZATION/SUPPORT DOCUMENTATION MUST BE ATTACHED.

DO NOT COMPLETE THIS SECTION (HREQ)

☐ HAM	☐ RELATION
☐ WORK	☐ EPMS
☐ UNMF	☐ STATE
☐ SCRS/CRP Pending	☐ ORG CHART
☐ SCRR/PORR	☐ DIRECTORY
☐ PPOS	

RO

MS

DOB

DATE

VET

CITY

IN

PN#

BD#

LVL

PEO

EN

FTB

(PAYROLL)

Y/N

ST

FICA

FED

WGCT

JE

HREQ 08-11



PERSONNEL ACTION FORM

Form must be typed
PRINT AND SIGN

Check One: ☐ Hire
☒ Reappointment ☐ Change
☐ Separation ☐ Other

Send receipt to: _____

2
SMS

74302 ✓

Name: Kelley Mark MI
Last First MI
Title/Rank Legislative Liaison Dept President's Office Effective date 07/01/12 End date 06/30/13
Status: Basis: Hours per week: HR50 ONLY
☐ Faculty ☐ 12mo TSRS
☐ Temporary Faculty ☐ 11mo Last pay date: 7-15-13
☐ Classified ☐ 10.5mo 8/12/14
☒ Temporary Staff ☐ 9mo Supervisor 83494.29
☐ Other _____ Authorized Processor _____

CHANGE

Check one and complete "FROM" and "TO" section
☐ Account number ☐ Base pay/Hourly rate ☐ Hours ☐ Basis from _____ to _____
☐ Title from _____ to _____
☐ Supervisor from _____ to _____

ENTERED

JUL 18 2012

DATATEL W

FROM:	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT
SOURCE					
TO:					
SOURCE					
	10	6112	5061	\$83,875.00	100.00

FROM TO
07/01/12 06/30/13

REASON

For teaching faculty only: Official transcript: ☐ attached ☐ on file Verified by: _____ (initials)
☐ Highest degree ☐ Institution
☐ Satisfies 18 hour rule ☐ YES ☐ NO If "NO" approved justification form must be attached.

SIGNATURES

By signing below, I certify that this transaction is not a violation of the nepotism policy.
☐ Nepotism policy does not apply
☐ Nepotism policy applies. Approved Request for Exception to the Nepotism Policy Form is attached.
Department _____ Other required signature _____
Dean/Division _____ HR signature _____
Grants Approval _____ ALL AUTHORIZATION/SUPPORT DOCUMENTATION MUST BE ATTACHED.

DO NOT COMPLETE THIS SECTION (HREO)

	RELATION	BD	LVL	ST	Y / N
☐ HAM	☐ RELATION	☐ BD	☐ LVL	☐ ST	☐ Y / N
☐ WORK	☐ REMS	☐ MS.	☐ LVL	☐ FICA	☐ FICA
☐ UNMP	☐ STATE	☐ DOB	☐ EEO	☐ FED	☐ FED
☐ SCRS/ORP Pending	☐ ORG CHART	☐ B9 DATE	☐ EDC	☐ WGCP	☐ WGCP
☐ SCRR/PORR	☐ DIRECTORY	☐ VET	☐ FTE	☐ JR	☐ JR
☐ PPOS					

HREO 08-11



PERSONNEL ACTION FORM

Form must be typed
PRINT AND SIGN

Check One: ☐ Hire
☒ Reappointment ☐ Change
☐ Separation ☐ Other

Send receipt to: _____

2 ms

Name: Kelley Mark MI TSRS
Last First MI
Title/Rank: Legislative Liaison Dept: President's Office Effective date: 07/01/13 End date: 06/30/14
Status: Basis: REG ONE
☐ Faculty ☐ 12mo Hours per week: 15.14
☐ Temporary Faculty ☐ 11mo Salary \$ \$99,500.00
☐ Classified ☐ 10.5mo Hourly rate \$ STVR 2014
☒ Temporary Staff ☐ 9mo Supervisor 4145.83
☐ Other _____ Authorized Processor _____

Check one and complete "FROM" and "TO" section

☐ Account number ☒ Base pay/Hourly rate ☐ Hours ☐ Basis

from 83,875.0000 to 99,500.0000

☐ Title from _____ to _____

☐ Supervisor from _____ to _____

ENTERED

FROM:

SOURCE	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT

TO:

SOURCE	FUND	ACTIVITY	OBJECT	AMOUNT/RATE	PERCENT
	10	6112	5061	\$99,500.00	100.00

DATE JUL 10 2013

DATATEL FROM 07/01/13 TO 06/30/14

REASON

TEACHING FACULTY

For teaching faculty only: Official transcript: ☐ attached ☐ on file

Verified by: _____ (Initials)

☐ Highest degree _____ ☐ Institution _____

☐ Satisfies 18 hour rule ☐ YES ☐ NO If 'NO' approved justification form must be attached.

SIGNATURES

By signing below, I certify that this transaction is not a violation of the nepotism policy.

☐ Nepotism policy does not apply

☐ Nepotism policy applies. Approved Request for Exception to the Nepotism Policy Form is attached.

Department: _____ DATE: 6/27/13

Dean/Division: _____ Other required signatures: Pat West DATE: 6/27/13

Grants Approval: _____ HR signature: _____ DATE: 6/27/13

ALL AUTHORIZATION/SUPPORT DOCUMENTATION MUST BE ATTACHED.

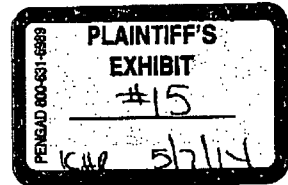
DO NOT COMPLETE THIS SECTION (HREC)

RC	MS	DOB	DATE	VET	Y	N
☐ HAM	☐ RELATION	☐ EPMS	☐ STATE	☐ ORG CHART	☐ DIRECTORY	☐ VET
☐ WORK	☐ STATE	☐ ORG CHART	☐ DIRECTORY	☐ VET	☐ Y	☐ N
☐ UNMP	☐ ORG CHART	☐ DIRECTORY	☐ VET	☐ Y	☐ N	☐ N
☐ SCRS/OPR Pending	☐ ORG CHART	☐ DIRECTORY	☐ VET	☐ Y	☐ N	☐ N
☐ SCRS/PORR	☐ ORG CHART	☐ DIRECTORY	☐ VET	☐ Y	☐ N	☐ N
☐ PPOS	☐ ORG CHART	☐ DIRECTORY	☐ VET	☐ Y	☐ N	☐ N

FNH: ☐ **BD:** ☐ **LVL:** ☐ **EQ:** ☐ **EN:** ☐ **FTE:** ☐

(PATROL) ☐ **ST** ☐ **FICA** ☐ **FED** ☐ **WCCP** ☐ **JE** ☐

HREC 08-11



From: "Wren, David" <dwren@thesunnews.com>
To: justinsc06@yahoo.com
Sent: Mon, July 12, 2010 9:45:33 AM
Subject: RE: Barrett

Justin,
Was wondering if now that the primary is over whether I can go ahead and use the e-mails regarding Brad Dean and the chamber money?
Thanks,
David

From: justinsc06@yahoo.com [mailto:justinsc06@yahoo.com]
Sent: Thu 5/20/2010 4:29 PM
To: Wren, David
Subject: Barrett

Any luck? Looking for any other emails now. But I don't think I have anything documenting. Will keep thinking how else to document he set up the meeting.

Thanks,
Justin
Sent from my Verizon Wireless BlackBerry

DICTIONARY.COM

and

Use **And** in a sentence

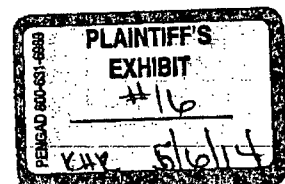
and

ænd; *unstressed* ənd, ən, *or, esp. after a homorganic consonant*, n Show
Spelled [and; *unstressed* uh nd, uh n, *or, esp. after a homorganic consonant*, n] Show
IPA

conjunction

1.

(used to connect grammatically coordinate words, phrases, or clauses)
along or together with; as well as; in addition to; besides; also;
moreover: *pens and pencils*.



World English Dictionary

and (ænd, (*unstressed*) ənd, ən)

— **conj** (preceded by *good* or *nice*)

1. along with; in addition to: *boys and girls*
2. As a consequence: *he fell down and cut his knee*
3. afterwards: *we pay the man and go through that door*
4. (intensifier): *the sauce is good and thick*
5. plus: *two and two equals four*
6. used to join identical words or phrases to give emphasis or indicate repetition or continuity: *better and better ; we ran and ran ; it rained and rained*
7. used to join two identical words or phrases to express a contrast between instances of what is named: *there are jobs and jobs*
8. *informal* used in place of *to* in infinitives after verbs such as *try*, *go*, and *come* : *try and see it my way*
9. an obsolete word for if **an** , **an'** , Informal spellings: **'n** : *and it please you*

— **n**

10. (*usually plural*) an additional matter or problem: *ifs, ands, or buts*

usage The use of *and* instead of *to* after *try* and *wait* is typical of spoken language, but should be avoided in any writing which is not informal: *We must try to prevent (not try and prevent) this happening*

Collins English Dictionary

Pioneers in dictionary publishing since 1819

and (ænd 4); unstressed ənd 4; ən 4)

Definitions

conjunction (*coordinating*)

1. along with; in addition to || boys and girls
2. as a consequence || he fell down and cut his knee
3. afterwards || we pay the man and go through that door
4. *preceded by good or nice* (intensifier) || the sauce is good and thick
5. plus || two and two equals four
6. used to join identical words or phrases to give emphasis or indicate repetition or continuity || better and

Thesaurus.com

Synonyms

conj in addition to; plus

- along with
- also
- as a consequence
- as well as
- furthermore
- including
- moreover
- together with

XFW: Gresham Wins SCGOP Straw Poll

repmkelley@aol.com

Sent: Sunday, April 25, 2010 2:30 PM

To: David DeCenzo [ddecenzo@coastal.edu]; Brad Dean [brad.dean@visitmyrtlebeach.com]; Eddie Dyer [dyer@coastal.edu]; Cynthia Elsberry; Chairman Will Garland [wgarland@sccost.net]; Dick Ward [rww1234@hotmail.com]; Charles Hinson [charles@wacclt.com]; Gary Loftus [gloftus@coastal.edu]; Curt Fredericks [cjfmyrtlebeach@aol.com]; Paul Goodrich [pdgoodrich@sprresorts.com]; Scott McNew [smcnew@ccim.net]; Adam Cates [adamcates@hotmail.com]; Mike Wooten [jmw@ddcinc.com]; John Rhodes [johnrhodes@beachballclassic.com]; Alan Clemmons [clemmons1@aol.com]; Nelson Hardwick [nelsonhardwick@sc.rr.com]; Liston Barfield [liston@sccost.net]; Billy Witherspoon [wdspoon@sccost.net]; George Hearn [ghearn@sccost.net]; Kay Loftus; Joe Woodie [jwoodie@traddcommercial.com]; Anita Floyd [af2690@aol.com]; Annette Young [ayoung48@sc.rr.com]; Doug Wendel [doug.wendel@bcccompany.com]; Brown Bethune [wbbethuneccim@sc.rr.com]

Cc: Berry Stille [bstille@rpmengineers.com]; Bill Golden [bgolden@golffoliday.com]; Coupe DeVille [edeville@sc.rr.com]

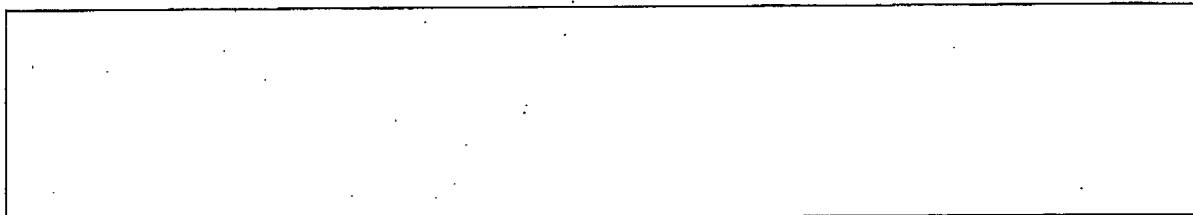
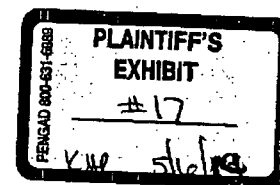
For all that have supported and those that still can and want to this is Great News!!!!
Sent via BlackBerry by AT&T

From: "Luke Byars" <act@greshambarrett.com>

Date: Sun, 25 Apr 2010 14:09:45 -0400

To: <repmkelley@aol.com>

Subject: Gresham Wins SCGOP Straw Poll



Dear Friend,

Sorry to bother you on a Sunday, but I had some great news that just couldn't wait!

Gresham took first place in the South Carolina Republican Party straw poll held at the annual Silver Elephant dinner in Columbia last night. The full results are provided below, but here's the big takeaway from Saturday night's win: with just 44 days left until the Primary, our campaign has seized the momentum and we're not letting go of it.

Republicans from every corner of the state are beginning to realize what you and I have known for quite some time - Gresham is the one candidate with the conservative credentials, character and plan to lead an economic turnaround in South Carolina.

As we head in to the homestretch, we need your help now more than ever. So today, I am asking you to do two things that will make a big difference:

1. **Volunteer** - Get involved with our campaign. We've got plenty of work that needs to be done - from making phone calls, to putting up signs to stuffing envelopes. We could really use your help. [Click here](#) to get involved or call 803.255.8095.

2. **Contribute** - Whether it's \$10, \$50 or \$100, whatever you can give today will go a long way

[clicking here.](#)

Thank you for everything you do!

Sincerely,

Luke Byars
Campaign Manager
Barrett for Governor

P.S. Here are the full straw poll results from last night's Silver Elephant dinner.

1st Place - Gresham Barrett 37%
2nd Place - Henry McMaster 34.2%
3rd Place - Nikki Haley 18.4%
4th Place - André Bauer 10.4%

P.P.S. For more about last night's straw poll, [click here to read the Post & Courier's coverage.](#)

No longer interested in receiving emails? [Unsubscribe Below.](#)

This message was sent from Luke Byars to repmkelley@aol.com. It was sent from: Gresham Barrett, P.O. Box 287, Columbia, SC 29202. You can modify/update your subscription via the link below.

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Next Story >

Conway couple in apparent murder-suicide had previous domestic problems

Myrtle Beach family feuds over estate

Published: May 22, 2011

Son accuses sibling, dad of pilfering mom's assets

By David Wren — dwren@thesunews.com

While the matriarch of one of Myrtle Beach's most influential families was dying of cancer, a son and her estranged husband were scheming to steal her money, car, jewelry, real estate holdings and other assets, according to a lawsuit filed by another son in Horry County's probate court.

The lawsuit was filed by Bert Anderson, the youngest of James and Dorothy Anderson's two children and the personal representative of his mother's estate. In it, he said his brother, Bobby, and his father started stealing his mother's assets as soon as they learned she had a terminal illness.

In court documents, James and Bobby Anderson deny any wrongdoing. They say that Dorothy Anderson willfully transferred her belongings "to preserve her estate" and "protect assets from judgment creditors upon her death."

They also say that Bert Anderson has made "fraudulent misrepresentations" to the court about their role in the asset transfers.

Bobby Anderson declined to discuss the lawsuit when contacted by telephone on two occasions last week. James Anderson declined to discuss the lawsuit when contacted at his home. Their lawyer, Robert "Shep" Guyton, did not return messages seeking comment.

At stake is millions of dollars in property and cash that Bert Anderson says belongs to his mother's estate.

Building an empire

Dorothy Anderson was born in 1933 in Conway, the sixth child in a family of 14 siblings. She married James Anderson in 1951 and moved to the beach 18 years later - along with her sister, Mary Frances Tall - when she bought a boarding house on Ninth Avenue North called the Welcome Mat.

Over the next four decades, Dorothy Anderson grew the family's hotel fortune to about a half-dozen properties with more than 2,000 rooms. Along the way, she spearheaded movements to help beautify Ocean Boulevard by burying utility lines underground and talked the City Council into backing Treasures by the Sea - a Christmas-time, nautical-themed light show that she hoped would attract more tourists to the beach during the slow winter season.

Dorothy Anderson also played a key role in local civic organizations, as a founder of the Myrtle Beach Area Hospitality Association and a board member of the Myrtle Beach Area Chamber of Commerce. In 2003, she was named the chamber's Citizen of the Year.

Although the recent real estate collapse wiped out much of the family's wealth - their flagship Poindexter resort, for example, was lost to foreclosure after being in the family for 33 years - the Andersons remain one of this area's business leaders.



When Dorothy Anderson was diagnosed with stomach cancer in May 2009, her doctor gave her just two months to live.

"The doctor asked my mom if she had any questions and she said, 'No,'" said Bert Anderson, who was with his mother when she was diagnosed. "Then the doctor said, 'Well, can I give you any advice?' My mom's answer was: 'I don't need any advice from you because you've already given up.'"

She then sought treatment at one of the nation's top cancer clinics - MD Anderson Cancer Center in Houston - and battled her disease for more than a year, keeping a hand in the family business until the final months of her life.

"She would still go by the property when she wasn't in a chemo cycle and check on things," Bert Anderson said. "She definitely knew what was going on."

It was after her diagnosis in 2009 that Bert Anderson said his father and brother "embarked upon a scheme" to take Dorothy Anderson's property and other assets, according to the lawsuit filed in November.

The lawsuit alleges that James and Bobby Anderson used deception and forgery to steal Dorothy Anderson's 50 percent interest in 11 parcels of land, with her share worth at least \$4.5 million, according to county property records. Most of the property is located between Kings Highway and Ocean Boulevard in Myrtle Beach, and two of the sites are oceanfront.

James and Bobby Anderson also tricked her into signing over stock certificates worth an estimated \$298,112 and changed the title to her Mercedes Benz automobile, according to the lawsuit.

The lawsuit also outlines an alleged scheme in which James and Bobby Anderson used back-dated documents for JBDK LLC - one of the family's corporations - to block Bert Anderson's access to a Carolina First bank account.

According to the lawsuit, James and Bobby Anderson told Dorothy Anderson that she needed to let Bobby Anderson hold her assets in his name so creditors could not take the property from her. Bert Anderson said could find no evidence that any creditors were threatening to take his mother's property.

"I was able to get a certificate [from the clerk of court] showing that as of July 27, 2010, there were no pending judgments and no judgments filed within the previous 10 years," Bert Anderson said. "That absolutely floored my mom. She realized the stuff she'd been signing away had been done through trickery."

James and Bobby Anderson said in court documents that Dorothy Anderson approved of all the property and other transfers and that Bert Anderson knew or should have known about his mother's financial problems and her desire to protect her assets from creditors after her death.

Bert Anderson "has made claims he knows or should have known to be false," according to court documents James and Bobby Anderson filed January.

Bert Anderson won a default judgment against his brother and father because they failed to file their response to his lawsuit within the time period allowed. Judge Deirdre Edmonds denied a motion by James and Bobby Anderson to set aside that default during a court hearing in March.

Money disappears

The JBDK bank account includes income from one of the Anderson family's rental management programs that is deposited each month. That money is then used to pay the mortgage on 18 condominium units the family owns at the Camelot by the Sea resort in Myrtle Beach. Whatever amount is left over was supposed to be divided equally by James and Dorothy Anderson.

Even though the money was to be split evenly, Bert Anderson's lawsuit alleges that his father and brother started siphoning funds from the bank account in the months leading up to his mother's death.

A series of checks and cashier's checks were written from the JBKD account to Anderson Properties - a corporation that is owned and controlled by James and Bobby Anderson, according to court documents.

Bert Anderson said in his lawsuit that his mother was not aware of Anderson Properties and had no involvement in that corporation.

In addition to the checks, a six-figure deposit that was supposed to go into the account in July was diverted by James and Bobby Anderson before it could be deposited, according to the lawsuit.

James and Bobby Anderson allegedly diverted more than \$483,000 from the account last year, according to Bert Anderson, court documents and bank records.

Bert Anderson said in court documents that his mother became aware that money was being diverted from the bank account and it was "the source of great anguish and worry to her during the final months of her life."

In an effort to keep her funds from being taken, Dorothy Anderson and her husband signed an agreement with Carolina First in September in which her share of the leftover monthly proceeds was to be disbursed only to her.

In her will, Dorothy Anderson designated that money to go to a trust overseen by her estate. She named Bert Anderson to be the personal representative of that estate.

In January, Bobby Anderson closed out the original JBKD account and opened a new one listing him as the corporation's managing member and the account's only signer, according to the lawsuit and bank records.

Bert Anderson alleges that his brother opened the account by using a document that had been back-dated to Feb. 20, 2009. That document purportedly transferred all of James Anderson's interests in JBKD to Bobby Anderson.

Bert Anderson said he has no idea what has happened to the money since his brother opened the new account. He said in a separate lawsuit filed this month against Carolina First that another \$1.1 million is at risk because monthly deposits exceed \$250,000 during the peak summer season.

He wants a judge to freeze the bank account until the lawsuit is resolved and appoint a receiver to take over JBKD. A hearing on those matters is scheduled for 9:30 a.m. Monday at the Horry County Courthouse in Conway.

"We're only arguing about my mom's half," Bert Anderson said, adding that his mother's share will be divided between himself and his brother. "We're saying take the other half and do whatever you want with it. Right now, though, it's 100 percent to them and nothing to me."

Mercedes dispute

Bert Anderson said in interviews and in court documents that his brother and father regularly duped Dorothy Anderson out of her money and belongings during the last year of her life.

For example, Bert Anderson said his mother decided to sell \$61,800 worth of stock she owned in Conway National Bank to his brother in order to raise money for medical bills. Dorothy Anderson transferred the stock, Bert Anderson said, but his brother never paid for it.

"There were properties that were moved out of her name" in the months leading up to her death, Bert Anderson said. "By the time she made her will it was too late. The lawyer said, 'You don't own this piece of property any more.'"

Dorothy Anderson last year had talked to a lawyer about divorcing her husband, but she died before the divorce was finalized. The divorce proceedings are continuing so her estate can claim its right to her share of the marital property.

"When she realized my father and brother were not trying to help her, that they were helping themselves and that my father was not doing anything to protect her, that's what did it," Bert Anderson said. "My mother and father had had problems in the past, but they always moved beyond it. She couldn't get past this, though."

One of the biggest family blow-ups occurred when Bobby Anderson used "coercion and threats" to get Dorothy Anderson to sign over the title to her 2005 Mercedes Benz SL500 automobile, according to the lawsuit.

"Bobby told her that they're getting ready to execute a judgment and the only way she could keep her car was to sign it over to him," Bert Anderson said. "She didn't have any judgments. She had negotiated herself out of judgments in all the real estate deals."

Emails provided to The Sun News by Bert Anderson show he and his lawyer - John Chase of Charleston - tried last year to get Guyton to intervene in a dispute over ownership of the Mercedes.

"Bobby is refusing to sign title back to mom on her car," Bert Anderson wrote to Guyton in an Aug. 23 email. "She confronted him this morning after her car was missing all weekend. She signed title to Bobby in duress in March 2010 or this spring. She was told creditors were going to come and take her car."

Chase followed up with another email to Guyton about two weeks later.

"Your clients have gone to considerable expense - several thousand dollars - to have the ignition and keys changed," Chase wrote in a Sept. 8 email to Guyton. "This does not bode well. Let me hear from you re. this at once, please."

Bert Anderson said his brother never returned the automobile.

Bert Anderson said the theft of his mother's assets was just one of her worries in the months leading up to her death. He said Dorothy Anderson also was being threatened with physical harm if she did not sign over property to James and Bobby Anderson.

In an Aug. 23 email to Guyton, Bert Anderson told the lawyer that his mother had been forced to move from her home "due to threats to her welfare."

"She felt threatened by my dad," Bert Anderson said. "Despite the oceanfront home and all the nice furnishings, she packed one bag and spent the last four months of her life in a condo at the Anderson Ocean Club."

Bert Anderson said family members also threatened him and vandalized his automobile on several occasions, including one Sunday afternoon when he brought lunch to his mother at the condo where she was living.

"I had my tires cut and am being threatened also," he told Guyton in the Aug. 23 email.

Accounts dwindle

At about the same time negotiations were taking place over the Mercedes, Chase and Bert Anderson were asking Guyton for more information about money that was allegedly missing from the JBDC bank account, according to emails provided to The Sun News.

Chase, in a Sept. 8 email to Bert Anderson, recounted a meeting he had that day with Guyton.

"He [Guyton] started off by promising me an accounting concerning the dollars taken out of the rental operating account," Chase wrote in the email. "I showed him ... the supporting documents for the debit allegations we had made. I think it concerned him very much [to] see checks written by your father and endorsed by your brother."

The accounting that Guyton promised never came, according to the emails and court documents.

Chase's frustration over what he felt was a lack of cooperation was evident in an Oct. 1 email he sent to Guyton.

"We perceive your clients to be acting in a dilatory and insincere fashion, for we have not received the accounting information ..." Chase wrote.

The emails also show that Chase and Bert Anderson were suspicious of visits James and Bobby Anderson made to see Dorothy Anderson in the hospital during her final days.

"Mom had a rough weekend and is in ICU," Bert Anderson wrote to Chase on Oct. 4, less than a week before his mother's death. "She is resting but talks in her sleep about what has been done to her. Brother and Dad have done nothing over the weekend but celebrate a wedding that she was not invited to attend. They are just continuing to do their own thing like nothing has happened."

Then, on Oct. 6 - four days before Dorothy Anderson's death on Oct. 10 - Bert Anderson told Chase in an email that his father and brother had begun to visit the hospital more often.

"Dad comes every morning and Bobby at least twice a day," he wrote.

Chase responded in an email: "I don't suppose you need me to tell you this, but I would be very suspicious about your father and brother's sudden change of heart and show of concern."

Bert Anderson said the property and asset transfers that occurred during Dorothy Anderson's final months have created a legal nightmare. He is trying to get his mother's name restored on all of her deeds and the car title.

"We can't probate the estate because of the lack of title and possession," he said. "Things move mighty slow. My brother and father have it within their power to honor her wishes and not go through this long, drawn-out process. It's frustrating."

The battle also has taken an emotional toll on the Anderson family - one that Bert Anderson thinks will never be healed.

"We haven't talked since mom's funeral," Bert Anderson said. "We've been able to put a good public face on it, but we're not a big, happy family. I don't think we ever will be."

Contact DAVID WREN at 626-0281

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Conway Couple Inmate on Murder Charge Had Previous Domestic Problems

Join The Conversation

Myrtle Beach Sun News is pleased to provide this opportunity to share information, experiences and observations about what's in the news. Some of the comments may be reprinted elsewhere in the site or in the newspaper. We encourage lively, open debate on the issues of the day, and ask that you refrain from profanity, hate speech, personal comments and remarks that are off point. Thank you for taking the time to offer your thoughts.

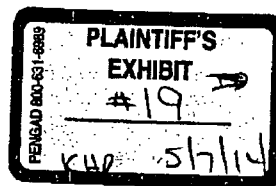
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SEP 18 2013

Weekend forecast looks fantastic for Myrtle Beach area

Federal probe of luxury car exports has Myrtle Beach area ties

Published: September 13, 2013

By David Wren — dwren@thesunnews.com

MYRTLE BEACH — A luxury automobile dealership and at least one area man have been named in a federal investigation into an alleged scheme to export high-end cars to foreign countries through the use of straw buyers, according to civil complaint filed this week in federal court in Columbia.

The complaint was filed along with warrants to seize a dozen vehicles and two bank accounts belonging to companies in Charleston and Houston that intended to export the vehicles, according to court documents. Criminal charges have not yet been filed in the case, which involves agents from the U.S. Secret Service, the State Law Enforcement Division, the Richland County Sheriff's Department and Columbia City Police.

Among those named in the complaint is Myrtle Beach Automotive, which sells BMW and Mercedes automobiles at its location on Jason Boulevard in Myrtle Beach. According to the complaint, Martin Burke — who allegedly recruited straw buyers — told investigators he was introduced to the Charleston exporters by a Myrtle Beach Automotive salesman. That salesman told Burke that he had been selling cars to the brokers through straw buyers for two years and "if you did it the right way" it would be O.K., according to the complaint.

Steve Rollins, general manager of Myrtle Beach Automotive, could not be reached for comment Friday. The complaint does not say where Burke lives.

Edward Sweet of Conway also is named in the complaint as the alleged straw buyer of a \$70,528 Porsche Cayenne from a dealership in Columbia. Sweet could not be reached for comment.

Automobile manufacturers generally prohibit the sale of cars in the U.S. to people who intend to export them for sale in another country, and there are stiff financial penalties for dealerships that knowingly sell their cars for that purpose. To get around those rules, some exporters use straw buyers — people who pretend the car is being purchased for their personal use. Exporters give the straw buyers money to purchase a vehicle and the automobile is then transferred to the exporter after the sale. Exporters typically pay each straw buyer a fee for making the purchase.

Exporters work to get around the rules because luxury cars cost much more in countries such as China — where these automobiles were headed — than in the U.S. The exporters can sell cars to foreign customers for less than it would cost to purchase the same car in that country, yet still make a profit. The scheme, which usually involves counterfeit titling of automobiles, often leads to mail fraud and wire fraud charges against the perpetrators.

Burke told investigators that he recruited Sweet to be the straw buyer for the Porsche, according to the complaint. Burke — who said he and his wife manage beach rental properties for a living — told investigators he also recruited family members to purchase eight luxury BMWs for the exporters.

According to the complaint, Burke drove Sweet to the Columbia dealership on April 13 and then left Sweet at the dealership. After the sale, federal agents followed Sweet for about a mile to a Lowe's hardware store parking lot, where Burke was waiting. About an hour later, a vehicle transport truck arrived and the driver – along with Burke and Sweet – started to load the Porsche onto the truck. Federal agents stopped the men, seized the vehicle and learned the Porsche was supposed to be taken to a port in New Jersey, according to court documents.

Alex Turkayev – owner of Charleston-based Automotive Export, one of the exporters named in the complaint – told a federal agent that a \$60,000 BMW in the U.S. would sell for about \$160,000 through a traditional car dealer in China, because of that country's high tariffs. Turkayev said salesman at several dealerships knew about the scheme and would contact him on a regular basis to let him know about new inventory, according to court documents.

In addition to the Porsche that Sweet purchased, federal agents have seized 11 luxury cars they believe are part of the export scheme, including another Porsche Cayenne, a pair of BMW X5s and eight Mercedes 350 and 450 models. Nearly \$183,000 was seized from the exporters' bank accounts.

Contact DAVID WREN at 626-0281.

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Mortgage fraud plea nets former Myrtle Beach area real estate agent one day in prison

[Next Story >](#)

Weekend forecast looks fantastic for Myrtle Beach area

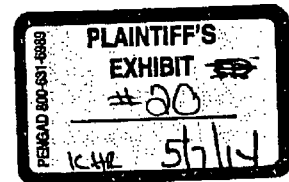
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Myrtle Beach Sun News is pleased to provide this opportunity to share information, experiences and observations about what's in the news. Some of the comments may be reprinted elsewhere in the site or in the newspaper. We encourage lively, open debate on the issues of the day, and ask that you refrain from profanity, hate speech, personal comments and remarks that are off point. Thank you for taking the time to offer your thoughts.

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Myrtle Beach "dance off" ends with broken arm, N.C. man jailed

Suspended Myrtle Beach lawyer accused of fraud, forgery

Published: March 19, 2013

By David Wren — dwren@thesunnews.com

MYRTLE BEACH — Mark Brunty, a Myrtle Beach lawyer who has been suspended from his law practice by the state Supreme Court, is accused in court documents of forging the signatures of prominent business leaders in a scheme to steal \$700,000 from a pair of out-of-state investors.

Brunty allegedly forged the names of Burroughs & Chapin Co. Inc. President Jim Apple and Alec Elmore, the vice president of First Federal Savings & Loan in Charleston, on documents used to persuade brothers Morris and Saul Kravecás to invest in phony business deals along the Grand Strand, according to a lawsuit filed in Horry County's circuit court. The brothers' investment, which was supposed to be kept in Brunty's trust account, now is missing.

"It's flat gone as far as we can tell," said Amanda Bailey, a lawyer representing the Kravecás brothers.

Brunty also is missing. Bailey said she has not been able to locate him in order to serve him with a copy of the lawsuit.

Meanwhile, reports with Better Business Bureau offices here and in other states show consumers have filed numerous complaints about a mortgage loan modification program Brunty promoted through email and telephone solicitations he made to people facing foreclosures. According to the complaints, people who responded to the emails received generic loan modification information from Brunty's law firm and a request for an advance payment of \$3,000. The complaints state that Brunty cashed clients' checks but did little work to help them save their homes.

Brunty could not be reached for comment Monday. A recording states that his telephone number is out of service and an answering machine at his law offices states the business is temporarily closed.

Mary Ann Peebles of Sacramento, Calif., is among the consumers who have filed complaints against Brunty. Peebles told The Sun News that someone from Brunty's office called her offering assistance with a mortgage modification. Peebles, a 76-year-old widow, said she sent a \$3,000 payment to Brunty's office but never received any help.

"Like a fool I fell for it because I always thought attorneys were supposed to be honest," Peebles said.

Brunty also is facing a legal malpractice lawsuit in which he is accused of having an inappropriate relationship with a client's wife. Horry County State Bank has filed a lawsuit accusing Brunty of defaulting on a \$50,000 loan and another bank this month foreclosed on Brunty's home in the Dunes Lake neighborhood. That bank obtained a \$294,031 deficiency judgment against Brunty as part of its foreclosure proceedings.

Brunty – along with business partner Dennis Dellinger, who also is named as a defendant in the Kravecas lawsuit – were supposed to keep the investors' money in a trust account but instead used the money for personal expenses, according to court documents. Morris and Saul Kravecas accuse Brunty and Dellinger of fraud, civil conspiracy and other charges. They are asking for unspecified actual and punitive damages.

Trey Deschamps – a Myrtle Beach lawyer representing Dellinger – said his client also was duped by Brunty. Dellinger trusted Brunty to handle legal aspects of the sales and keep the Kravecas brothers' money in his law firm's trust account.

"He [Dellinger] wouldn't have had any access to that money," Deschamps said. "You have an attorney, you're supposed to be able to trust him."

According to the lawsuit, the Kravecas brothers, Brunty and Dellinger formed a partnership in which Brunty and Dellinger were to identify distressed properties and loans that the Kravecas brothers could purchase. In exchange, Brunty and Dellinger would receive 20 percent of the profits from any deals they brokered.

The first deal involved a \$2.7 million loan by First Federal to a Myrtle Beach business that had defaulted on its payments. Brunty and Dellinger told the Kravecas brothers that they could purchase the loan from First Federal for \$600,000 and then resell it within 30 days for a \$150,000 profit. The Kravecas brothers wired \$600,000 to Brunty's law firm to be held in a trust account to purchase the loan. Brunty and Dellinger then sent a document titled "loan sale agreement" to the Kravecas brothers. That document purportedly had Elmore's signature on it.

When the sale failed to close on time, the lawsuit claims Brunty and Dellinger sent a document titled "extension agreement" to the Kravecas brothers. That agreement purportedly had Elmore's signature on it.

Elmore, in an affidavit included with court documents, said his signature on both documents is a forgery.

The second deal involved the purchase of two parcels in the Grande Dunes area of Myrtle Beach – one parcel with 27 ready-to-build home lots and another parcel of nearly 20 acres of undeveloped property behind the Lowe's grocery store off 82nd Parkway. The Kravecas brothers wired a \$100,000 deposit to Brunty's law firm to be held in a trust account. Brunty and Dellinger then sent two letters allegedly confirming the property sales to the Kravecas brothers. Those letters purportedly had Apple's signature on them.

The lawsuit claims that Apple's signature was forged on both letters.

Bailey said the Kravecas brothers have invested in real estate deals in the past, but not in the Myrtle Beach area. Morris Kravecas is a doctor living in the Miami area while Saul Kravecas is a retired corporate executive living in New Jersey.

Bailey said the allegations in the lawsuit didn't come to light until after the state Supreme Court suspended Brunty in November. The court's order did not specify why Brunty was suspended, although the suspension falls under rule 17-b of the state's Rules for Lawyer Disciplinary Enforcement. Rule 17-b states that "upon receipt of sufficient evidence demonstrating that a lawyer poses a substantial threat of serious harm to the public or to the administration of justice, the Supreme Court may suspend the lawyer or transfer the lawyer to incapacity inactive status."

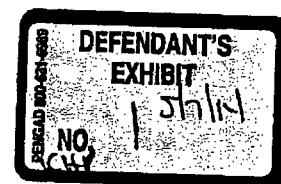
Lesley Coggiola with the state's Office of Disciplinary Counsel said the department's investigation of Brunty is ongoing and he will remain on suspension at least until it is completed. If the department finds sanctions are warranted, it can either enter into an agreement with Brunty or file charges against him for a

repmkelley@aol.com

Sent: Saturday, January 09, 2010 4:12 PM
To: Cynthia Elsberry; jriddle@do.hcs.k12.sc.us
Attachments: Index of Taxpaying Ability~1.doc (29 KB)

Please review and comment. I need any changes or additions by Monday evening. The amendment is H-3748 which will be redrafted as an amendment to H-3272.

Thanks,
Mark

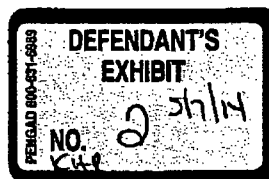


Index of Taxpaying Ability Talking Points

- This amendment allows for school districts to be able to be indexed by the same formula as they are now for purposes of funding K-12 education.
 - The amendment prevents a HUGE shift in EFA funding with no logical reason for doing so.
 - It will stop a disproportionate burden being placed on Districts with high levels of renters.
 - * Poor communities with many low income renters that can not afford to buy a home will have rents increased due to the millage assessed on 6% property.
 - * Poor districts will pay higher proportionate taxes than richer districts with high end owner occupied homes (i.e.... Lexington)
 - Exempting the 4% Taxpayers from the formula creates an Index that has neither rhyme nor reason as to the ability of a community to help in the education of their children.
 - By passing this amendment you will prevent yet another tax increase on the small businessman in districts that have a high percentage of 6% taxpayers.
 - This will allow the education community to have a better comfort level in support of business investment, especially in districts that are in the most need of jobs, because they will not be losing State revenue do to an increase in 6% property in the district.
 - This amendment will prevent an additional burden on the largest tax producing district in South Carolina. More taxes on tourism cuts into the competitive edge they and you worked so hard to gain (2 for 1, Tourism Development Fee, Beach Renourishment Funds, Highway Funds).
-
- Section 2 allows a committee similar to the TRAC committee to study and create a formula to address the Taxpaying Ability of all school districts that is fair and equitable to all concerned.

Re:

Page 1 of 2



Re:

repmkelley@aol.com

Sent: Sunday, January 10, 2010 9:30 PM

To: Cynthia Elsberry

Just got back in town. Thanks for the corrections. Spelling and grammar are some of my weak points. I will correct Jeff's address when he responds.

Mark

Sent via BlackBerry by AT&T

From: Cynthia Elsberry <CElsberry@horrycountyschools.net>

Date: Sun, 10 Jan 2010 20:27:48 -0500

To: repmkelley@aol.com<repmkelley@aol.com>; Jeff Riddle<JRiddle@horrycountyschools.net>

Subject: FW:

Mark,

I just realized that Jeff's address in your original e-mail is incorrect. When I replied to it, it bounced back.
Cindy

Dr. Cynthia C. Elsberry
Superintendent, Horry County Schools
www.horrycountyschools.net

P.O. Box 260005

1605 Horry Street

Conway, SC 29528-6005

843-488-6716 Office

843-742-7996 Cell

843-488-6719 Fax

celsberry@horrycountyschools.net

From: Cynthia Elsberry

Sent: Sunday, January 10, 2010 8:26 PM

To: jriddle@do.hcs.k12.sc.us; repmkelley@aol.com

Subject: RE:

Jeff and Mark,

I've marked my suggestions below:

Index of Taxpaying Ability Talking Points

- This amendment allows for school districts to be able to be indexed by the same formula as they are for purposes of funding K-12 education.
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1e

will have rents increased due to the millage assessed on 6% property.

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- By passing this amendment you will prevent yet another tax increase on the small businessman in districts that have a high percentage of 6% taxpayers.
- ~~This will allow the education community to have a better comfort level in~~ The application of the index required will serve as a disincentive for supporting business investment, especially in districts that are in the most need of jobs, because they ~~will~~ would ~~not be losing~~ lose State revenue ~~do~~ due to an increase in 6% property in the district.
- This amendment will prevent an additional burden on the largest tax producing district in South Carolina. More taxes on tourism cuts into the competitive edge they and you worked so hard to gain (2 for 1, Tourism Development Fee, Beach Renourishment Funds, Highway Funds).

-
- Section 2 allows a committee similar to the TRAC committee to study and create a formula to address Taxpaying Ability of all school districts that is fair and equitable to all concerned.

Dr. Cynthia C. Elsberry
 Superintendent, Horry County Schools
www.horrycountyschools.net
 P.O. Box 260005
 1605 Horry Street
 Conway, SC 29528-6005
 843-488-6716 Office
 843-742-7996 Cell
 843-488-6719 Fax
celsberry@horrycountyschools.net

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To: Cynthia Elsberry; jriddle@do.hcs.k12.sc.us
Subject:

Please review and comment. I need any changes or additions by Monday evening. The amendment is H-3748 which will be redrafted as an amendment to H-3272.

Thanks,
 Mark

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you received this correspondence in error please inform the sender immediately and delete the email and any attachments. (qwe1)

Dr. Ronald Ingle

From: <RepMKelley@aol.com>
To: <RIngle@coastal.edu>
Sent: Tuesday, July 20, 2004 3:55 PM
Subject: Contract Lobbyists

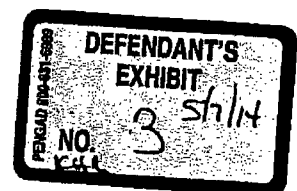
History of Contract Lobbyist Issue In 2004-2005 Budget

- Governor puts a proviso in his Executive Budget to reduce funding to any state agency by the amount they pay for contract lobbyists.
- State Budget originates in the House using the Executive Budget as a guideline only.
- House puts in the line reduction (-) \$60,000.00 for CCU and other amounts for all other schools and agencies that use contract lobbyists by the amount of the contracts, but the House does not put in the proviso that directs the reduction. This is done so as to not create a fight on the House floor over this issue.
- Senate passes the identical lack of language in their version. They leave the line deduction of \$60,000. but put an increase in the overall budget for CCU of \$500,000.00. This is more than any other university received.
- The House and Senate passed the 2004-2005 budget with the actions explained above.
- There is nothing for the Governor to take action on, as pertains to this issue, because there is nothing in the budget that addresses contract lobbyists in proviso.

*** In conversations that I have had with the author of the Bill that would preclude State agencies from hiring contract lobbyists he has expressed an opinion to exempt Higher Education from the restriction in the bill that he will introduce next year.

***** \$500,000. to CCU (recurring) not bad work for contract lobbyists. Wonder what the other "Government Liaison" people were doing?

Please let me know if this is what you need, or if there is more that we can add.



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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

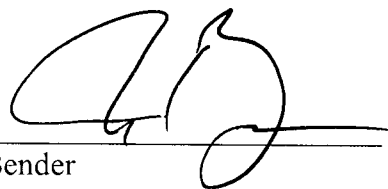
David Wren and Sun Publishing Company Inc.,
d/b/a The Sun News,.....Appellants,

v.

Mark Kelley,.....Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), *SCACR* the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and does not contain any other material.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.

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3710 Landmark Dr., Suite 400
Columbia, SC 29202
803.799.9091 (telephone)
803.779.3423 (facsimile)
ATTORNEYS FOR APPELLANTS

January 23, 2015

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
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David Wren and Sun Publishing Company Inc.,
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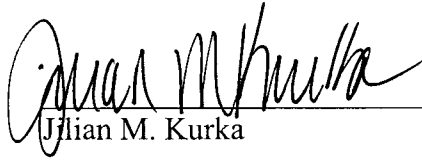
Mark Kelley,.....Respondents.

CERTIFICATE OF SERVICE

I, Jilian M. Kurka, Paralegal to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with a copy of the Record on Appeal by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

James P. Stevens, Jr.

Natalie S. Stevens-Graziani
Stevens Law Firm, P.C.
P.O. Drawer 127
Loris, SC 29569-0127


Julian M. Kurka

January 27, 2015