

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Jeffrey Kennedy Respondent,

v.

Richland County School District Two, Eric Barnes, and Chuck Earles Appellants.

**RECORD ON APPEAL
Volume 3
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1 THE COURT: Yes, sir.

2 (Whereupon there was a bench conference off
3 the record in the presence of the jury but out of the
4 hearing of the jury.)

5 THE COURT: For the record we preserve the
6 motions that we normally have. We'll take them up after
7 the testimony.

8 MR. BARLOW: Thank you, Your Honor.

9 MS. PEAVY: Thank you, Your Honor. The
10 plaintiff calls Mr. Jeffrey Kennedy.

11 THE COURT: Mr. Kennedy, I'll remind you that
12 you're still under oath to tell the truth in this
13 matter.

14 THE WITNESS: Yes, ma'am.

15 JEFFREY WILLIAM KENNEDY,
16 having been previously duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. PEAVY:

19 Q Mr. Kennedy, we've been here several days this
20 week. There's been a lot of testimony, and this is
21 our opportunity to address some additional points
22 about that testimony.

23 A Yes, ma'am.

24 Q I want to discuss Tim Hunter briefly. You enjoyed
25 working for Tim Hunter as part of the security

1 staff at games and events; correct?

2 A Yes, ma'am.

3 Q And your testimony has always been that you tried
4 to get those extra assignments on Coach Hunter's
5 activities; correct?

6 A Yes, ma'am.

7 Q You don't hold any grudge against Mr. Hunter, do
8 you?

9 A No, ma'am.

10 Q Okay. And Mr. Hunter isn't one of the people that
11 is named in this lawsuit; correct?

12 A Correct.

13 Q You don't think Tim Hunter ruined your reputation,
14 do you?

15 A No, ma'am.

16 Q Okay. And when you pointed out in your testimony
17 that Tim Hunter had keys and so did a lot of other
18 people, members of his staff, that's because you
19 believed that Spring Valley had a key problem;
20 correct?

21 A Yes, ma'am.

22 MR. BARLOW: Your Honor, I'm going to object.
23 We're covering his prior testimony here. This is
24 supposed to be rebuttal.

25 MS. PEAVY: Your Honor, I believe that

1 Mr. Hunter testified extensively as to his office
2 procedures, the way his department was run. I think
3 Mr. Kennedy is allowed to address that on rebuttal.
4 Mr. Hunter was not deposed previously as part of the
5 lawsuit.

6 THE COURT: I think he can address the
7 allegations to the extent that it relates to Mr. Kennedy
8 and what he did or did not do in rebuttal.

9 BY MS. PEAVY:

10 Q Would you have liked to have viewed that video
11 footage that Tim Hunter testified he viewed from
12 the night when the money went missing?

13 A Yes, ma'am.

14 Q And did Richland Two or Chuck Earles or Eric Barnes
15 ever show that to you?

16 A No, ma'am.

17 Q During these -- and you learned at this trial that
18 that video footage that -- I think it was
19 10:30 P.M. when Mr. Hunter left until, I think he
20 testified, he got there around 8:00 that morning.
21 You learned at this trial that that footage
22 wasn't -- hadn't been saved; correct?

23 A Correct.

24 Q And did you ever see a copy of the check that went
25 missing from Ms. Loiodice's office?

1 A No, ma'am.

2 Q And if that check had been cashed, had been
3 negotiated at some bank or a check cashing place,
4 would that have been information that you would
5 have wanted to know about?

6 A Yes, ma'am.

7 Q Because that would have shown that someone took
8 that check and maybe their face showed up on a
9 video screen; right?

10 A Yes, ma'am.

11 Q You also testified that you saw the baseball team
12 in the halls of the Athletic Department on the
13 night in question; correct?

14 A Yes, ma'am.

15 Q Okay. And Mr. Permenter, Captain Permenter,
16 testified to that as well; correct?

17 A Yes, ma'am.

18 Q All right. And is the reason that you got to
19 observe the baseball team in the halls of the
20 Athletic Department that night was because
21 Lieutenant Young called you to let you know that an
22 alarm had gone off?

23 A Yes, ma'am.

24 Q And what did Lieutenant Young direct you to do?

25 A Go to Bates Hall and observe and see what was going

1 on.

2 Q And by the time you got over there, had the coach
3 or whoever had the alarm code already turned it
4 off?

5 A Yes, ma'am, they was in the building.

6 Q Okay. And you had parked your vehicle out front
7 where the plate glass doors were; correct?

8 A Yes, ma'am.

9 Q Well, I don't need to show it. We've seen it up on
10 the screen where the keypad is; right?

11 A Yes, ma'am.

12 Q So you're sitting in your vehicle looking in to the
13 Athletic Department building?

14 A Yes, ma'am.

15 Q Here (indicating) is the plate glass. Over here
16 (indicating) is the keypad. What do you see?

17 A I see coaches in the building and students.

18 Q Okay. So they're over on that side (indicating)?

19 A Yes, ma'am.

20 Q So they're down over in front near Tim Hunter's
21 office?

22 A Yes, ma'am.

23 Q Okay. And Tim Hunter testified that the video
24 showed he thought it was sometime after midnight.
25 Is that accurate in your mind?

1 A Yes, ma'am.

2 Q All right. So that's the best of your
3 recollection?

4 A Yes, ma'am.

5 Q And the fact that you were over in one location and
6 then Lieutenant Young called you to head back over
7 to Bates Hall, that's just an example of how every
8 night is different; correct?

9 A Yes, ma'am.

10 Q Okay. So you didn't think, when you armed the
11 Athletic Department earlier that evening with
12 Lieutenant Reid by your side, you didn't think you
13 would be back there until the end of your shift;
14 correct?

15 A Correct.

16 Q And Mr. Hunter testified about seeing you come back
17 on the video to set the alarm -- or to turn the
18 alarm off -- around 5:45; is that correct?

19 A Yes, ma'am.

20 Q And he said that the way you said you entered the
21 weight room in the first door there on the left,
22 that little alcove right behind the keypad, he said
23 that would have been odd because you then would
24 have had to walk all the way down there to turn off
25 the light and then walk all the way back through

1 the weight room to come back out that same door.

2 That was his testimony; right?

3 A Yes, ma'am.

4 Q Okay. And when you went in the weight room, did
5 you receive a call from Lieutenant Young?

6 A Yes, ma'am.

7 Q And were y'all chatting?

8 A Yes, ma'am.

9 Q Okay.. What was he telling you?

10 A He telling me that I needed to go to Polo Road and
11 open the gate for the cafeteria manager.

12 Q Okay. So you were going to go to another one of
13 your schools?

14 A Yes, ma'am.

15 Q And you also testified you were in the weight room
16 for a little while?

17 A Yes, ma'am.

18 Q Having a bottle of water, wasting time; correct?

19 A Yes, ma'am. Well, I can't leave Spring Valley
20 until 6:00 o'clock in the morning. So normally if
21 I got a little more time, I'll go through that
22 weight room or just sit in the truck or something
23 like that.

24 Q Okay.

25 A You know what I'm saying? At night I can't leave

1 until 1:00 o'clock in the morning. We're there
2 from 11:00 to 1:00 to start going to my schools.

3 Q Uh-huh.

4 A And then in the morning I can't leave until 6:00 to
5 go back and open up the schools.

6 Q All right. So even though, you know, Mr. Garrick
7 is saying that -- kept saying you were wasting
8 time, that's how you were trained to do the job;
9 correct?

10 A I mean, yes. It don't take that long to do what
11 you got do. So you've got time. So you try to
12 space your time out so that you're just not sitting
13 in the truck and falling asleep or doing nothing.

14 Q Okay. Let's get back to the weight room because
15 Mr. Hunter felt that if you walked back the length
16 of the weight room after you shut the light off and
17 then you're walking all the way back down and going
18 out that door behind the keypad, he seemed to think
19 that was a pretty treacherous activity. You're
20 smiling a little bit.

21 Was it treacherous to walk back down after
22 you'd shut the lights off?

23 A No, ma'am. You still got the lights from the
24 parking lot. It's a clear path straight down to
25 that door to the light switch. I've done it many

1 times.

2 Q At that point are the hall lights on too?

3 A Yes, ma'am. Yes, ma'am.

4 Q So there's some ambient lighting coming in, even if
5 the overhead lights aren't on; correct?

6 A Yes, ma'am.

7 Q And you had been in that weight room lots?

8 A Lots of times in the three years I was doing this,
9 yes, ma'am.

10 Q And did members of the security staff go in there
11 from time to time and lift weights?

12 A Yes, ma'am.

13 Q Okay. So just like all the schools you went to
14 over the years -- E.L. Wright, Spring Valley, Polo
15 Road -- you had been in all these spaces numerous
16 times?

17 A Yes, ma'am.

18 Q Okay. This promotion, you've heard -- strike that.
19 You heard Ms. Batchelder read from her notes today;
20 correct?

21 A Yes, ma'am.

22 Q And is it fair to say that her notes accurately
23 reflected that this promotion meant so much to you?

24 A Yes, it did.

25 Q You were telling her about how you were a husband,

1 you were a father, you had kids to educate,
2 grandchildren. You were begging her to believe
3 you?

4 A Oh, yes, ma'am. I was getting off that night shift
5 going on second shift. My next step I was going to
6 try to make captain.

7 Q So you saw a bright future for yourself with
8 Richland Two?

9 A I did.

10 Q And they put into evidence a few letters of -- oh,
11 what are they called? -- letters of counseling from
12 back in 2008 and 2009 from Captain Z. just saying,
13 you know, "Step up your game. Show up when you're
14 supposed to. Don't leave early," what have you.
15 Other than that you saw a bright future; correct?

16 A Yes, ma'am.

17 Q You weren't looking to sabotage that in any way,
18 were you?

19 A No, ma'am.

20 Q And you were making good money, weren't you?

21 A Yes, ma'am.

22 Q Okay. There was a lot of testimony that if you
23 stood directly under the security camera, you could
24 tell which way it was pointed. Did you hear that
25 testimony?

- 1 A I did.
- 2 Q Did you ever do that?
- 3 A No, ma'am.
- 4 Q And someone who was doing that presumably might be
- 5 shown doing that; correct?
- 6 A Correct.
- 7 Q All right. And your job at the time these thefts
- 8 occurred wasn't to sit in the watch room and watch
- 9 video feed; correct?
- 10 A That's correct.
- 11 Q You weren't sitting there replaying video of the
- 12 security cameras from different angles; correct?
- 13 A Correct.
- 14 Q You were out doing the rounds, doing the grunt
- 15 work, checking the buildings, being a security
- 16 guard?
- 17 A Yes, ma'am.
- 18 Q All right. And you were doing all that in hopes
- 19 that on your watch anyway, no one was committing
- 20 one of the 100-plus thefts a year at Spring Valley
- 21 that Jim Childers testified to; correct?
- 22 A Correct.
- 23 Q All right. Ms. Jackson seems like a nice lady.
- 24 Wouldn't you agree?
- 25 A Yes, ma'am, she is.

- 1 Q Okay. You never had any quarrel with her while
2 y'all were both employed at Richland Two, did you?
- 3 A No, ma'am.
- 4 Q And y'all didn't really even know each other?
- 5 A No, we didn't.
- 6 Q You would go where she told you to go if she needed
7 something opened or her staff needed assistance?
- 8 A Yes, ma'am.
- 9 Q Okay. And so when you testified about the
10 custodial staff having keys, that was just obvious
11 because they did have keys because they were
12 cleaning offices; correct?
- 13 A Yes, ma'am.
- 14 Q And you were here yesterday during Mr. Childers's
15 testimony; correct?
- 16 A Yes, ma'am.
- 17 Q All right. And you listened to the care with which
18 Mr. Childers treated Ms. Jackson?
- 19 A Yes, ma'am.
- 20 Q Kind of kid gloves; right?
- 21 A Yes, ma'am.
- 22 Q Does that make you feel angry in some way?
- 23 A Yes, ma'am. Anybody did nothing to try to help me
24 defend me.
- 25 Q Okay.

1 A They didn't see no videos or nothing that would
2 exonerate me. It wasn't important. It wasn't
3 suspicious.

4 Q So you had just been recommended for a promotion.
5 You were obviously considered a valued employee,
6 but your supervisors, the people running the
7 Security Division, they didn't act the way Jim
8 Childers acted towards Ms. Jackson; right?

9 A No, ma'am.

10 Q And Chuck Earles never trained you once he took
11 over as head, did he?

12 A No, ma'am.

13 Q Okay.

14 A We just did the same thing we always did, nothing
15 changed.

16 Q Okay. So in 2008 when you started, your captains
17 and lieutenants and Chief Propst told you the way
18 to do it?

19 A Yes, ma'am.

20 Q And we noticed that Lieutenant Reid was coming on
21 around the time when all this occurred, and you
22 actually had him -- you were kind of having him
23 shadow you a little bit to show him how it's done;
24 right?

25 A Yes, ma'am.

1 Q So when you came on in 2008, did you do something
2 similar with the guards that had already been
3 there?

4 A Yeah, Lieutenant Young and Officer Mitchell.

5 Q Okay. And back then Lieutenant Young wasn't a
6 lieutenant; right?

7 A He was a lieutenant, and he was my shift supervisor
8 then.

9 Q So you would shadow around with him to find out how
10 it's done?

11 A Yeah, he trained with me.

12 Q Okay. You know, we've heard a lot of talk that
13 Chuck Earles didn't want you and your coworkers
14 taking all these breaks and wiling away the time,
15 but that was the way y'all had always done it;
16 correct?

17 A Yes, ma'am. We don't get no lunch break.

18 Q Uh-huh.

19 A So at Spring Valley you've got to be there from
20 11:00 o'clock to 1:00 o'clock. I mean, I've been
21 at Spring Valley long enough that I could walk
22 Spring Valley in like 20 minutes and check the
23 outside doors. The second shift will leave the
24 cell phone on the charger in the break room. You
25 have to go in there and change your battery in

1 there.

2 Q Uh-huh.

3 A So I done walked through most of my outside doors
4 and everything. So I go in there and sit down and
5 take my little break because I don't get no lunch
6 break.

7 Once you start going to your other schools,
8 you're on a time thing then. If something happens,
9 you ain't going to be able to finish all your
10 schools. So I take mine while I'm at Spring Valley
11 because I'm there for two hours.

12 Q Okay.

13 A Then when I do that, then I go ahead and finish the
14 other half I've got to do.

15 Q Uh-huh.

16 A So I space my time out where I'm not just sitting
17 in the truck doing nothing.

18 Q Okay.

19 A Or falling asleep.

20 Q And Mr. Garrick was obviously rightly discouraged
21 to hear you tell him and Ms. Batchelder several
22 times consistently that during you shift, you're
23 wasting time. You don't blame him for that, do
24 you. That's his job; right?

25 A Yes, ma'am.

1 Q And in a perfect world, no one would ever waste any
2 time while they were on the job, whether they work
3 9:00 to 5:00, 11:00 to 7:00, what have you. Every
4 employer wants their employees to be efficient and
5 on the clock; correct?

6 A Yes, ma'am.

7 Q All right. Now, there was testimony from your
8 former coworkers, current and former Richland Two
9 employees, that you told them that you were being
10 investigated for the thefts?

11 MR. BARLOW: Your Honor, objection. That's
12 not rebuttal to our case. They didn't testify in our
13 case.

14 THE COURT: Let me hear the question first.

15 MR. BARLOW: All right.

16 MS. PEAVY: I just want to establish that
17 he -- oh, you want to hear the question?

18 THE COURT: Yes, ma'am.

19 BY MS. PEAVY:

20 Q Now, is it correct that there was testimony that
21 you told them you were being investigated from the
22 theft from Tim Hunter's office; correct?

23 You weren't surprised that they were
24 investigating you because you worked on the night
25 in question, and you worked on those other two days

1 and that no one on the security staff would be
2 surprised that you were being investigated or
3 looked at for it because that was the way it
4 worked.

5 If you were on shift and something went
6 missing, they were going to look to you because you
7 had keys and you had access.

8 MS. PEAVY: Your Honor, I think there's been a
9 lot of testimony in the defense's case that they believe
10 that Mr. Kennedy, I guess, defamed himself. So I'm
11 trying to show that the existence of the investigation
12 is a separate issue.

13 THE COURT: I'm going to sustain the
14 objection. I think that's an argument you can make to
15 the jury.

16 MS. PEAVY: Okay. Thank you, Your Honor.

17 BY MS. PEAVY:

18 Q Let's talk a little bit about Kim Jones. You were
19 here for Ms. Jones's testimony. You heard her
20 testimony that she received a letter; correct?

21 A Yes, ma'am.

22 Q Did you know that she had never been disciplined?

23 A No, ma'am.

24 Q Okay. And she testified that you called her and
25 threatened her; is that correct?

1 A No, ma'am.

2 Q Okay. She testified that you did that; correct?

3 A Yes, ma'am.

4 Q Sitting here today, a father of two, grandfather of
5 six, someone who was in a longtime marriage, have
6 you ever threatened Kim Jones?

7 A No, ma'am.

8 Q Ever tried to scare her?

9 A No, ma'am.

10 Q And up until she realized that you and she had
11 violated the Richland Two policy about trying to
12 view this video outside of the chain of command,
13 she never told you she was scared of you, did she?

14 A No, ma'am.

15 Q And she never demonstrated to you that she was
16 scared or felt frightened in your presence, did
17 she?

18 A No, ma'am.

19 Q And when y'all spoke on the phone, that was because
20 you had given her a card with your number on it;
21 correct?

22 A Yes, ma'am.

23 Q Okay. And was that so that she could reach you to
24 find out the best time to meet to try to review the
25 footage?

1 A Yes, ma'am.

2 Q You didn't appeal your termination with Richland
3 Two from October 2012, did you?

4 A No, ma'am.

5 Q Okay. You didn't think you would get a fair shake,
6 did you?

7 A Not from Mr. Garrick, no, ma'am.

8 Q Okay.

9 A He already had formed his opinion of me.

10 Q Okay.

11 A He demonstrated that today.

12 Q Okay.

13 MS. PEAVY: Excuse me one moment.

14 (Pause.)

15 MS. PEAVY: That's all I have. Thank you.

16 THE COURT: Any cross?

17 MR. BARLOW: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BARLOW:

20 Q Mr. Kennedy, the first time you saw this Spring
21 Valley video was not in this trial, was it?

22 A Which one?

23 Q The ones that we watched here.

24 A I only seen that one with me in the hall pushing
25 open that book room door and going in the break

1 room. I saw that at the Richland County Sheriff's
2 Department with Franchot Brown.

3 Q Which one was that?

4 A The one showing me coming in the back door. I
5 pushed open the book room door and went in the
6 break room. That's the only one.

7 Q All right. Anthony Permenter showed you videos,
8 didn't he?

9 A Anthony Permenter?

10 Q Yes, sir.

11 A No, he did not show me no videos.

12 Q He did not. Okay. You gave a deposition in this
13 case, didn't you?

14 A I did.

15 Q We looked at that deposition last time, didn't we?

16 A Yes, sir.

17 Q All right. And do you remember talking about that
18 with me?

19 A Yes, sir.

20 Q Okay.

21 A I didn't say he showed me a video.

22 Q You didn't?

23 A No, sir.

24 Q Let me check on that here.

25 A Okay.

1 MR. BARLOW: Do you care if I use this
2 certified copy here?

3 MS. PEAVY: No, I don't mind.

4 BY MR. BARLOW:

5 Q In that deposition, sir, you were under oath?

6 A Yes, sir.

7 Q Just like you were here. There was a court
8 reporter there just like here, and your lawyers
9 were there too; right? I want you to turn to page
10 60 for me, Mr. Kennedy.

11 A All right. I have all that.

12 Q Have you got it? All right. Let me turn to mine.
13 I'm going to read, looking at line 13, and you read
14 along with me.

15 "How about, like, when we were talking before
16 about the Spring Valley videos and all that, how
17 did you get to see that? Did they show it to you?"

18 "Answer: Captain Permento (phonetic)." Is
19 that the same thing as Captain Permenter?

20 A Yes, sir.

21 Q All right. "Question: That's Ms. Permenter?"

22 "Answer: Not Mrs., her husband used to work
23 there."

24 "Anthony?"

25 "Anthony, yeah."

1 "Question: He is the one that showed you the
2 Spring Valley video?"

3 "Answer: Yes."

4 A He showed me pictures of the video. He didn't show
5 me the video.

6 Q Your testimony right there was that he showed you
7 the video, sir?

8 A I meant pictures of the video.

9 Q All right. Now, you sat in the truck while the
10 baseball coach and the team went in the building?

11 A They was in the building when I got up there.

12 Q So you stayed in the truck though?

13 A I could see them.

14 Q So the security guard for the building that's
15 supposed to make sure what's going on, things
16 aren't going missing on his watch, sits in his
17 truck while they're all in the building?

18 A It's the baseball team and the coaches. They were
19 in there all the time. They was in the building
20 when I got there. It's like that on a regular
21 base.

22 The track team come back, the basketball team,
23 the same thing. My job is to go check the building
24 when they come back out and make sure the building
25 is secured.

- 1 Q That's right. You didn't go in there because
2 they're trustworthy, aren't they?
- 3 A I seen the coach go up there. Lieutenant Young
4 told me that the alarm was okay.
- 5 Q All right. You, in fact, turned the alarm off that
6 morning, didn't you?
- 7 A I sure did.
- 8 Q Because the coach reset the alarm, didn't he?
- 9 A Yeah, somebody set the alarm. I guess he did.
- 10 Q Well, the coach did, didn't he?
- 11 A Yeah, he had said he was in the building.
- 12 Q Well, I'm asking you, is it your testimony that the
13 coach cut the alarm back on?
- 14 A Yes. Yes, sir.
- 15 Q All right. Now, on these soccer tournaments and
16 things like that, you helped tote the money boxes
17 with the coaches before, hadn't you?
- 18 A Helped tote the money box?
- 19 Q Yes, sir.
- 20 A Yes, sir. I went back to follow with Sonny to
21 escort him back to the office with the money,
22 basketball and stuff like that.
- 23 Q Sure. So you knew at these tournaments, people
24 were collecting money and bringing it back?
- 25 A Yeah, I seen them.

1 Q Let me ask you this: You expected an investigation
2 to be conducted; right?

3 A Yeah.

4 Q When the money went missing?

5 A Uh-huh.

6 Q Okay. You were being accused at some point of
7 being the person that took the money; right?

8 A I was the only person being accused.

9 Q All right. But the first time you ever told
10 anybody that you were on the phone with Mr. Young
11 during that time was this trial, wasn't it?

12 A No, not true. I told them when I met with them in
13 that meeting that Mr. Young called me.

14 Q You never told Traci --

15 A Yes, I did. I told them to talk to Mr. Young, and
16 I told them to talk to Officer Z. about my routine
17 at the school. They was talking about I was in the
18 building too long, and they never did.

19 Q Now, you know how to pull up video, don't you?

20 A No, I do not.

21 Q You don't know how to pull up a realtime video and
22 monitor schools?

23 A No, I did not. Captain Groves used to pull up the
24 video for me when I worked in the watch room. He
25 pulled it up for me. That's what it stayed on.

1 Until I left I just did the logs. If anything
2 happened I called him and he came in there.

3 Q Sir, why don't you turn to page 50 in that
4 deposition. I want you to look at line 19. I
5 asked you the question: "What video capability did
6 you have?

7 "Answer: I can pull up all the schools and
8 just monitor, just pull up all the schools. They
9 can put up about four or five schools at one time
10 and monitor that. I can take that down and put
11 another one up. As far as running back cameras and
12 video seeing what happened, I don't know how to do
13 that."

14 But you know how to pull the video up --

15 A I mean, I can pull the school up, yeah. I can't,
16 you know, what I'm saying, check back on nothing.

17 Q Right.

18 A I can pull it up when the camera comes up.

19 Q You can pull it up realtime?

20 A Just like the pictures y'all did yesterday.

21 Q That's right. And you can see what the cameras are
22 seeing when you are doing that?

23 A On a certain area, yeah.

24 Q Sure. Now, you watched the videotape that had the
25 coach in it, didn't you?

1 A What you mean had the coach in it?

2 Q You know, the testimony that was about the video
3 with the coach, you know, that showed the coach
4 coming into Bates Hall.

5 A Did I watch that video?

6 Q Yes, sir. You watched it prior to today.

7 A The video of the coach?

8 Q Yes, sir.

9 A I've seen pictures with the coaches in the hall.

10 Q You're saying you didn't see the video with the
11 coach in it?

12 A I can't recall seeing the video of the coach in it.

13 Q Do you want to look at page 35 there?

14 A What page?

15 Q Thirty-five. I want you to look at line 15.

16 A I see it.

17 Q All right. I'm going to read. You read along with
18 me. That's the most efficient way to do this, I
19 think.

20 "Did you watch the videotape from that night?"

21 "The videotape for what night," was your
22 answer.

23 "Question: The night that you worked, that
24 Thursday night or whatever it is they were talking
25 about when the coach came in."

1 Line 19 is your answer. "Oh, yeah, I seen
2 him. Yes. Yes, sir."

3 A Yeah. That's the same thing, the video pictures,
4 that Mr. Permenter showed me.

5 Q Mr. Permenter didn't save any of that video, did
6 he?

7 A No, I don't think he did.

8 Q You didn't either, did you?

9 A I didn't know how to save it. I wasn't privy to
10 it.

11 Q You saw this confidential memo laying out. Is that
12 your testimony?

13 A Yes, sir.

14 Q You didn't do a thing to report that to anybody and
15 let them know it was out, did you?

16 A Yes, sir, I told my supervisor that it was out.

17 MR. BARLOW: No further questions.

18 THE COURT: Anything further?

19 MS. PEAVY: No, Your Honor.

20 THE COURT: You may step down.

21 (The witness leaves the witness stand.)

22 THE COURT: Ladies and gentlemen, as you
23 realized, I ordered lunch for you all today. It has
24 arrived. So I'm going to ask that you all take a lunch
25 break.

1 I'm going to remind you during the lunch break
2 not to discuss what you have heard or seen during this
3 particular time. Even though you may have heard all the
4 evidence that has to be presented, you are still not in
5 a position to be able to determine the facts until
6 you've heard the closing arguments and until you've
7 heard my instructions to you as to the law.

8 I'm going to ask that you retire to the jury
9 room and enjoy your lunch. If you wish to leave the
10 building after that, you certainly may do that. We do
11 have some legal issues we need to take up outside of
12 your presence, which we'll do that during this lunch
13 break.

14 So if you'll report back to the jury room at
15 no later than 2:15, then we'll be ready at that
16 particular time to come back and continue on with the
17 trial of this matter. Have a good lunch.

18 (The jury retires to the jury room for the
19 lunch break at 12:50 P.M.)

20 THE COURT: Are there any motions at this
21 time? I believe we preserved the motions for the
22 defense at the conclusion of the defense's case. So
23 I'll be happy to hear any motions.

24 MR. BARLOW: Yes, Your Honor. Just with
25 regard to the directed verdict, we want to renew the

1 directed verdict motion at this time on the remaining
2 claims. As far as the defamation claim, we feel that
3 the evidence has not established any of the requisite
4 publication.

5 Specifically with regard to the termination,
6 there has not been anything published to anyone. There
7 is no evidence of that, that anybody heard or understood
8 that to be defamatory in any way, shape, or form.

9 THE COURT: You're saying the termination?

10 MR. BARLOW: The termination itself. I think
11 the termination can be severed from the reassignment in
12 terms of an adverse action to the plaintiff. I think
13 it's unfair for the jury to consider this as a wrongful
14 termination case. He is an at-will employee.

15 THE COURT: I certainly haven't considered it
16 as a wrongful termination case or that the defamation
17 related to the termination. It's always been my
18 understanding from everything I've heard and everything
19 that I've read that it related to purely the
20 circumstances regarding the investigation and the claims
21 relating to the money that was missing in these other
22 instances.

23 MR. BARLOW: Yes, and that's my position
24 certainly. As far as the termination, it should not be
25 part of this case; and damages should not be available

1 for the termination of his employment because that's a
2 separate act that has nothing to do with it.

3 Now, in addition to the qualified privilege,
4 I'd reassert that there's a qualified privilege that
5 attaches to a memorandum, a confidential e-mail, that's
6 sent to supervisors.

7 There is no evidence that any defendant
8 exceeded that privilege or acted with any malice. You
9 know, I defined actual malice at the prior directed
10 verdict motion.

11 There is just not evidence in the record that
12 either of the two gentlemen acted with actual malice
13 from which a jury could find that. There's not any
14 testimony about that.

15 So I would renew the directed verdict
16 motion as to qualified privilege on the defamation
17 claim, in addition to lack of publication with the
18 termination.

19 In addition to that, element two of defamation
20 as defined in Williams versus Lancaster School District,
21 631 S.E.2d 286, Court of Appeals, 2006, the second
22 element is an unprivileged publication of a statement to
23 a third party.

24 There is no evidence that this was published
25 to a third party in an unprivileged context. I think

1 any employee that saw it at the school, it's privileged
2 in that respect.

3 The case I cited, the Court of Appeals case,
4 the statement at issue there was a principal's statement
5 to another employee that "a teacher cleaned us out,"
6 McBride, that's subject to a qualified privilege in that
7 case.

8 So the second element of the defamation
9 standard requires that they show an unprivileged
10 communication as privileged. In addition to that, the
11 qualified privilege, which is a defense, an affirmative
12 defense, I think we've proven that as a matter of law.

13 THE COURT: So you're saying that whatever
14 that case -- that's 631 S.E.2d 286 -- says that a
15 principal is having a conversation with just a general
16 employee and made statements impugning that somebody
17 committed a crime that that was -- that was not a
18 publication?

19 MR. BARLOW: In connection with an
20 investigation, it was not. That's McBride versus
21 Greenville County School District, that case. That
22 citation I have just given you is for the Lancaster
23 School District case.

24 THE COURT: And so which -- I've associated
25 631 with that.

1 MR. BARLOW: All right.

2 THE COURT: Is that not the correct one?

3 MR. BARLOW: No, that's an opinion I handed up
4 yesterday, the McBride case. I don't know if I can put
5 my hands on that. I don't know that it's been actually
6 published yet by the Court of Appeals.

7 THE COURT: I have that one.

8 MR. BARLOW: All right.

9 THE COURT: So now, what are you citing
10 McBride for?

11 MR. BARLOW: We are citing McBride for the
12 qualified privilege, affirmative defense.

13 THE COURT: Yes, it has to be raised as an
14 affirmative defense. I understand that.

15 MR. BARLOW: Sure. And not only that, on
16 remand that McBride case, that satisfied the affirmative
17 defense of qualified immunity when the principal, the
18 statement he made, that "the teacher had cleaned us
19 out," was subject to a qualified privilege and directed
20 verdict was granted. There have been several iterations
21 of that McBride case that have gone up and back.

22 THE COURT: Okay. So what is the 631 case?

23 MR. BARLOW: That's Williams versus Lancaster
24 County School District.

25 THE COURT: Which says what?

1 MR. BARLOW: It gives the elements of
2 defamation, which are, one, a false and defamatory
3 statement; two, the unprivileged publication of the
4 statement to a third party.

5 I don't think that there is evidence of an
6 unprivileged communication to a third party. These are
7 all employees within the department. No defendant made
8 a publication to anyone outside of the supervisors.
9 There's no evidence of that.

10 THE COURT: So your argument is that any
11 communication that took place would have been privileged
12 and that -- who do you say the communications involved?

13 MR. BARLOW: It involved the supervisors who
14 are addressed on the confidential memo.

15 THE COURT: All right.

16 MR. BARLOW: That's my arguments on the
17 defamation claim.

18 THE COURT: Yes.

19 MR. BARLOW: As far as the negligent
20 supervision --

21 MS. PEAVY: Your Honor, can we respond to that
22 or would you like us to wait?

23 THE COURT: Let me just hear all of his
24 arguments, and then I can ask you all the questions I
25 need to ask you and let you respond.

1 MR. BARLOW: As far as the negligent
2 supervision claim, we would renew our directed verdict
3 motion on that as well. The complaint alleges that the
4 School District, Richland Two, negligently supervised
5 the people who are individual defendants.

6 There is nothing in the record to show that
7 any of the individual defendants had any work history,
8 any prior problems anywhere that would have alerted the
9 School District that they would be likely or it would be
10 foreseeable -- assuming that they defamed anybody --
11 that it would be likely or foreseeable that either
12 Mr. Barnes or Mr. Earles would defame him. There is
13 just not any evidence of that in the record.

14 THE COURT: But that goes to the negligent
15 hiring, does it not, and not a negligent supervision?

16 MR. BARLOW: I think it goes to both. I mean,
17 if there's not any prior writeups or anything like that
18 with the police department or EMS or wherever those two
19 gentlemen had worked, that would be one thing. The
20 negligent supervision is whether they had done any of
21 that at Richland Two to let Richland Two know that there
22 was a problem with that.

23 THE COURT: It would not be a situation in
24 which there is an investigation ongoing and the failure
25 to supervise it during the course of that investigation

1 to ensure that information is not released to those
2 individuals who do not have a need to know or who do not
3 have -- were not involved in the investigation,
4 basically outside of the protective group of
5 individuals.

6 MR. BARLOW: That's not what the complaint
7 alleges happened. That's not what the complaint alleges
8 the claim to be. I don't think negligent supervision
9 can exist in a vacuum that you -- I mean, that sounds
10 like just a basic negligence claim that you failed to
11 properly monitor an investigation generally, School
12 District.

13 Negligent supervision is more: You failed to
14 supervise the individuals who were conducting the
15 investigation because you had a reason to know that they
16 weren't going to do it properly.

17 You had prior knowledge from prior events and
18 circumstances that these individuals would not do the
19 investigation properly and would defame someone as a
20 result. I think that's the argument on the negligent
21 supervision.

22 Finally, Your Honor, with the Tort Claims Act
23 argument that I made yesterday, I think it has to be
24 either/or. Either the individuals acted outside of the
25 scope and they're liable or they didn't, and the School

1 District is the responsible party. I don't think it can
2 go to the jury as both.

3 THE COURT: What about those provisions? The
4 provision that excludes under 15-78-70, which is the
5 part you cited yesterday, it talks about nothing may be
6 construed -- "Nothing in this chapter may be construed
7 to give an employee of a governmental entity immunity
8 from suit or liability if it's proved that the
9 employee's conduct is not within the scope of his
10 official duties or that it constitutes actual fraud,
11 actual malice, intent to harm, or a crime involving
12 moral turpitude."

13 So there are circumstances in which both the
14 employee, as well as the School District, can be sued to
15 determine whether or not, first of all, the employee was
16 acting within the course and scope of his duties or
17 whether or not there was actual malice involved.

18 MR. BARLOW: Well, there is another immunity
19 though under the Tort Claims Act in 15-78-60 though that
20 would make the School District itself immune from
21 actual -- action by an employee that is actual malice,
22 intent to harm, et cetera. I think it's (13),
23 15-78-60(13) maybe.

24 THE COURT: No, sir. That's not what you
25 argued to me yesterday, which is why I came to the

1 conclusion I did.

2 MR. BARLOW: Okay. Well, I --

3 THE COURT: 15-78-60(13) talks about
4 regulatory powers and functions.

5 MR. BARLOW: Okay. It's one of the 15-78-60.
6 If those are --

7 THE COURT: It's number (17).

8 MR. BARLOW: Okay, (17).

9 THE COURT: Which is basically the same
10 language that I just talked about in 15-78-70. So
11 basically the jury has to make the decision.

12 In my view, the way I've seen it exercised is
13 that the jury makes a decision; and there's a special
14 interrogatory that goes to the jury as to whether or not
15 it is either within the course and scope of his duties
16 or was it done with actual malice. That ultimately
17 would determine who is responsible.

18 MR. BARLOW: All right. And I guess at this
19 point I would argue that there is not evidence of intent
20 to harm, actual malice, et cetera. So the individuals
21 should be out. If there is an entity or a defendant, it
22 should be the School District.

23 THE COURT: So if in considering evidence as
24 it relates to the defamation, could they not make a
25 finding that there was actual malice? I understand that

1 you would disagree with that.

2 MR. BARLOW: Correct. Right. I would
3 disagree that there is anything to support a finding of
4 actual malice at this point. Thank you.

5 THE COURT: All right. Thank you.

6 For the plaintiff, yes, ma'am.

7 MS. PEAVY: Your Honor, I'd like to address
8 the qualified privilege issue if I may. We would like
9 to move to strike the defense and any charge to that
10 effect under Rule 12(f) of the Rules of Civil Procedure.

11 Under the case of Abofreka versus Alston
12 Tobacco Company, which is 288 S.C. 122, 341 S.C.2d 622.
13 If I may approach, I can hand it up.

14 THE COURT: Yes, ma'am.

15 (Hands to Court.)

16 MS. PEAVY: This case is directly on point
17 with the situation here, Your Honor, which is you have a
18 memo. It's been demonstrated that a qualified privilege
19 attaches to it based on the author and the recipients.

20 The privilege is lost when the memorandum is
21 posted in the employee -- on the premise of the
22 employee -- on the premises of the company for employees
23 to see.

24 It states directly that, "The privilege was
25 lost when the memorandum was published to persons other

1 than those to whom the privilege applies. A Marnat
2 employee -- that's the company -- testified to the
3 location of the memorandum caused it to be seen by
4 persons other than Marnat employees. The trial judge
5 did not err in striking the defenses from the answer."

6 So, Your Honor, I believe we're entitled to a
7 ruling as a matter of law that the qualified privilege
8 based on who the author was and who the recipients were
9 was lost in this case because the testimony is
10 undisputed from Richland Two's own employees that it was
11 lying out for the rank and file to see and that it was
12 located in Richland Two vehicles. So we would ask for a
13 ruling on that as a matter of law.

14 THE COURT: Any other arguments?

15 MS. PEAVY: As to all of the issues?

16 THE COURT: Yes, ma'am.

17 MS. PEAVY: Okay. As to the negligent
18 supervision claim, Your Honor, we believe that that
19 claim should go to the jury because we had testimony
20 that the Security Division was a rumor mill.

21 Chuck Earles was trying to change that
22 culture, that he wanted all the employees to sign a
23 Change of Culture memorandum. So, you know the evidence
24 is such that you know you have a problem. You've got to
25 do some supervising and figure out is everyone working

1 to solve that problem. Are we working to keep things
2 confidential?

3 There is also testimony in the record from
4 Mr. Garrick on what the culture of excellence is, that
5 there is a -- that the way Jim Childers behaved in
6 taking away keys from Ms. Jackson, I mean, that was
7 really the gold standard.

8 Obviously you've got a contrast with the way
9 the taking away of the keys and the publication of that
10 was dealt with in Jeffrey Kennedy's case. So we believe
11 we've got a claim for negligent supervision.

12 If we have to amend the complaint in some way
13 to conform to the evidence based on what's been
14 introduced here in trial, we can do so; but we believe
15 we're entitled to go to the jury on that.

16 THE COURT: But that is different from what
17 you alleged in the complaint, is it not?

18 MS. PEAVY: I'm looking at the complaint right
19 now. It says, "At the time of the above-described
20 actions, Mr. Earles, Mister -- it says Mr. Bonds --
21 Richland Two knew or should have known of the necessity
22 and opportunity to control the defendants as the
23 above-described defamation began to escalate; and they
24 were under a reasonable duty to exercise reasonable care
25 to control its employees to keep them from harming the,

1 plaintiff."

2 I think what we're talking about there is that
3 Richland Two, they knew they had a Security Division
4 problem. They had Chief Propst who was -- you know,
5 there's been conflicting testimony. I don't know if he
6 resigned or if he was terminated, but he was out the
7 door.

8 They were trying to change it up. They knew
9 they had a problem with rumors. Church Earles didn't
10 create that idea. I mean, that was something that he
11 observed when he was not the Director; and he tried to
12 change it when he became the Assistant Director and the
13 Director, what have you.

14 They have a duty to make sure that their
15 employees are living up to this culture of excellence.
16 That's what it says in the complaint. They're under a
17 duty to exercise reasonable care to control its
18 employees.

19 So there should have been training or what
20 have you on: "This is what you do when your taking away
21 keys and someone's reputation could be ruined."
22 Mr. Childers did it on his own accord; but I think there
23 is evidence to go to the jury on this, Your Honor.

24 THE COURT: But paragraph 21 doesn't apply,
25 that that employees of Richland Two are supposed to be

1 controlled. It would be Barnes, Batchelder, Earles, and
2 Jones.

3 MS. PEAVY: Yes, Your Honor. That's because
4 Chuck Earles should have been instructed that if you're
5 taking keys away, you've got to handle it in a discreet,
6 quiet, need-to-know basis.

7 Don't send out emails that are going on a
8 Richland Two e-mail system that can be pulled up on the
9 screen, that can be printed out, that can be
10 disseminated. Everyone knows the way electronic
11 communications work. That stuff can float around in 60
12 seconds.

13 The way Jim Childers testified as to how he
14 dealt with it, I think we have established that, you
15 know, that's the standard. Your Honor, if we need to
16 move to amend the complaint to conform, obviously we'll
17 do so.

18 THE COURT: Any response?

19 I'm sorry. Before I get to that, we're all in
20 agreement then that any defamation does not relate to
21 the termination?

22 MS. PEAVY: Yes, Your Honor.

23 THE COURT: Yes, sir.

24 MR. BARLOW: Yes, just as far as a brief
25 response to the Abofreka versus Alston Tobacco Company

1 case. Certainly, the qualified privilege was lost in
2 that case because they published the two people who were
3 not or are not employees.

4 It's a completely different factual
5 circumstance here. There is no evidence that any
6 defendant intended to post that. Certainly, we haven't
7 waived somehow the qualified immunity defense, and the
8 jury needs to be able to consider that.

9 I mean, if you're not going to grant our
10 directed verdict on that, it's certainly an issue of
11 fact for the jury to determine whether the defense has
12 been somehow waived or exceeded by whatever conduct the
13 defendants engaged in. It's still in play.

14 MS. PEAVY: Your Honor, I --

15 MR. BARLOW: There is no reason to rule as a
16 matter of law that we have lost the qualified privilege
17 because there is some testimony in the record that
18 people saw the memo that weren't the original people
19 that it was addressed to.

20 MS. PEAVY: That's the only evidence in the
21 record. We believe that it is properly a ruling as a
22 matter of law, Your Honor. They shouldn't be able to --
23 the jury shouldn't be charged on it because as a matter
24 of law the privilege was destroyed when other people saw
25 the memo who were not supervisory level employees.

1 MR. BARLOW: At a minimum though, it's a
2 factual issue as to how they got it and how it got
3 there, whether it was through Jeffery Kennedy by way of
4 Anthony Permenter or our people, the people who are
5 defendants.

6 I mean, if somebody who is a supervisor sends
7 this or leaves it out, that is not defamation by Chuck
8 Earles or Eric Barnes. That's not a publication by Eric
9 Barnes or Chuck Earles.

10 MS. PEAVY: They testified they didn't publish
11 it. They didn't leave it out. The only testimony was
12 that it was left out which means that one of the people
13 that received it -- and all those people are supervisory
14 level employees -- that they printed it out, that they
15 left it out.

16 MR. BARLOW: They're certainly --

17 MS. PEAVY: So I think as a matter of law,
18 we're entitled to have that stricken and that there not
19 be a charge on that, Your Honor. Abofreka upholds that
20 the qualified privilege defense is properly stricken.

21 THE COURT: Let me ask: Who does the
22 privilege relate -- who does the privilege extend to?
23 Does it extend only to those individuals to whom the
24 memo is addressed? Does it extend to all District
25 employees?

1 My view is it's a qualified privilege that's
2 to be limited to those individuals, based on the case
3 law in the definition, those people who have an interest
4 in whatever the event is and that people are discussing
5 it.

6 That would include those individuals who are
7 investigating the allegations and the claim. I can
8 understand it would extend from the Principal to Barnes,
9 to Earles, to those individuals that they interviewed
10 about the situation, which would include the Principal,
11 and then up to the District level.

12 Then as a result of whatever action was
13 determined on the personnel side, the memo to those
14 individuals who were supervisors who would be
15 responsible for supervising Mr. Kennedy in his -- in his
16 new role or his new location or wherever he was going to
17 be assigned.

18 MS. PEAVY: And that's our understanding, Your
19 Honor, that the privilege attaches -- that e-mail in and
20 of itself is privileged because it's the Director, Chuck
21 Earles, who is indicating this to his supervisory staff.

22 That's not the issue. The issue is the
23 subsequent printing out of the e-mail, the subsequent
24 display of the e-mail in the watch room and the Richland
25 Two vehicles.

1 That testimony is undisputed. So we believe
2 as a matter of law that we've shown that that privilege
3 was lost when the memorandum marked confidential was
4 left out and visible to Richland Two employees, rank and
5 file employees.

6 MR. BARLOW: Your Honor, she is asking for a
7 strict liability standard. If the memorandum gets out,
8 then therefore you don't get a qualified immunity
9 defense.

10 The defendants who are accused of defamation
11 somehow lose their immunity defense if the memo gets out
12 by someone other than them. I mean, that's strict
13 liability. That's not the way defamation works.

14 THE COURT: So basically your position is that
15 steps were taken to safeguard to whom -- it was
16 addressed to specific individuals, and it states in the
17 memo that it shouldn't be published.

18 So if it's published by somebody else that is
19 not directly either Barnes or Earles or Garrick, then
20 that defamation claim would have to go against those
21 individuals who actually put it out there.

22 MR. BARLOW: Yes, yes.

23 MS. PEAVY: Your Honor, I think the important
24 thing to note just briefly is that the only way that
25 this e-mail could have been printed out is by someone

1 who is on that e-mail chain. So someone who is in that
2 supervisory sphere or in that management sphere printed
3 that out. They're the only people on the to -- the
4 address.

5 THE COURT: But you have the burden of proof.
6 You have the burden of proving that. I mean, you just
7 can't say it's been out there and therefore ipso facto
8 somebody had to print it out. So it falls back on the
9 District.

10 I mean, I guess the only -- the only way to
11 establish it is to bring in each one of those people who
12 received it and for them to say, "I didn't publish it or
13 I did publish it."

14 I mean, you're asking for there to be a leap
15 from -- I mean, there's got to be some evidence that one
16 of those individuals did that and just to say, "Well,
17 it's obvious that it was printed out and it's
18 distributed," you still have to establish who it is.

19 MS. PEAVY: Well, the only evidence I believe
20 is that the e-mail was delivered to the people who are
21 listed on there; and they are all supervisors. So it
22 would then be that the people who received the e-mail
23 would have the power, custody, and control of the e-mail
24 and would have printed it out and left it out.

25 THE COURT: And does that fall on the School

1 District or does that fall on them individually?

2 MS. PEAVY: It's both because you've got an
3 issue where you've got a confidential memorandum and
4 it's not kept confidential. Chuck Earles and Eric
5 Barnes both said they didn't print it out and leave it
6 in the break room.

7 But the only evidence is that it was printed
8 out by someone who received it. The only people who
9 received it are supervisors, and it was visible in the
10 break room and in the vehicles.

11 THE COURT: I will...

12 MR. BARLOW: I was going to say something just
13 in response to the negligent supervision claim.

14 THE COURT: Yes, sir.

15 MR. BARLOW: I think it's too late to amend
16 the complaint to allege a futile claim for what appears
17 to be a general duty to maintain a community or a
18 workplace of excellence.

19 There's just not such a claim that exists.
20 There is no right of action. There is no duty to
21 maintain a nice workplace in South Carolina. There is
22 not a cause of action for that. There is no general
23 negligence claim in these facts.

24 Negligent supervision, the elements of that
25 require -- the first one is the employee is on the

1 premises of the employer using the chattel of the
2 employer.

3 The employer knows or has reason to know of
4 the ability to control the employee, and the employer
5 knows or should know of the necessity and opportunity
6 for exercise and control.

7 So it assumes that there is a tortfeasor, one
8 person, who does this that the employer has failed to
9 control, not that it has failed to generally control its
10 operations. That's it.

11 MS. PEAVY: Your Honor, I don't think I
12 responded to their Tort Claims Act motion. I can do so.

13 THE COURT: Yes, ma'am.

14 MS. PEAVY: Our position, Your Honor -- and
15 this kind of dovetails into another issue -- is that we
16 believe that the evidence is in the record of actual
17 malice here. Under the Holtzscheiter versus Thomson
18 Newspapers case, 332 S.C. 502 -- and I can hand that up
19 if you would like.

20 THE COURT: Yes, ma'am. I'm familiar with it,
21 but you can hand it up.

22 MS. PEAVY: Okay.

23 (Hands to Court.)

24 MS. PEAVY: We would ask for a ruling that the
25 statement that "Jeffrey Kennedy is not to have keys,"

1 when published to a group of security employees where
2 the very nature of being a security guard is having
3 keys, we would contend that that's defamatory per se and
4 that it's actionable per se.

5 Therefore, the law presumes that the defendant
6 acted with common law malice and that the plaintiff
7 suffered general damages. So we would be asking for a
8 charge on that.

9 But I also think, since it's a question of
10 law, it's appropriate at this stage for there to be a
11 discussion of that; and we're moving for a directed
12 verdict on that issue.

13 That dovetails into the Tort Claims Act, their
14 directed verdict issue, because we believe that there is
15 actual malice here; so therefore, the defamation claim
16 against the individuals should stand because it meets
17 the exception under 15-78-70, Subsection (b).

18 THE COURT: I think that that is -- I think
19 how to interpret what was stated and whether or not it
20 constitutes defamation is clearly a jury issue. I think
21 it's up to them to view the evidence and look at it as a
22 whole and determine -- if we get past the publication
23 issue -- whether or not the message that was
24 communicated was defamatory.

25 I think that that's something they have to

1 make a decision on based upon the ordinary meaning and
2 whatever arguments that you want to make. If you want
3 to make that as a jury argument that, you know, for
4 security officers not to have keys impugns his
5 reputation, then I think you can make that argument.
6 But I think that's clearly an issue that has to be
7 determined based on the jury by the jury. That's not as
8 a matter of law.

9 MS. PEAVY: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. BARLOW: No, Your Honor.

12 THE COURT: I'm going to consider some of the
13 issues that you raised in your motions. I will review
14 the information again in light of the new arguments and
15 my understanding of, I guess, what you were trying to
16 tell me before.

17 Let's come back at about 2:00 o'clock. I can
18 give you a ruling, and at that time we'll be prepared to
19 give you a charge.

20 (Whereupon there is a luncheon recess.)

21 THE COURT: There are a couple of additional
22 questions that I need to ask as it relates to some of
23 the claims.

24 I understand with the defamation claim, what I
25 had originally ruled was that it would be a jury issue

1 as to Mr. Earles and Mr. Barnes -- or it's not been a
2 directed verdict as to Mr. Earles and Mr. Barnes. I
3 added Richland County School District Two, and I
4 dismissed Kim Jones.

5 So those are the parties that will remain at
6 the close of the defendant's case; is that correct?

7 MS. PEAVY: Yes, Your Honor.

8 MR. BARLOW: Yes, Your Honor.

9 THE COURT: Let me make sure -- and I know
10 I've heard it many times -- but it appears a lot of
11 things get mixed together. What is the plaintiff's
12 position as to what the defamation entails? In other
13 words, what's the defamatory statements or claims that
14 they're making as it relates to Barnes and Earles?

15 MS. PEAVY: As it relates to Barnes and
16 Earles, it concerns that they insinuated through their
17 conduct and the e-mail is a statement that a security
18 guard is not to have keys.

19 We contend that by having that published to
20 the staff at large, not among the supervisors, that
21 statement can only mean one thing to people working in
22 security. I believe the testimony on this was clear
23 that a security guard without keys, something is wrong.
24 They're not to be trusted.

25 The way that the memo is closely related to

1 the investigation and to the missing money from Tim
2 Hunter's office and also the -- and also the
3 Administration Building thefts -- there's only one way
4 to interpret that, which is that they believed Jeffery
5 Kennedy was the responsible party.

6 They're moving forward letting everyone know
7 they don't trust him. It doesn't matter what the
8 Richland County Sheriff's Department decided to do, this
9 is their opinion; and they're going to let everyone know
10 that he is not to be trusted.

11 The standard of care to use when, you know,
12 dealing with confidential employee information is to be
13 discreet, to keep it confidential, to ensure it's kept
14 confidential.

15 We don't dispute that they have the right to
16 send a memo to their supervisors. What we argue, Your
17 Honor, is that they defamed him or caused him to be
18 defamed when the e-mail was printed out and left around
19 carelessly.

20 They knew they had a culture problem. They
21 knew they had a gossip problem. That's the Change of
22 Culture memo. So that's our position as to Mr. Earles
23 and Mr. Barnes.

24 THE COURT: And specifically what -- you said
25 through conduct and e-mail. Tell me what conduct of

1 Mr. Barnes was communicated to third parties.

2 MS. PEAUY: Well, Mr. Barnes and Mr. Earles
3 both --

4 THE COURT: I'm asking about Mr. Barnes.

5 MS. PEAUY: Mr. Barnes?

6 THE COURT: Yes.

7 MS. PEAUY: Mr. Barnes was -- his conduct to
8 third parties?

9 THE COURT: What did he do that was
10 defamatory? What communications? What conduct? What
11 actions did he take? What are you claiming that he did
12 that constitutes -- separate and apart from Earles --

13 MS. PEAUY: Okay.

14 THE COURT: -- that constitutes defamation?

15 MS. PEAUY: Well, I think there was plenty of
16 testimony in the record about the chain of command in
17 the Security Division, which was that you had the rank
18 and file, the guys and the women doing the shift work.
19 Then you have the captain and lieutenant level. Those
20 are the people who the e-mail is addressed to.

21 Then you had Mr. Barnes and then you had
22 Mr. Earles. Mr. Barnes was the person charged with
23 supervising those captains and lieutenants who the
24 e-mail is addressed to. He knew that there was a
25 culture problem. He knew that he and Chuck Earles were

1 trying to change that rumor mill.

2 So he should have ensured that it was kept
3 confidential. So he allowed the message to get out, and
4 everyone knew that he considered Mr. Kennedy to be the
5 thief. He was -- he testified himself he was angry that
6 Mr. Kennedy wasn't fired back in June.

7 THE COURT: And to whom were those comments
8 about that he thought he was guilty, for lack of a
9 better word, and that he was angry that he wasn't fired?
10 To whom were those communicated? I'm talking purely
11 about the defamation, not the negligent supervision
12 issues, only the defamation.

13 MS. PEAVY: I think that Lieutenant Reid
14 testified that everybody -- that through their words and
15 conduct -- that Mr. Earles and Mr. Barnes communicated
16 to the staff that he wasn't to be trusted. I think that
17 was the testimony.

18 Mr. Permenter, Captain Permenter, Lieutenant
19 Reid, Barry Mitchell said everyone knew. There was only
20 one way for everyone to know that they didn't think
21 Jeffrey could be trusted was for Mr. Barnes and
22 Mr. Earles to communicate that.

23 (Pause.)

24 MS. PEAVY: Your Honor, also just briefly. He
25 testified that he didn't print the e-mail out, and it's

1 for the jury to weigh the credibility of the witnesses
2 as well. The theory of our case is that someone who is
3 on that e-mail printed it out and left it out.

4 THE COURT: As it relates to the qualified
5 privilege, whether there exists a qualified privilege,
6 it is a matter of law which has to be decided by the
7 Court. As it relates to the memorandum or the memo that
8 was sent to the employees, I find that that was the
9 subject of a qualified privilege.

10 It was addressed to individuals who had a need
11 to know about the issues that were being discussed, that
12 it was limited to those certain personnel who had that
13 need. So it was not -- the interest that was being
14 expressed was the common interest among all the
15 individuals to whom the information was communicated.

16 So those conversations as it relates to the
17 e-mail is the subject of a qualified privilege. It
18 becomes a jury question as to whether or not the
19 privilege was exceeded.

20 As it relates to that conduct, I'm not sure
21 that that information -- I'm not sure to whom the
22 conduct was demonstrated. I think there might be some
23 dispute as to that.

24 That's a question as to whether or not the
25 information is being published to other individuals. I

1 think that's a jury question as well, as to whether
2 through their conduct in interacting with the other
3 employees that they were outside of the supervisory
4 stuff, that they had communicated a defamatory message.
5 Of course, whether the message was, in fact, defamatory
6 is also a jury question. So I'll deny the directed
7 verdict on that basis.

8 On the negligent supervision, I'm still not
9 sure that I really understand what the argument is about
10 the negligent supervision. I've heard about two or
11 three different arguments.

12 The argument that made the most sense to me
13 was the last argument that was made by the defense.
14 There was no general duty to keep a good workplace, a
15 work site.

16 The problem I have with the negligent
17 supervision is that it appears that there has to be --
18 and I'll have to look back at it again -- it appears
19 there has to be some knowledge on the part of the
20 employer or the person who is doing the supervising that
21 there is an issue that they need to be aware of.

22 As it relates to the School District, there's
23 two scenarios here. There's the School District
24 supervising Barnes and Earles, and I find that there's
25 not any evidence to show that they should have been put

1 on notice that there was some error or there was some
2 problem with the manner in which those two gentlemen
3 were supervising their employees or were conducting
4 business within the School District.

5 So while there's a lot of questions about, you
6 know: Did you ask questions about the training? Did
7 you ask how they were trained? Did you go back and talk
8 to them?

9 As it relates to the School District's
10 responsibility, which I think would go up to Batchelder
11 and Garrick and how they view -- how they supervised
12 Earles and Barnes -- there's no evidence that would have
13 put them on notice that they had to be aware that there
14 was some issue that they needed to properly go back and
15 supervise and to know that they had to control how those
16 two individuals were exercising their duties and
17 performing those duties and supervising their employees.
18 So on that particular issue, I will grant the directed
19 verdict as to that particular issue.

20 The second scenario that comes up is as it
21 relates to Barnes and Earles having knowledge and to
22 supervise their employees on how they should have -- how
23 they are to treat information that's presented to them.

24 Again, I think the testimony was that, as it
25 relates to the memorandum -- and that's really the issue

1 that we're talking about here. That still goes to the
2 slander issue -- but as to supervising them in terms of
3 discussions that they may have had, I haven't heard
4 anything about the overall tenor in the discussion about
5 the fact that there was a rumor mill.

6 Case law seems not to address -- while there
7 have been a number of cases that talk about rumors, both
8 in the context of slander, there's not much in the
9 context of negligent supervision.

10 I don't think that that is a duty that is owed
11 to a third party that they have to control all of the
12 discussions and conversations that their employees have
13 within their workplace.

14 The question is certainly the memo that was
15 sent out is marked confidential and it's marked not to
16 discuss it and the memo goes so far as to say, you know:
17 "The contents of this memo are will not be shared with
18 others except on a need-to-know basis," which certainly
19 imparts the importance of being able to keep that
20 information confidential and keep it to themselves.

21 The fact that somebody goes -- and the
22 testimony was, "When I send out something confidential,
23 I would expect that those in a supervisory role would
24 understand that importance and to show and demonstrate
25 and respect the fact it's confidential and should not be

1 shared with others." I think that's a reasonable
2 expectation.

3 I also believe that based upon the evidence
4 and the case law that there is not a -- that there has
5 been no reason to believe that those individuals would
6 therefore go out and do something contrary to what the
7 expectation was in light of the fact that the memo
8 clearly says it's confidential.

9 One of the things about negligent supervision
10 is they should know of the necessity and the opportunity
11 to exercise the control over their employees and prevent
12 them or to cause them to do something that would prevent
13 them from doing something else and knowing that they
14 have the ability to control.

15 Certainly, they would know that they have the
16 ability to control those individuals; but there's been,
17 I guess, a lack of evidence and information about
18 what -- I guess what the School District or what the
19 employers would have done differently and what they
20 should have done in terms of being able to convey that
21 message.

22 Now, I understand that the argument is that
23 they didn't go back and they didn't talk to him
24 individually or personally. They didn't do what
25 Childers would have done.

1 But I don't think that that conduct would
2 impart back to the School District and hold the School
3 District responsible, in the absence of having some
4 evidence that there should have been some type of
5 different treatment or that they are aware that those
6 confidences had ever been disclosed in other
7 circumstances or other situations.

8 So for that reason I will grant the motion as
9 it relates to the negligent supervision. Additionally,
10 I think there's nothing in the evidence to show that --
11 and I think I may have already said this -- that Earles
12 would not have handled the matters that were under his
13 control and that the School District would need to act,
14 to step in to do otherwise.

15 The claim is not against -- the claim is not
16 against the individuals. It's against the School
17 District. In the absence of some evidence that the
18 School District should know that Earles would not
19 properly supervise or Barnes would not properly
20 supervise their employees, I think that there would be
21 some issue that would put them on notice that they
22 needed to do so.

23 I think that claim fails. I understand this
24 morning I said something different; but in listening to
25 the arguments again, I'm going back and reevaluating it.

1 I think I was incorrect when I indicated that it should
2 remain in the case.

3 The Tort Claims Act, I think I've stated the
4 reasons why I think they both should stay in. I think
5 that there isn't -- there is an immunity under the Act,
6 but I think there would have to be some finding and
7 maybe some interrogatory to the jury that talks about if
8 there is a recovery against the defendants, whether they
9 acted with actual malice.

10 I think once that's determined, then I think
11 then that would be clear and would be a clear statement
12 as to whether or not the individuals in the School
13 District should be responsible in the event there is a
14 verdict. So I'll deny the motion on that basis.

15 MR. GOODWYN: Just as a practical matter, are
16 you going to let the jury know kind of what the case has
17 been boiled down to before we get to closing?

18 THE COURT: I will. So having said all of
19 that, on the charge I'll tell you what I will charge and
20 we can go from there.

21 As I indicated, I think there are several
22 issues that the jury has to decide. First, they have to
23 decide whether -- and I'm talking generally -- whether
24 the statement or conduct was defamatory. Secondly,
25 whether or not it was published. Third, whether as

1 MS. PEAVY: Thank you, Your Honor.

2 CLOSING ARGUMENT

3 MS. PEAVY: Ladies and gentlemen of the jury,
4 Madam Foreperson, thank you. Like the judge said, we
5 know you have been here all week. You've been
6 attentive. You've been listening to the witnesses.
7 You've been listening to the testimony. We appreciate
8 that, all the lawyers in this room, as does Mr. Kennedy,
9 as does the School District and their employees.

10 When I first had the opportunity to speak to
11 you on Monday afternoon, I told you we were here for one
12 reason because there is only one place in our country,
13 here, that Jeffrey can try and get his reputation back.
14 That place is this courtroom. Nothing has changed.
15 That's what this case was about on Monday. That's what
16 this case is about now.

17 Now, you've heard a lot of evidence about the
18 fact of the \$1,000 missing from the Athletic Department
19 and the other small thefts at the Administration
20 Building.

21 I'm not going to go through all those details
22 again. We heard there are a lot of questions, a lot of
23 unanswered questions, about keys, about access to the
24 building, about videos or the lack thereof, about
25 habits, about wasting time, about alarms, about

1 timelines.

2 We've heard testimony from the witnesses about
3 other people who were in the building on the same days
4 when Jeffrey was. We heard from Tim Hunter. I think we
5 can all agree that Tim Hunter, the Athletic Director,
6 seems like a great guy. He is a longtime coach. He is
7 a longtime educator. He is a Spring Valley parent. He
8 has a good reputation in the school and the community.

9 He would have had a lot to lose by taking this
10 \$1,000. He had no history of any theft or dishonesty.
11 So even though he was the person who left the cash out,
12 who had a key, it just didn't seem to make sense that
13 Tim Hunter would risk all that, really risk who he was,
14 to do that. He had too much to lose.

15 We didn't hear from Sonny Uker, but we heard
16 people talk about him. We heard Tim Hunter talk about
17 him, said he was a stand-up guy, his right-hand guy, a
18 great booster for Spring Valley. So he had a good
19 reputation in the community.

20 He enjoyed his job according to the testimony.
21 Again, it sounds like he would have had a lot to lose by
22 taking this money. We didn't hear any history that he
23 had any history of being dishonest.

24 So even though he was there that night and he
25 knew the money had been left out, it just didn't seem

1 likely that those two gentlemen would have taken that
2 money.

3 Then there's my client, Mr. Jeffery Kennedy.
4 The case against him was that he too was in the Athletic
5 Department that night working. He was off camera in --
6 his testimony was in the weight room for about five or
7 six minutes, and that he had keys.

8 But, again, just like Tim Hunter, just like
9 Sonny Uker, he had a lot to lose. You heard his
10 testimony. He had just gotten this promotion. He was
11 getting off third shift. He was looking forward to
12 being a lieutenant. He had a wife. He had kids.

13 We heard Traci Batchelder recount her notes
14 from her meeting with him back in March. It was heart
15 wrenching, to me at least, because I know Mr. Kennedy.
16 He was part of the culture of excellence at Richland
17 Two. He was up for a promotion.

18 It just doesn't make sense that he would go
19 ahead and jeopardize all of that by taking this money,
20 by rifling through desks, nothing like that. It didn't
21 sound like he would want to lose that, just the way Tim
22 Hunter wouldn't want to jeopardize his life, his family,
23 just the way Sonny Uker would not want to do that ever.

24 But Jeffrey was on duty that night, and he was
25 on duty in the Administration Building those other days.

1 The testimony is undisputed. He would have expected to
2 be investigated. That's what happens when you work
3 security and something goes messing on your shift.

4 You've got keys. You've got access. They all
5 know the cameras are everywhere. They don't know where
6 the cameras are looking at what time; but they know
7 they're being watched. They know if something goes
8 missing, they're going to look to see what the security
9 guard was doing.

10 That's not the problem. It's not a problem
11 that Richland Two decided to investigate and see what
12 Jeffrey did that night. It's not a problem that Chuck
13 Earles or Eric Barnes decided to see what Jeffrey was
14 doing the days in question. That is reasonable, but
15 they don't have the right to be reckless and smear a
16 good reputation.

17 Unlike the situation with Tim Hunter, unlike
18 the situation with Sonny Uker, for some reason Jeffrey's
19 good reputation really didn't seem to matter. He had
20 been working there a long time. He had a few notes in
21 his file about how maybe he was late or he left early on
22 a shift or whatever, but they had just recommended him
23 for the promotion.

24 So really in theory he was a valued member of
25 Richland Two, but for some reason something wasn't quite

1 right in their eyes. You saw Jeffrey on the stand. The
2 judge is going to ask you or is going to tell you that
3 it's up to y'all to evaluate credibility. It's up to
4 y'all to form your opinions about witnesses and the way
5 they presented themselves.

6 So maybe he did forget a few details a few
7 months later about what door he went in on what night at
8 the nine schools that he monitors or that maybe he
9 wasted 20 minutes one night instead of wasting ten
10 minutes. I think we can agree sometimes when you're
11 looking back, you don't know exactly what you did on
12 February 24th, what have you.

13 The testimony has been undisputed. They never
14 ever saw Jeffrey accessing any of these offices with a
15 key in the three years that he had been working there,
16 nothing, no evidence to that.

17 But instead of giving Jeffrey consideration,
18 instead of looking and seeing that Jeffrey was a person
19 who should be protected, they went ahead and they
20 targeted him.

21 In his 50 years, he had a good career in
22 security. He had a good reputation among his coworkers.
23 You heard from Lieutenant Reid. You heard from Captain
24 Permenter. They are still working for the District.
25 They have no reason to come here and tell you they think

1 Jeffrey Kennedy is a good guy.

2 They have no reason to come here and put
3 themselves at odds with their current employer, but they
4 thought he had a good reputation. They thought what
5 happened to him was really unfair.

6 Jeffrey was a person who had started that
7 youth mentoring program for young men at his church.
8 Jeffrey was a person who helped to guard the collection
9 plate at his church.

10 Now, just like Tim Hunter, he had a lot to
11 lose; but for some reason he wasn't treated the same.
12 He had no history of theft or dishonesty. So really
13 when you look at it, they had every reason to believe
14 that he wouldn't be a petty thief.

15 Now, we've heard a lot of testimony about
16 other people, other potential candidates, people who had
17 access. You heard from Mr. Garrick, plain as day, other
18 people had access. Other people had keys.

19 You heard from Eric Barnes. He testified that
20 when he was conducting his investigation, he tried to
21 drown out the white noise. I guess by white noise he
22 meant looking into these other people that maybe had
23 opportunity and access and keys.

24 We talked about the baseball team. We never
25 heard anyone say they had spoken to them. We talked

1 about the custodial staff, never heard anyone say anyone
2 spoke with the morning security staff or who was on duty
3 that day.

4 You also heard a lot of testimony about the
5 video system. That's been replaced since this incident.
6 Maybe it kept malfunctioning or taping over or the
7 motion sensors weren't working properly. Who knows?

8 We don't have it here. We don't have that
9 span of video to look at. So you can consider that when
10 you consider all the evidence as well: What's here and
11 what's not here.

12 I think at the end of the day, you'll be left
13 with the same impression that the Sheriff's Department
14 was left with. They couldn't convincingly arrive at a
15 conclusion that one person had taken this money or been
16 responsible for these other thefts in the Administration
17 Building. There was just too many unanswered questions
18 and not enough hard facts.

19 You heard Jim Childers up on the stand the
20 other day. He testified that break-ins happen. People
21 would come through the ceiling tiles at times, be
22 creative.

23 He also testified that with 2,000 teenagers, a
24 bunch of staff, coaches, Athletic Department people,
25 teams going in and out, tournaments, he estimated a

1 hundred thefts a year at Spring Valley. The testimony
2 was undisputed he doesn't report all those to the
3 Security Division.

4 So we know what the facts were. We know what
5 the evidence was. If you're a supervisor, like Chuck
6 Earles or Eric Barnes, and you know the police have
7 decided not to charge anyone, they didn't have any
8 proof, you know, no one was convicted of the crime,
9 whose reputation do you choose to smear?

10 Do you take your best guess? No, we know
11 that's not the responsible thing to do. Because
12 employees have the right to expect that their privacy is
13 protected while they're in the workplace.

14 You heard Mr. Garrick testify to a culture of
15 excellence -- a culture of excellence. Part of that is
16 looking out for your employees, ensuring that their good
17 name isn't sullied because an investigation is going on,
18 and you think they're responsible.

19 It's to make sure that their reputation isn't
20 ruined because information in their confidential HR file
21 gets out, is left around carelessly. You can't ruin
22 your employee's reputation.

23 If someone hasn't been charged or convicted
24 with a crime, you can't go around letting people know
25 that you think they're a thief no matter what. Needless

1 to say it's extremely harmful.

2 I'm asking you to think about what you heard
3 from Jim Childers because I thought that testimony was
4 really instructive. Jim Childers had to deal with this
5 situation where he was taking keys from a longtime
6 employee. We all heard from Ms. Jackson. She was a
7 lovely lady up there on the stand.

8 Jim Childers didn't want to smear her
9 reputation. He didn't want to ruin her good reputation.
10 He didn't want to sully her in any way. She worked for
11 a long time. She was trusted.

12 He testified that what he did was he
13 discreetly and quietly told the Principal and one or two
14 other managers on a need-to-know basis of his decision
15 to take those keys away quietly, discreetly, need to
16 know, no e-mail, no memo.

17 Mr. Garrick testified that Mr. Childers
18 handled that situation, I think, pretty much perfectly
19 because that's the goal. Employees have a right to
20 privacy when it comes to sensitive issues like that so
21 that people's reputations aren't ruined by a smear.

22 Mr. Childers knew that. He knew if it got out
23 that he was pulling Ms. Jackson's keys, it would hurt
24 her. It would harm her. She has built up a good
25 reputation over time. She was in a position of trust.

1 It would harm her if people knew he had done that.

2 Isn't that the same thing with Jeffrey
3 Kennedy? Wasn't he a longtime employee, three years?
4 Wasn't he valued and trusted? They had recommended him
5 for a promotion; but we know he wasn't treated the same
6 way, not at all.

7 If you want to discipline an employee, you
8 can. No one is here saying that Richland Two and its
9 supervisors, its managers, don't have a right to
10 discipline their employees.

11 Richland Two is a renown School District.
12 It's a large school district. Mr. Garrick is dealing
13 with HR issues every day. They have a lot going on.
14 But if you're going to discipline your employee, you
15 need to keep it in-house. You need to keep it
16 confidential.

17 That's what this case is really about. We're
18 not here to fault Chuck Earles for sending an e-mail to
19 his supervisory staff telling them that under no
20 circumstances is Jeffrey Kennedy to have keys anymore.

21 He has the right to do that. Those are his
22 supervisors. He is the Director. A boss has to be able
23 to tell managers what the discipline is so that they can
24 follow the instructions.

25 But Chuck Earles and Eric Barnes also knew

1 that they had some problems in that department in terms
2 of having things confidential. You saw the Change of
3 Culture memo that Chuck Earles prepared. They had a
4 rumor problem. They had a gossip problem. They were
5 trying to fix it.

6 Chuck Earles and Eric Barnes knew that
7 Jeffrey's reputation and professional career would be
8 damaged if that e-mail got beyond its recipients, got
9 beyond the core group of supervisory staff who they were
10 allowed to communicate with.

11 Everyone in this case has acknowledged that
12 that e-mail to this day if you saw it and you worked in
13 security, Lieutenant Reid said, "You put two and two
14 together. Everyone knows."

15 That e-mail did get out. It was printed out.
16 The undisputed testimony is that it was lying in the
17 office, the shift room or whatever it's called, watch
18 room, and that people saw it lying out there: Captain
19 Permenter, Barry Mitchell.

20 Captain Permenter is still at the District.
21 His wife has worked there forever. She is a recipient
22 on that e-mail. These people don't have a bone to pick
23 with the District. They're longtime employees.

24 But the fact is the evidence shows that it was
25 printed out by someone who received it, someone who had

1 access to it, and it was left out. This was careless
2 and reckless.

3 So no one is surprised, based upon the
4 culture, the rumor mill, that word got out; and it just
5 didn't get out to the security staff. That would have
6 been bad enough.

7 No, it got out. Because Columbia, even though
8 it's the capital city, sometimes it can feel like a
9 small town. People's lives overlap. People work at
10 Richland Two. They testified they've got thousands of
11 employees.

12 Well, some of those people might go to your
13 same church, your same synagogue. Some of those people
14 might do recreational activities with you. Your lives
15 are intertwined when you live in Columbia.

16 People at these big employers, they know.
17 They know that they're going to interact with people
18 outside of just that little world of Richland Two. The
19 student body found out about it. We know that.

20 Mr. Jeffrey testified he was at Wal-Mart, saw
21 a Spring Valley student talking about him. Now, most
22 adults won't go beyond your back or step away.
23 Sometimes kids aren't quite so sensitive. That happened
24 this year.

25 We know Jeffrey's church found out about it.

1 He testified he had started up that Godly Men's program,
2 to help mentor youth. Suddenly he wasn't really welcome
3 doing that anymore, and suddenly he is not asked to work
4 security while the offering is being counted and
5 accounted for on Sundays.

6 We don't know how many looks he has gotten
7 when people recognize who he is. We just know it's out
8 there. I talked about this in my opening statement to
9 y'all, the virus. It travels.

10 We're in an age now where rumors can fly in
11 two seconds, where it can go anywhere. People have
12 their phones. People have their computers. It's not
13 hard for it to get around.

14 How many friends and acquaintances, if they
15 knew someone was thought to be a theft [sic], would have
16 turned away from Jeffrey instead of saying hello? How
17 many times has Jeffrey noticed and how many times will
18 he notice someone maybe giving him a little bit of a
19 funny look, recognizing him from his years at Richland
20 Two saying, "Oh, that's Mr. Kennedy from Spring Valley."

21 Again, we're in Columbia. His marriage is no
22 longer. He still has kids. He has still got grandkids.
23 He can't just pack up and move somewhere else. His life
24 is rooted here. He graduated from Keenan. His mother
25 is here.

1 So he can't simply run away from all this. He
2 is not 20 years old. He can't simply pack up and start
3 a new life, transfer college, and go somewhere where
4 people don't know him. He's going to have to deal with
5 this.

6 So the question becomes: What can you as
7 jurors do to try to make this right? Because remember,
8 this is the only place for Jeffery Kennedy. The law
9 doesn't make you write -- make the School District write
10 an apology, make Mr. Barnes or Mr. Earles write an
11 apology. It doesn't allow a retraction to be forced to
12 be printed anywhere.

13 The only thing the law allows is for you, the
14 members of the jury, to award money damages to
15 compensate someone in Mr. Kennedy's position for the
16 embarrassment, for the humiliation, for any loss he has
17 suffered, inside, his emotions, his family structure,
18 what have you that he has endured as a result of this
19 incident.

20 The question is: What's appropriate here? I
21 would suggest that you all go back to the jury room and
22 arrive at an amount that fairly compensates Jeffery
23 Kennedy for the embarrassment and humiliation that he
24 suffered as a result of this reckless accusation that he
25 was a thief.

1 An amount that will say to the School
2 District, that will say to the School District's
3 employees that, "You have to be exceedingly careful when
4 you're dealing with a man's reputation or you will end
5 up paying for it later."

6 An amount that says to everyone who hears
7 about the verdict, the public, that Jeffrey doesn't
8 deserve this bad reputation, something that's
9 appropriate and sends a message.

10 Now, Mr. Kennedy testified before this all
11 happened, he was bringing home about \$1,600 every pay
12 period. So he was bringing home about \$3,200 a month or
13 so. Mr. Kennedy is 50 years old -- about to turn 50.
14 Sorry, Mr. Kennedy.

15 I would submit to you, ladies and gentlemen,
16 that ten years of his salary where he was at Richland
17 Two before all of this came down, that's an appropriate
18 amount. That's an amount of about \$400,000.

19 That's an amount that will send a message to
20 the School District and to its employees that they were
21 wrong, that shows that you thought Jeffery Kennedy was
22 right, and that he did not deserve what he was subjected
23 to.

24 The judge is going to give you a verdict form.
25 The School District obviously is an entity. It can't

1 defame anyone. It acts through its employees. I would
2 ask you to fill in an award of \$400,000 on this verdict
3 form to show the District, to show the community that
4 the way the District and its employees treated Jeffery
5 Kennedy was wrong and that you the jury are trying to
6 make it right today. Thank you so much for your time.
7 That's all I have.

8 THE COURT: Yes, sir. You may proceed.

9 MR. BARLOW: May it please the Court, Counsel.

10 THE COURT: Yes, sir.

11 **CLOSING ARGUMENT**

12 MR. BARLOW: Ladies and gentlemen, it's good
13 to get back up in front of you. It's been a long week.
14 I also appreciate your patience and attention on behalf
15 of the School District folks over here, Mr. Garrick and
16 Captain Mahoney as well.

17 In my opening I told you what kind of case
18 this was. Both sides agreed this case was about trust.
19 Okay. The judge's instructions are going to tell you
20 how to apply the law.

21 You don't get to make up the law. If you
22 don't like what the judge tells you the law is, that's
23 too bad because the judge is going to tell you what the
24 law is that you have to apply. You are not allowed to
25 make your own law. If you don't like the law, then I'm

1 sorry. It's what the judge says does apply.

2 This is not a criminal case. This was the
3 first thing -- or one of the first things I said on
4 Monday. It seems like a long time ago. I said, "This
5 isn't a criminal case."

6 I said we would not come up here and try to
7 prove that Jeffery Kennedy took money from the
8 administrative hall or from the Bates Hall beyond a
9 reasonable doubt. Okay.

10 The burden is theirs to prove that we caused
11 Jeffery Kennedy reputational injury. It's not our
12 burden to prove that he stole things from us. I did
13 tell you that I would prove to you -- and I did prove to
14 you -- this week through all of our witnesses that there
15 were lots of reasons for the School District folks that
16 you heard from up here not to trust what Jeffery Kennedy
17 was telling you.

18 I don't have time to list them all, but there
19 are a lot of them. Eric Barnes is the one who used the
20 term white noise up there on the stand. You've heard
21 from counsel when they were asking questions of all the
22 witnesses.

23 What about Tim Hunter? What about
24 Ms. Jackson? What about Sonny Uker? What about the
25 baseball coach? Don't they have keys? Where are all

1 their keys? Who does this? And who does that? The
2 keys are white noise. Okay. If somebody is in that
3 building, they show up on the camera.

4 There are a couple of people that have a key
5 that gets into every door in there. There are two
6 people, I think you heard testify today, maybe three,
7 that actually have the master key to get in the Athletic
8 Director's Office in the Bates Hall. That's Tim Hunter,
9 Jeffrey Kennedy, and Jim Childers. That's something to
10 think about there.

11 The other white noise that you heard about,
12 Sonny Uker, an 86-year-old guy. Do you really need to
13 sit down and question an 86-year-old man about whether
14 he stole money? Do you need to sit down and question
15 Tim Hunter and put him through a whole battery of tests?

16 You heard from Ms. Jackson up here.
17 Ms. Jackson would be the last person to ever take
18 anything from anybody. She gives plenty to people but
19 would never, ever take anything. So that's white noise.

20 They want to talk about everything except what
21 their client did. I will go through some of that now.
22 They also want you to second guess people who have spent
23 their lives in law enforcement, people who have spent
24 their lives in education trying to do the right thing.
25 They know when something is wrong, and they need to take

1 care of it and address it when something just doesn't
2 seem right with one of their employees.

3 One of the terms you heard was common
4 denominator. That means something that's involved in
5 every little thing, something that is always the same
6 with everything.

7 In the administrative hall we heard testimony,
8 three reports in about two weeks, suspicious activity in
9 there by Mr. Kennedy. All of that was varied from his
10 normal routine.

11 Stuff didn't just go missing in the school now
12 when Mr. Kennedy was in there and unaccounted for. It
13 went missing in that very area in the administrative
14 hall in the time that he was off camera.

15 Now, Mr. Kennedy just says he was wasting
16 time, just killing time. It's curious that Mr. Kennedy,
17 whenever he is killing time and wasting time, it's not
18 on the camera. It's not on camera when he does that.

19 But who has time to rifle through desks and
20 file cabinets and things like that? Who has time to do
21 that? Are the students going to come in through the
22 Assistant Principal's office or by the Principal and
23 start digging in the desk and trying to take stuff?

24 It's the third shift security guard who has
25 time to do these things. Who knows where the cameras

1 are? Somebody who has a lot of time in the building. I
2 think one of the questions when Mr. Kennedy got back up
3 was: "You spend a lot of time in these buildings, don't
4 you? You know these buildings better than anybody
5 else."

6 You heard from Chuck Earles that you can look
7 up in those cameras and see exactly where they're
8 pointed. You heard from Mr. Kennedy, after some
9 prompting from his deposition, that he knows how to run
10 these cameras. He knows how to pull it up.

11 He can see which camera is looking here
12 (indicating). He can see which camera is looking there
13 (indicating). He can find the blind spots. So those
14 are some of the things at the administrative hall.

15 There's just no reason to go to the back door,
16 stay in there for 20 minutes, take a break 20 minutes
17 after your shift starts. I mean, nobody takes a break
18 20 minutes after their shift starts. That just doesn't
19 make any sense.

20 That's what these people are trying to filter
21 out. Who is the most likely person? Are we going to
22 try to convict this person of a crime or anything like
23 that? No, let's just try to find out what's going on
24 and make it stop. That's what they are trying to do at
25 this point.

1 Let's talk about the Bates Hall for a minute.
2 Who has the best opportunity there? Who would know what
3 the cameras see and what they don't see? The
4 explanation for the lights in the weight room, that's
5 just kind of all over the place there.

6 It takes you about ten seconds to turn off
7 lights, to walk to the edge of the room, and turn off
8 lights. And why do you go back through the dark room
9 when you can go through a lit hall and be right back on
10 the camera? So that was one of the explanations for
11 that that we got.

12 The baseball coach? Well, maybe the baseball
13 did it. Well, why are you sitting out in your truck
14 while the baseball coach and the team are coming back in
15 the building if the baseball coach is somebody that is
16 not trustworthy and you can't trust?

17 The testimony was the baseball coach does not
18 have an A-key. They watched him on the video for a
19 little bit. And the rest of the players took off,
20 removed from the situation.

21 Once Mr. Kennedy was out of the third shift
22 there at Spring Valley, once he was out of the
23 administrative hall, once he was out of the Bates Hall,
24 all this stuff stopped. That bait money that Mr. Earles
25 put in there stayed in there for six months in the file

1 cabinet area there in the administrative hall.

2 The answers to the questions Mr. Garrick asked
3 Mr. Kennedy, "You know, why did you do that?"

4 "Oh, I didn't go back around the front. I
5 stayed in the building the whole time, and then I went
6 out the back door." He was not truthful with that.

7 For the first time at this trial, he has
8 brought up that he was on the phone with Mr. Young at
9 the time. Mr. Young presumably is somebody that could
10 receive a subpoena, come here and testify. You didn't
11 hear anything from Mr. Young to try to confirm that.

12 He never said anything like that to
13 Mr. Garrick or Ms. Batchelder or anybody that was
14 interviewing him. That's a brand new thing. Traci
15 Batchelder's notes are one of the exhibits.

16 I want you to read Traci Batchelder's notes
17 and see if you can find anything about any conversation
18 that Mr. Kennedy was having with Mr. Young during that
19 time that he says he was not in Tim Hunter's office with
20 the money.

21 Also, Kim Jones. You heard all the testimony
22 about Kim Jones. He thought she was cute, wanted to
23 chat with her all the time; but then he's going to tell
24 you, "No, I didn't look at that video and tell her what
25 was on it. She called me. I didn't call her." I think

1 you can get that testimony yourselves.

2 So that's why Richland Two didn't really trust
3 Jeffery Kennedy and the idea was that we needed to do
4 something to try to rectify this situation. But he
5 showed you himself why you shouldn't trust him either.

6 We talked about the stories he was giving
7 Mr. Garrick and Ms. Batchelder about his activities.
8 There is one thing we can say about Mr. Kennedy's
9 testimony here and his interviews with other people is
10 that he is consistently inconsistent.

11 He has been under oath twice, once when he was
12 in a deposition and the other time here. About
13 50 percent of it was the same. You saw how we would go
14 back to the deposition transcript and try to correct the
15 testimony and show you what he said before that's
16 different from what he's saying now.

17 In addition to that, when we talked about
18 Ms. Jones and not telling the truth about her, when he
19 was testifying, he said he left Richland Two. Now, he's
20 working with GEO Care or something like that.

21 But on cross examination I showed you that he
22 left out a whole 18 months of employment that he had.
23 He worked at Allied Barton and SCANA right after
24 Richland Two.

25 I showed him the Linkedin page that he had,

1 his application. He started to work for them the same
2 month that he left Richland Two. I think he didn't want
3 to tell you that because he wanted you all to think he
4 was out of work for a long time. He was not. He went
5 right from that job right to the next job.

6 Then you know what he does? He tells
7 everybody in security. He tells the people who
8 testified the other day, Mr. Permenter for one.
9 Mr. Mitchell, "When is the first time you heard that
10 Mr. Kennedy had been accused of stealing anything?"

11 "Well, I heard that from Mr. Kennedy."

12 "Mr. Mitchell, when is the first time you ever
13 heard that Mr. Kennedy had taken anything from the Bates
14 Hall that he was accused of, that he was the suspect?"

15 "Well, I heard that Mr. Mr. Kennedy."

16 What Mr. Kennedy wants to do is tell everybody
17 in security that he's been accused of things, and then
18 he wants you to give him damages because he says
19 everybody in security knows about it. I mean, that's
20 kind of what you're hearing here, the inconsistencies
21 that are going on here.

22 Then he tells you that he was homeless and he
23 was evicted and things like that. I don't see how that
24 could be the School District's fault when he goes right
25 from the School District to another job paying him more

1 money.

2 Those are the things you need to think about
3 as far as what he has shown you in the trial, not just
4 what we're telling you, but what he showed you in the
5 course of the week why you can't trust him.

6 I also showed you and told you at the
7 beginning we would show you that, despite the reasons
8 that we had not to trust Mr. Kennedy at that time, we
9 gave him another chance and he was treated fairly.

10 He was paid for four months while he was out
11 on leave. He basically got a four-month paid vacation.
12 Then he comes back to work. Then he wants it both ways,
13 of course, when he comes back to work.

14 "They've got me doing supervisory work.
15 They've got me doing the same things that the
16 supervisors are doing," he tells you. Then the next
17 thing he tells you is, "This work is demeaning. They
18 put me in a closet. Everybody thinks that I must have
19 stolen something because I'm working in a closet."

20 So which is it? Is it you're treated as a
21 supervisor or are you somebody who works in a closet?
22 You just can't have it both ways. You also heard that
23 he got the same pay. His pay didn't change. He got the
24 same hours. He got the same pay. He got the same
25 benefits. He liked his job. He didn't apply for

1 another job.

2 I mean, if you don't like your job, if it's
3 demeaning and you hate it and the people are treating
4 you miserably, what's the first thing you do? You start
5 applying for another job while you still have a job.
6 That's what you do.

7 Nobody was out to get Jeffery Kennedy. They
8 wanted to promote Jeffery Kennedy. I mean, this is
9 right before these thefts came to the attention of Chuck
10 Earles and Eric Barnes and the school people. He was up
11 for a promotion. He was ready to be promoted.

12 Nobody was out to do him in or meant him any
13 ill will or anything like that. They took steps to
14 protect the confidentiality when he came back to work.
15 You've seen that confidential e-mail so many times I'm
16 not going to drag that thing back up here and show it to
17 you.

18 What it says -- it's addressed to about five
19 or six people -- it says, "Confidential. Keep this
20 confidential." There is nobody that testified at all
21 that Chuck Earles or Eric Barnes put that memo out where
22 Mr. Kennedy was going to get in trouble or everybody was
23 going to see it and then think that Mr. Kennedy had
24 stolen stuff.

25 They want you to believe that there's some

1 secret message in that e-mail -- that I'm sure you can
2 take back and read because it's an exhibit -- that
3 really says that Chuck Earles is sending mind vibes to
4 these people to say, "Print this out. Make sure we can
5 get Jeffery Kennedy and embarrass him by doing this."

6 I think Mr. Garrick hit the nail on the head.
7 You've got a Permenter who is an addressee on this
8 e-mail. You have a Permenter who is his friend
9 testifying here. How do you think that e-mail got out?
10 What's the most likely thing?

11 Let's focus on what's likely, not what's
12 possible because that's what you are asked to do here.
13 They have to prove what's likely, not just what might be
14 possible. All right.

15 The judge is going to instruct you that you're
16 not allowed to get a defamation claim, you're not
17 allowed to claim that somebody has ruined your
18 reputation if you're the one that's publishing all the
19 information out there to people.

20 That's what was going on with that. There is
21 not a single witness here that testified that their
22 initial source of information in this case was that
23 e-mail. "Jeffery Kennedy told me. Jeffery Kennedy told
24 me." That's where his witnesses got the information,
25 not from this e-mail at all.

1 Both witnesses showed him the video.

2 Mr. Permenter showed him the video. They are good
3 friends. Now, Mr. Permenter is the guy that's pulling
4 up the video for Jeffrey Kennedy to see, in which he
5 initially denied he had ever seen it at all. Then we
6 showed him the deposition on that, and he corrected
7 that. That's what's going on.

8 Now, we've talked a lot about this Change of
9 Culture here. They want to focus on the, "Mind your own
10 business," part of it and say that there was a
11 reputation problem going on or one of these rumor mills.

12 There is no evidence at all here that we had
13 any problem with any of these people who were addressed
14 on this confidential e-mail that started rumors or
15 spread information.

16 They want you to say that Chuck Earles should
17 have run everybody down and said, "Can you read this?
18 Can you make sure you read this and read it real good."
19 These are professional people who are supervisors. They
20 know what to do when they get an e-mail, and they know
21 they're not supposed to print it out.

22 That's not Chuck Earles's fault. That's not
23 Eric Barnes's fault if one of them decides that they're
24 going to print it out and leave it in their car or leave
25 it in the room.

1 Change of Culture, the one that's important to
2 us is number five. It says, "Always be honest. Do not
3 hide the truth. Coming forward and taking
4 responsibility for a mistake is always better than
5 having your supervisor discover it."

6 That's exactly what happened in the Kim Jones
7 situation. We talked about that at length. You know,
8 it was a simple thing. Traci Batchelder was going to
9 give him the same letter that Ms. Jones got, but he had
10 to go and try to interfere with her.

11 Roosevelt Garrick, Mr. Garrick said and made a
12 good point here, I think. He said, "It's the same thing
13 as bullying. We would never tolerate this from
14 students. We're not going to tolerate it from
15 employees." That's what you're dealing with here as far
16 as that goes.

17 Now, Mr. Kennedy never got a bad reference.
18 He wanted to say that initially, but that's another one
19 of those things we pulled out with the deposition; and
20 he said, "No, I don't have any evidence that anybody
21 gave a bad reference to one of my future employers about
22 my work in Richland Two."

23 He got a job. You know, he got that initial
24 job that he didn't want to tell us about. Then he got
25 his next job. There's been no loss of income to

1 Mr. Kennedy. There's been no hurt feelings, no
2 reputation damage at all to Mr. Kennedy as a result of
3 what happened at Richland Two.

4 Now, I'm almost done here, but I want to leave
5 you with this one. For Mr. Kennedy to win this case,
6 you have to believe that all of our witnesses -- these
7 people who have dedicated their careers and their lives
8 to upholding and enforcing the law, teaching and
9 coaching kids, driving a bus for special ed kids,
10 working two jobs -- and I'm talking about Ms. Jackson
11 now and taking pride in her work doing everything,
12 serving as role models for kids, for other employees,
13 for coworkers.

14 You'd have to believe that they all got
15 together and they cooked up this story about what was on
16 these videos just to hurt Mr. Kennedy's reputation; and
17 they have come in here and lied to you for three or four
18 days.

19 This case is about trust. There's only one
20 side of this case that you can really trust, and that's
21 the Richland Two side of the case. It's not Jeffery
22 Kennedy's side. I thank you all again and I look
23 forward to your verdict for the defendants when y'all
24 come back. Thank you.

25 THE COURT: Any rebuttal?

1 MS. PEAVY: No, Your Honor.

2 (Whereupon the Court charges the jury as
3 follows.)

4 (Whereupon the Court charges the jury as
5 follows.)

6 THE COURT: During this trial, ladies and
7 gentlemen, you and I have certain duties to perform. As
8 the trial judge, it's my responsibility to preside over
9 the trial of this case and to rule upon and pass upon
10 the admissibility of evidence that's been presented
11 throughout the course of this trial.

12 You should consider only the competent
13 evidence which is before you. To any evidence to which
14 there was an objection sustained, you must not speculate
15 as to what the evidence might have been.

16 Any decisions about whether evidence was
17 inadmissible or not, you should not consider the reasons
18 for the decisions. You should consider only the
19 competent evidence which is before you, which is the
20 testimony from the witnesses, as well as the exhibits
21 that have been made a part of the record in this case.

22 Now, I have the additional duty and
23 responsibility to instruct you on the law that applies.
24 As the trial judge, I'm the sole judge of the law that
25 applies. If you have any preconceived ideas as to what

1 the law is or what you want the law to be or your
2 interpretation of the law, you must set all of that
3 aside.

4 Under your oath as jurors, you are sworn to
5 accept the law as I charge it to you. Now, if by chance
6 I make some error in my instructions to you, there is
7 another court at another time that can correct those
8 errors of law. But for purposes of this trial right now
9 this moment, you must accept the law as I charge it to
10 you as being the correct statement of law.

11 Now, in every case tried before a jury, you
12 the jurors become the sole, exclusive judges of the
13 facts in this case. No one can tell you what the facts
14 of this case are.

15 If I've done anything throughout the course of
16 the trial that has given you any impression that I'm
17 commenting on the facts, that I'm telling what facts to
18 find, that I'm giving you an opinion about the facts, I
19 ask that you set all of that aside, for I assure you, I
20 don't have any opinion about the facts of this case.

21 That's not my job here. That's not my role.
22 That's your duty, your responsibility as jurors to
23 determine the facts of this case. Now, in order to do
24 that, you have to analyze and evaluate the evidence and
25 determine what evidence convinces you of its truth.

1 In order to do that, you have to judge or
2 weigh the credibility of the witnesses who have
3 testified. In judging the credibility or believability
4 of the witnesses, you may consider the following
5 factors:

6 What was the manner and appearance of the
7 witness who testified? Was he or she hesitant or
8 straightforward in answering the questions? How did the
9 witness come to know the facts that he or she testified
10 to? What was his or her ability to know these facts?

11 Was the testimony of a witness consistent or
12 inconsistent? Is there some reason that a witness would
13 want to give testimony that would help or hurt one side
14 or the other?

15 In other words, was the testimony of a witness
16 biased or prejudiced in some manner? Was the testimony
17 of a witness strengthened or weakened by other testimony
18 and other evidence?

19 Now, ladies and gentlemen, in judging the
20 credibility or believability of the witnesses, you may
21 believe one witness against several witnesses or you may
22 believe several witnesses against one witness.

23 You may believe a portion of a witness's
24 testimony and disregard other portions of that same
25 witness's testimony. And if you have a good and

1 sufficient reason for doing so, you may accept the
2 witness's testimony in its entirety or you may reject it
3 in its entirety.

4 You may also consider whether a witness's
5 testimony has been challenged or impeached by prior
6 testimony or prior evidence. If you believe that a
7 witness's testimony has been impeached or challenged,
8 you may give any or all the witness's present or prior
9 testimony the weight that you think it deserves.

10 These factors you should not exercise
11 arbitrarily; but if in your good judgment there is
12 reason for you to consider these factors, then you
13 should do so. Your objective, ladies and gentlemen, is
14 to seek the truth.

15 Whether it comes from a witness or witnesses
16 for the plaintiff or a witness or witnesses for the
17 defendant, you don't determine the truthfulness of the
18 testimony by counting the number of witnesses who
19 testified for one side or the other. The truth isn't
20 determined by counting witnesses.

21 What the law simply requires is that when you
22 exercise your mental processes in coming up with what
23 you consider to be truthful evidence, you should use
24 your good common sense. Use your sense of logic and
25 reasoning. Use your experiences in life.

1 You then apply these attributes to the
2 evidence and determine what you the jury consider to be
3 truthful evidence. Then to those true statements of
4 fact as determined by you, you apply the law as I
5 instruct you. Then you will be able to arrive at your
6 verdict.

7 Ladies and gentlemen, your verdict should not
8 be based upon sympathy, passion, or prejudice. By your
9 verdict you have no friends to reward, and you have no
10 enemies to punish. Your verdict should simply speak the
11 truth.

12 Now, under our rules any time a lawsuit is
13 filed and we come to court for a trial, the person who
14 brings a lawsuit or the plaintiff has the burden of
15 proving each and every element of their claim by what we
16 call the greater weight or preponderance of the
17 evidence.

18 That's typically illustrated by looking at a
19 set of those old fashioned scales, where at the
20 beginning of the trial, the scales are even; but
21 throughout the course of the trial as the evidence is
22 presented, the scales may tip back and forth.

23 If, after considering all the evidence, the
24 scales remain even or if they tip ever so slightly in
25 favor of the defendant, then that means that the

1 plaintiff has not satisfied the burden of proof; and
2 your verdict must be for the defendant.

3 If, on the other hand, after all the evidence
4 is presented, the scales should tip ever so slightly in
5 favor of the plaintiff, then that means that the
6 plaintiff has satisfied that burden of proof; and your
7 verdict must be for the plaintiff.

8 Of course, there is no way to physically weigh
9 the evidence. It is entirely a mental process. The
10 evidence to which you assign the most weight should be
11 the evidence that convinces you of its truth, regardless
12 of from whom or what source it comes.

13 Now, this is a defamation case. The plaintiff
14 claims that the defendant communicated a defamatory
15 statement about the plaintiff to another person.
16 Defamation can be in the form of a written statement or
17 it could be one that's communicated by actions or
18 conduct or it could be oral statements.

19 The defamation action is based on the
20 violation of the plaintiff's right to enjoy a good
21 reputation without false and defamatory attacks.
22 Defamatory language is language that tends to injure or
23 adversely affect the plaintiff's reputation.

24 In order to recover in this case, the
25 plaintiff has to prove by the greater weight or

1 preponderance of the evidence that the defamatory
2 language was communicated by the defendant about the
3 plaintiff.

4 A defamatory statement is one than tends to
5 attack the honesty, integrity, virtue, or reputation of
6 a person and expose that person to disgrace, public
7 hatred, avoidance, contempt, or ridicule.

8 A defamatory statement does not have to be
9 direct, open, or a positive attack. It may be merely a
10 suggestion or a hint which is false and malicious, as
11 long as the meaning is plain.

12 In deciding whether a statement is defamatory,
13 you must give the words their ordinary and popular
14 meaning. The intent and meaning of the words must be
15 determined from the words themselves and the context in
16 which they are used.

17 All parts of the statement must be considered
18 together to determine the statement's true meaning.
19 Individual words cannot be singled out as defamatory.
20 In addition, the statement must be considered in light
21 of the facts known to the person or persons to whom the
22 statement was made and not in light of what the facts
23 are known to the parties.

24 The defendant must prove that the statement
25 was substantially true. A statement is not defamatory

1 if it is substantially true. Even if the defendant made
2 the statement for no good purpose or for ill will or
3 it's solely for the purpose of harming the plaintiff, if
4 the statement is true, then the plaintiff cannot recover
5 for defamation.

6 Next, the plaintiff must prove that the
7 statement was communicated to someone other than the
8 plaintiff. It's not enough that the statement be made
9 within the hearing of another person. The plaintiff has
10 to prove that the statement was heard by another person
11 who understood that that statement referred to the
12 plaintiff.

13 The plaintiff also has to prove that the
14 defendant made the statement knowingly or reasonably
15 expecting it to reach a third person. If the plaintiff
16 repeats the defamatory statement to a third person, the
17 defendant is not responsible for damages that are caused
18 by the plaintiff's communicating of the statement.

19 The defendant is only responsible for the
20 damage caused by its own publication of the defamatory
21 statement. Now, even if you were to find that the
22 defendant's statement was defamatory, the defendant in
23 this case claims that it was under a qualified
24 privilege.

25 In order to prove that a qualified privilege

1 exists, the plaintiff must prove -- I'm sorry -- the
2 defendant must prove by a greater weight or
3 preponderance of the evidence that the defendant made
4 the statement in good faith.

5 If the statement was made with actual malice,
6 that is, with knowledge that the statement was false or
7 with reckless disregard of whether it was true or false,
8 then the defendant cannot claim a qualified privilege.

9 The defendant must also prove that there was
10 an interest to be upheld and that the statement was
11 solely to uphold the interest of the defendant or a
12 third party.

13 The defendant must also prove that the
14 statement was made at the proper time. Finally, the
15 defendant must prove that the statement was communicated
16 in a proper manner and only to proper parties.

17 Now, ladies and gentlemen, I will instruct you
18 that this Court has determined that the memorandum
19 communicated by e-mail to the security supervisors was
20 privileged because it was made to persons solely to
21 uphold the interest of the defendant.

22 However, you have to decide whether the
23 defendant exceeded the privilege by communications or
24 publication with actual malice. That is again with
25 knowledge that it was false or with reckless disregard

1 of whether it was true or false or that it was not made
2 at the proper time or to the proper parties or in the
3 proper manner.

4 Finally, ladies and gentlemen, the plaintiff
5 must prove that his reputation was damaged by the
6 defamatory statement. The plaintiff must prove that the
7 damages naturally and proximately resulted from the
8 defendant's statement.

9 Actual damages are damages which will
10 compensate the plaintiff for the injury and to put him
11 as near as possible in the same position that he would
12 have been in before the statement had been made.

13 General damages would include humiliation,
14 hurt feelings, mental suffering, injury to reputation,
15 and other types of injuries to which you cannot normally
16 associate a monetary value.

17 The plaintiff must also prove any special
18 damages that result from the defamatory statement.
19 Special damages are monetary damages with respect to
20 property or business or profession or occupation of the
21 plaintiff, such as a loss of a job or loss of customers
22 or loss of a business relationship as a result of the
23 injury to his reputation.

24 Now, certain statements are considered to be
25 what is slanderous per se or defamation per se. A

1 statement is defamation per se, if it's slanderous per
2 se the injury to the plaintiff is presumed; and he does
3 not have to prove any special damages.

4 Statements which charge the plaintiff with a
5 commission of a crime of moral turpitude, contraction of
6 a sexually transmitted disease, adultery, unchastity or
7 unfit in the plaintiff's business or profession are
8 considered to be slanderous per se or defamation per se.

9 In deciding whether a crime is one of moral
10 turpitude, those generally involve -- we call them
11 crimes of dishonesty. That would fall under the slander
12 per se or defamation per se.

13 If you find that the statement was slanderous
14 per se, as I stated, the plaintiff does not have to
15 prove those special damages; but you should return a
16 verdict for the plaintiff and award at least nominal
17 damages.

18 Nominal damages may be only a small or trivial
19 sum. Nominal damages are required because the law
20 presumes that there is some actual damage to the
21 plaintiff's reputation and character that is directly
22 and proximately resulting from the defamatory statement
23 that amounts to slander per se.

24 If you find that the plaintiff is entitled to
25 actual damages, then you should consider whether the

1 defendant would be required to pay punitive damages to
2 the plaintiff.

3 Punitive damages are exactly what they sound
4 like. They're intended to punish the defendant and to
5 attempt to ensure that neither the defendant nor anyone
6 else commits similar conduct in the future.

7 In order to recover for punitive damages, the
8 plaintiff has to prove by clear and convincing evidence
9 that the defendant acted with actual malice in making
10 the defamatory statement.

11 Clear and convincing is more than just a
12 preponderance of the evidence, but it's less than beyond
13 a reasonable doubt as you hear often associated with
14 criminal cases.

15 Clear and convincing proof leaves no
16 substantial doubt in your mind. It means that the
17 evidence is not ambiguous, doubtful, equivocal, or
18 contradictory.

19 Convincing means persuading by proof or
20 argument, causing one to believe in the truth of what is
21 asserted. Clear and convincing proof establishes not
22 only in your mind that the fact at issue is probable but
23 that it is highly probable.

24 Again, only if the plaintiff proves actual
25 malice in making the defamatory statement by clear and

1 convincing evidence may the plaintiff recover for
2 punitive damages.

3 Actual malice involves a malicious intent or
4 recklessness, willfulness, or wantonness. This means
5 that the defendant's statement was motivated by ill will
6 and with the intent to injure the plaintiff or that the
7 statement was made with such recklessness as to show a
8 conscious indifference toward and a disregard of the
9 plaintiff's rights.

10 In determining the amount to award for
11 punitive damages, you should consider the nature of the
12 defendant's actions, the punishment, if any, which will
13 be given for those actions in the form of actual
14 damages, and the ability of the defendant to pay.

15 Ladies and gentlemen, the amount which you
16 make for an award for actual damages, as with all
17 damages, the plaintiff doesn't have to prove them to a
18 precise mathematical certainty; but the plaintiff has to
19 put up enough evidence that would allow you the jury to
20 be able to determine an amount that is fair and just and
21 reasonable.

22 When you have considered all of the evidence
23 in this case and when you have applied the law as I have
24 instructed it to you, then it will be time for your
25 foreperson to record the verdict on the appropriate

1 form. I will go over them.

2 There are two separate forms, Madam
3 Foreperson. I will go over these forms with you. Let
4 me note, first, that neither one of these forms has a
5 specific line against Richland County School District
6 Two. That's because the School District can only act
7 through its employees.

8 In judging whether the School District would
9 be responsible, we have to judge the conduct of those
10 individuals. So the verdict form specifically relates
11 to the two individuals in this case. There's no
12 significance to which employee I consider first.

13 The first form I picked up is on the
14 defamation claim against Chuck Earles: We the jury
15 unanimously find for -- there is a place for the
16 plaintiff -- a line for actual damages, with a dollar
17 sign in parentheses, a line for punitive damages, with a
18 dollar sign in parentheses, or for the defendant,
19 Charles Earles.

20 Let me go over that part first. So your
21 thought process is this: Did the plaintiff prove by a
22 greater weight or preponderance of the evidence that the
23 defendant, Chuck Earles, defamed him based upon those
24 elements that I described to you?

25 Was there a defamatory statement? Was there a

1 publication of that statement? Was there a qualified
2 privilege? Did they exceed the privilege? Consider all
3 those factors and the damages and then determine that.

4 If you find that the plaintiff has failed to
5 meet the burden as to any one of those elements, then
6 your verdict would be for the defendant, Charles
7 Earles.

8 If you find, however, that the plaintiff has
9 met the burden of proving by the greater weight or
10 preponderance of the evidence that he was defamed by
11 Charles Earles, then you would consider the damages.

12 The actual damages would include those damages
13 to reputation and those matters which I have explained
14 to you, and any special damages that may apply. If you
15 find that he has, then you would complete this. You
16 determine what those damages are, and you complete this
17 like you would a check: The words on the line with the
18 numbers behind the dollar sign.

19 If and only if you make an award for actual
20 damages, may you consider the punitive damages. Your
21 question on the punitive damages is: Did the plaintiff
22 prove by clear and convincing evidence that the
23 defendant's conduct was motivated by actual malice; that
24 is, a reckless, willful disregard for his rights?

25 If you find that he has failed to prove that,

1 then you would not fill out the punitive damages. If
2 you find, however, that he has proven by clear and
3 convincing evidence there is actual malice, then you
4 would consider the amount to award for punitive damages
5 and make that award.

6 Once you have completed the top part, then
7 there is a question here at the bottom. It says: If
8 you returned a verdict in favor of the plaintiff, do you
9 the jury unanimously find that Chuck Earles acted with
10 actual malice?

11 Now, when you complete this, it's not based
12 solely on whether or not you made an award for punitive
13 damages. Remember to award punitives, it has to be
14 clear and convincing.

15 But if you find by a greater weight or
16 preponderance of the evidence that there was malice,
17 then you would check yes. If you find that the
18 defendant [sic] did not prove actual malice, then you
19 would check no. If you check for the defendant, you do
20 not complete the sentence, the question at the bottom.

21 No matter what your verdict, you would sign
22 your name and place today's date. I will tell you that
23 the verdict as to Eric Barnes is exactly the same. You
24 go through the exact same process.

25 It says on the defamation claim against Eric

1 Barnes: We the jury unanimously find for the plaintiff
2 -- there is a line for actual damages, a line for
3 punitive damages. There's a place to check for Eric
4 Earles [sic].

5 The same process you consider with Chuck
6 Earles, you consider with Eric Barnes. Again, did the
7 plaintiff prove by a greater weight of the evidence or a
8 preponderance of the evidence that he was defamed by
9 Eric Barnes?

10 If you find that he failed to prove that, then
11 you would check for the defendant. You do not need to
12 complete the rest of the form, other than sign your name
13 and put today's date.

14 If you find, however, that the plaintiff did
15 prove by a greater weight or the preponderance of the
16 evidence that Eric Barnes defamed him, as I have
17 described that to you, you would consider the actual
18 damages. If and only if you make an award for actual
19 damages, may you consider punitive damages.

20 Again, the question on punitives is by clear
21 and convincing evidence that Earl Barnes [sic] acted
22 with actual malice, as I have described that to you. If
23 you find that he failed to prove it by clear and
24 convincing, then you don't complete this; but you would
25 still need to answer the question.

1 If you return a verdict in favor of the
2 plaintiff, do you the jury unanimously find that Eric
3 Barnes acted with actual malice? Yes or no? Again, no
4 matter what the verdict is, Madam Foreperson, if you
5 would sign your name and place the date.

6 Now, ladies and gentlemen, as I stated, your
7 verdict must be unanimous. It must be the verdict of
8 all 12 of you. You have been sworn as fair and
9 impartial jurors to determine the facts of this case
10 based upon the law -- based upon the evidence that's
11 been presented and based upon the law as I've instructed
12 it to you.

13 When you have done that, then you will arrive
14 at your verdict. No one will be able to complain about
15 the verdict that you have reached. You will have fully
16 discharged your duty and your responsibility as jurors.

17 I understand that we're near the end of the
18 day. I will tell you that I would like you to begin
19 some deliberations this afternoon. I ask that you not
20 try to rush through any deliberations in order to be
21 able to leave.

22 When you tell me you're ready to leave for the
23 evening, I will certainly excuse you. I will tell you
24 that I will not order dinner for you. So we are happy
25 to have you come back tomorrow and continue your

1 deliberations, if appropriate.

2 I ask that you not rush through deliberations
3 in an effort to try to adjourn for the day. You can
4 stay here as long as you like or as little as you like.
5 We will certainly welcome you back tomorrow to conclude
6 your deliberations.

7 Before you begin your deliberations, ladies
8 and gentlemen, I will tell you that the law requires
9 that I consult with the attorneys to see if I have
10 omitted anything from the charge, my instructions.

11 If I have not omitted anything, then the
12 verdict forms, as well as all the exhibits, will be sent
13 to you into the jury room; and you can begin your
14 deliberations at that time.

15 Madam Foreperson, if there are any questions
16 that come up during the course of your deliberation, if
17 you will write the question on a sheet of paper. Please
18 sign your name to the question. Knock on the door and
19 give it to the bailiff. We'll try to answer those
20 questions.

21 If you have no questions and whenever you have
22 reached a verdict and you filled out the form, if you'll
23 knock on the door at that time. We'll receive you back
24 into court to receive the verdict that you've rendered
25 in this case.

1 I ask that you retire to the jury room and
2 await further instructions before you begin your
3 deliberations. Thank you.

4 (The jury retires to the jury room at
5 4:46 P.M.)

6 THE COURT: Are there any exceptions to the
7 charge by the plaintiff?

8 MR. GOODWYN: The only thing I thought and I'm
9 not sure if this came into play when you have the
10 Richland County School District Two verdict form was an
11 explanation about double recovery. The plaintiff won't
12 -- even if you put an amount on both forms, he won't get
13 double recovery. Did you plan on saying that?

14 THE COURT: I can certainly do that. That's
15 not a problem.

16 MR. GOODWYN: Okay.

17 THE COURT: Anything from the defense?

18 MR. BARLOW: No, Your Honor.

19 THE COURT: If you'll ask them to come back,
20 please.

21 (The jury returns to the courtroom at
22 4:48 P.M.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: I'm sorry, ladies and gentlemen.
25 When I was explaining to you about the School District

1 and they can only act through their employees,
2 understand that there are two separate verdict forms and
3 there are two separate employees in this particular
4 case.

5 You should consider the conduct as to each one
6 individually. You don't combine them together to
7 consider as a group whether or not they engaged in the
8 conduct. You have to consider each person's conduct
9 separately.

10 I will tell you: Do not be concerned about a
11 double recovery. Those are legal issues for the Court
12 to take up, and I assure you that the law does not
13 provide or allow for a double recovery.

14 You should award each -- you should make your
15 verdict based upon the facts relating to each particular
16 defendant and not grouping them together and not being
17 concerned about whether or not there would be a double
18 recovery in this case. So having said that, I'll ask
19 that you return to the jury room at this particular time
20 and await further instruction.

21 (The jury retires to the jury room at
22 4:50 P.M.)

23 THE COURT: Anything further from the
24 plaintiff?

25 MR. GOODWYN: No, Your Honor.

1 THE COURT: From the defendant?

2 MR. BARLOW: No, Your Honor.

3 THE COURT: I just saw one typo. On
4 Mr. Earles, it says defendant Charles Earles. Do you
5 want me to change it to Chuck? Or can I leave it as
6 Charles?

7 MR. BARLOW: You can leave it. That's his
8 name.

9 MR. GOODWYN: Well, the caption is Chuck.

10 THE COURT: I'm happy to change it if that's
11 what I need do.

12 MR. BARLOW: I have no objection to it.

13 MR. GOODWYN: I believe we should probably
14 change it.

15 THE COURT: That's fine.

16 MR. GOODWYN: Just to make it clear.

17 THE COURT: No problem. I am happy to change
18 that. While I'm doing this, make sure all the exhibits
19 are there. Here is the verdict form as to Mr. Barnes.
20 Please look at it again and I'll get this one changed.

21 (Pause.)

22 (Whereupon, the jury commences its
23 deliberation at 4:57 P.M.)

24 (The following occurred at 6:20 P.M.)

25 THE COURT: I have a note from the jury which

1 MR. GOODWYN: I'm ten minutes away. That
2 would be better for me.

3 THE COURT: And then you'll be able to reach
4 your clients, just as long as I'm able to reach you in
5 the event they have any questions that come up.

6 MR. GOODWYN: Okay.

7 THE COURT: As soon as I get a note, I'll be
8 sure to call you at that time.

9 MR. GOODWYN: Thank you, Your Honor.

10 MR. BARLOW: Thank you.

11 (Whereupon the proceedings are concluded for
12 October 2, 2014.)

13 (The following proceedings are reported on
14 October 3, 2014.)

15 (The jury recommences its deliberation at
16 9:28 A.M.)

17 (The following occurred 10:58 A.M.)

18 THE COURT: I've received a note from the jury
19 with two questions. It says, "We are a little confused.
20 Question one, we are seeking clarity from you on terms
21 actual, punitive, and malice.

22 Question two, is there a percentage chart to
23 use or do we break the amount into a rounded number to
24 the best of our ability?" That's signed by the
25 foreperson.

1 I'm not sure exactly -- I understand punitive
2 and malice. I'm not sure what they mean with actual,
3 whether they're talking about actual damages or whether
4 they are talking about actual malice. So I'll be happy
5 to clarify that with the jury when I bring them in.

6 My thought is to, depending on what it is,
7 clarify and charge them, recharge them on punitive
8 damages, which includes a definition of actual malice.
9 If they need actual damages, I'll recharge them on that
10 as well.

11 MR. GOODWYN: Could you reread the second
12 question? I'm not even sure what they mean.

13 THE COURT: It just says, "Is there a
14 percentage chart to use or do we break the amount into a
15 rounded number to the best of our ability?"

16 MR. GOODWYN: Percentage chart?

17 THE COURT: I don't know what that means
18 either.

19 MR. GOODWYN: Oh, they may be wondering
20 between the two defendants.

21 THE COURT: I would certainly clarify, as I
22 told them yesterday, that they have to consider each one
23 individually and award damages. It's attributable to
24 each defendant and not combine them or split them and
25 will reemphasize to them that there will not be a double

1 recovery. The law does not allow for a double recovery.
2 So any issues related to that would be taken up.

3 MR. BARLOW: Would there be any way to clarify
4 that this is not a termination case?

5 MR. GOODWYN: I would object to that since
6 that was not charged.

7 THE COURT: I don't know that there is
8 anything in here that relates to termination.

9 MR. BARLOW: Well, damages.

10 THE COURT: Well, there are damages for
11 slander. So, you know, I mean, that's a cause of action
12 for defamation.

13 MR. BARLOW: All right.

14 MR. GOODWYN: You're just going to recharge
15 them basically on the damages?

16 THE COURT: I'm not giving them any new
17 instructions. I'm not doing anything different. I will
18 answer their questions and try to find out what the
19 actual part means.

20 Once they tell me, I'll go from there. I'll
21 tell them with respect to question two that there's no
22 chart; but I will reemphasize to them that what I told
23 them was that they had to consider the evidence as to
24 each separate defendant.

25 If they decide to make an award for damages,

1 they need to make an award based on damages that were
2 caused by those individual defendants and answer the
3 question and that they should not add them together, and
4 they would not split them up.

5 Anything else?

6 MS. PEAVY: No, Your Honor.

7 THE COURT: You can ask the jury to come in,
8 please.

9 (The jury returns to the courtroom at
10 11:01 A.M.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Good morning, ladies and
13 gentlemen.

14 THE JURY: Good morning.

15 THE COURT: I have received a note from the
16 foreperson this morning. It says, "We are a little
17 confused. Question one, we are seeking clarify from you
18 on terms actual, punitive, and malice."

19 Then question two, "Is there a percentage
20 chart to use or do we break the amount into a rounded
21 number to the best of our ability," and it's signed.

22 Is that the note you sent to me?

23 THE FOREMAN: Yes.

24 THE COURT: I have a couple of questions.
25 When you talk about needing clarity on the terms of

1 actual, punitive, and malice, certainly I can give you
2 the charge on malice and define that for you, as well as
3 -- I'm assuming you are talking about punitive damages?

4 THE FOREMAN: Yes, ma'am.

5 THE COURT: On the actual are you talking
6 about actual damages or are you talking about actual
7 malice, a definition of actual malice?

8 THE FOREMAN: Actual malice.

9 THE COURT: That helps and that's what I'll do
10 at this time.

11 THE FOREMAN: Excuse me. Excuse me. I'm
12 incorrect.

13 THE COURT: So actual damages?

14 THE JUROR: I just want actual and punitive
15 damages.

16 THE FOREMAN: Sorry about that.

17 THE COURT: That's what I thought. I just
18 wanted to make sure. You'll remember that yesterday I
19 instructed you as to the elements of damages -- elements
20 of defamation.

21 The last portion that the plaintiff has to
22 prove, the plaintiff has to prove that his reputation
23 was damaged by the defamatory statement; and, therefore,
24 he must prove the damages that naturally and proximately
25 resulted from the defendant's statements.

1 Actual damages are damages which compensate
2 the plaintiff for the injury and to put him as near as
3 possible in the same position that he would have been in
4 before the statements were made or before the damage
5 occurred.

6 General damages include humiliation, hurt
7 feelings, mental suffering, injury to reputation, and
8 other types of injuries on which you cannot generally
9 place a monetary value; but you will have to assign a
10 monetary value in order to compensate him for those
11 damages.

12 The plaintiff must also prove special damages
13 that result from the defamatory statement. Special
14 damages are monetary damages with respect to property,
15 business, profession, or occupation of a plaintiff, such
16 as the loss of a job -- excuse me -- loss of a job, loss
17 of customers, or the loss of a business relationship as
18 a result of injury to the plaintiff's reputation.

19 Then as it relates to punitive damages,
20 punitive damages are damages which punish the defendant
21 for his conduct and attempt to ensure that neither the
22 defendant nor anyone else commits similar conduct in the
23 future.

24 In order to recover for punitive damages, the
25 plaintiff has to prove by clear and convincing evidence

1 that the defendant acted with actual malice in making
2 the defamatory statement.

3 Clear and convincing evidence is more than a
4 preponderance or greater weight of the evidence. Clear
5 and convincing, it is more than -- it's less than beyond
6 a reasonable doubt which you often hear about in
7 criminal cases.

8 Clear and convincing proof leaves no
9 substantial doubt in your mind. It means that the
10 evidence is not ambiguous, doubtful, equivocal, or
11 contradictory.

12 Convincing means persuading by proof or
13 argument, causing one to believe in the truth of what is
14 asserted. Clear and convincing proof establishes in
15 your mind not only that the fact at issue is probable
16 but it is highly probable.

17 As I've indicated, he has to prove by clear
18 and convincing evidence that the defendant acted with
19 actual malice. Actual malice involves a malicious
20 intent or recklessness, willfulness, or wantonness.

21 This means that the defendant's statement was
22 motivated by ill will with the intent to injure the
23 plaintiff or that the statement was made with such
24 recklessness as to show a conscious indifference towards
25 or disregard of the plaintiff's rights.

1 In determining the amount that is appropriate
2 for punitive damages, you should consider the nature of
3 the defendant's actions, the punishment, if any, which
4 should be given for those actions, and the ability of
5 the defendant to pay. I believe that would clarify
6 those questions as to question one.

7 As to question two relating to, "Is there a
8 percentage chart?" Let me first go back and indicate to
9 you, there are two separate verdict forms, one for each
10 defendant.

11 You have to consider the evidence as it
12 relates to each particular defendant and whether -- if
13 you determine that the plaintiff is entitled to recover
14 a verdict based upon the law as I have instructed it
15 to you, then you consider all the damages that were
16 caused by that particular defendant.

17 Then you consider all the damages that were
18 caused by the other defendant. You do not add them
19 together. You do not divide them up. You find the
20 damages that are attributable to each defendant if you
21 decide to make an award.

22 Again, I will emphasize to you that the law
23 does not allow a double recovery, but you all need not
24 be concerned with that. That's a legal question which
25 the Court will determine based upon whatever verdict

1 that you reach in this case.

2 So you need not be concerned about whether or
3 not you're making an award for twice the amount that you
4 think he reasonably should pay or is reasonable under
5 the circumstances.

6 You have to consider the conduct of each
7 person individually. Then it's up to the Court and the
8 parties to discuss the legal issues relating to the
9 verdict as you reach it.

10 So you need not be concerned with adding them
11 or splitting up whatever the verdict is if that's the
12 concern arising out of question two.

13 So I ask -- I believe I've answered both of
14 them. I'll ask that you retire to the jury room and
15 continue your deliberations. If there are any
16 additional questions, if you'll please write me a note.

17 THE FOREMAN: Thank you.

18 THE COURT: Thank you.

19 (The jury retires to continue its deliberation
20 at 11:09 A.M.)

21 (Court's Exhibit Number 2 is marked for
22 purposes of the record.)

23 THE COURT: We'll stand in recess until we
24 hear from them further.

25 MR. GOODWYN: Sounds like they might be

1 somewhat close. We will stick around. You have my cell
2 phone number.

3 THE COURT: I do. If I get another note, I'll
4 be sure to let you know.

5 MR. GOODWYN: Thank you.

6 (Whereupon there is a recess.)

7 (The following occurred at 12:10 P.M.)

8 THE COURT: I understand that the jury has
9 reached a verdict. Is there anything we need to take up
10 before we bring them?

11 MR. GOODWYN: Nothing from the plaintiff, Your
12 Honor.

13 MR. BARLOW: Nothing from the defense, Your
14 Honor.

15 THE COURT: You may ask the jury to come in.

16 (The jury returns to open court to report its
17 verdict.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: Ladies and gentlemen, I understand
20 that you all have reached a verdict; is that correct?

21 THE FOREMAN: That's correct, Your Honor.

22 THE COURT: Would you please pass the
23 documents to the bailiff. Thank you.

24 (Hands to Court.)

25 THE COURT: Madam Clerk, if you would please

1 publish the verdict.

2 (Whereupon the verdict of the jury is
3 published as follows.)

4 THE CLERK: Case number 2013-CP-40-1460,
5 Jeffrey Kennedy versus Richland County School District
6 Two, Eric Barnes, Chuck Earles, on the defamation claim
7 against Eric Barnes, we the jury unanimously find for
8 the plaintiff in the amount of \$100,000 actual damages
9 and \$150,000 punitive damages.

10 The question: If you return a verdict in
11 favor of the plaintiff, do you the jury unanimously find
12 that Eric Barnes acted with actual malice? Yes. This
13 is signed by the foreperson, Lizzie Lewis-Clemons,
14 October 3, 2014.

15 Case number 2013-CP-40-1460, Jeffrey Kennedy
16 versus Richland Two County School District, Eric Barnes,
17 Chuck Earles, on the defamation claim against Chuck
18 Earles, we the jury unanimously find for the plaintiff
19 in the amount of \$100,000 actual damages and \$200,000
20 punitive damages.

21 As far as the question: If you return a
22 verdict in favor of the plaintiff, do you the jury
23 unanimously find that Chuck Earles acted with actual
24 malice? The answer was yes. This is signed Foreperson,
25 Lizzie Lewis-Clemons, October 3, 2014.

1 Madam Foreperson, are these your verdicts and
2 the verdict of the entire jury?

3 THE FOREMAN: Yes, ma'am, it is.

4 THE COURT: Do the parties wish to poll the
5 jurors?

6 MR. BARLOW: Yes, Your Honor.

7 THE COURT: Ladies and gentlemen, the clerk
8 will call your name. She will ask you two questions.
9 Those questions will be: Was this your verdict and is
10 it still your verdict? I ask that you answer according
11 to your conscience.

12 CLERK: Lizzie Lewis-Clemons, was this your
13 verdict?

14 THE FOREMAN: Yes, it was.

15 CLERK: Is it still your verdict?

16 THE FOREMAN: Yes, it is.

17 CLERK: Cathey Chunn, was this your verdict?

18 JUROR: Yes, it was.

19 CLERK: Is it still your verdict?

20 JUROR: Yes, it is.

21 CLERK: Heidi Lovit, was this your verdict?

22 JUROR: Yes, it was.

23 CLERK: Is it still your verdict?

24 JUROR: Yes, it is.

25 CLERK: Jerry Barney, was this your verdict?



Richland School District Two 6831 Brookfield Road Columbia, South Carolina 29206 (803) 787-1910
FAX # (803) 738-7393
www.richland2.org

RICHLAND SCHOOL DISTRICT TWO
6831 BROOKFIELD ROAD
COLUMBIA, SOUTH CAROLINA 29206

ADMINISTRATIVE OFFICES

TO: KENNEDY, JEFFERY
SS # [REDACTED]

FROM: DR. STEPHEN W. HEFNER
SUPERINTENDENT

RE: OFFER OF EMPLOYMENT

DATE: May 15, 2008

SECURITY OFFICER
NORMAL NO. OF DAYS: 262 (32)
SCHOOL: SUPPORT SERVICE CENTER



RICHLAND COUNTY SCHOOL DISTRICT TWO HERewith AND HEREBY OFFERS YOU INDEFINITE EMPLOYMENT ON AN "AT-WILL" BASIS. THIS MEANS THAT YOU ARE AT LIBERTY TO LEAVE THE DISTRICT'S EMPLOY WHENEVER YOU WISH AND THE DISTRICT IS AT LIBERTY TO DISMISS YOU FROM ITS EMPLOY ANYTIME IT WISHES FOR ANY REASON OR NO REASON SO LONG AS THE REASON, IF ANY, IS NOT A LEGALLY IMPERMISSIBLE ONE.

THE DISTRICT'S INTENT OF EMPLOYMENT IS SUBJECT TO CHANGES IN THE DISTRICT'S ORGANIZATIONAL CHART; IMPLEMENTATION OF A REDUCTION IN FORCE; A LOSS OF FUNDING WHICH MAY REQUIRE A PRO-RATA REDUCTION OF SALARY; OR WHENEVER IT IS DEEMED TO BE IN THE BEST INTEREST OF THE DISTRICT.

THIS OFFER OF EMPLOYMENT IS SUBJECT TO RATIFICATION BY THE RICHLAND COUNTY SCHOOL DISTRICT TWO BOARD OF TRUSTEES.

I ACCEPT THIS OFFER OF INDEFINITE EMPLOYMENT WITH RICHLAND COUNTY SCHOOL DISTRICT TWO ON AN "AT-WILL" BASIS AS DESCRIBED ABOVE.


SIGNATURE

5/15/08
DATE

Mission Statement - Richland School District Two, in partnership with the Columbia Northeast community, guarantees each student a quality education by providing appropriate and challenging learning experiences to equip each individual for life-long learning, responsible citizenship, and productivity in an ever-changing world.

000071

1007

Richland School District Two



SECURITY DIVISION

CHANGE OF CULTURE

FROM THIS DAY FORWARD:

1. MIND YOUR OWN BUSINESS. DO NOT EVER discuss anyone's personal life or situation. DO NOT EVER discuss another employee's job performance with anyone other than that employee or his/her supervisor and NEVER do it where others can hear it.
2. DO YOUR JOB. It is not that hard. Come to work on-time, squared away and with a good attitude EVERY DAY.
3. LEAVE YOUR PERSONAL LIFE AT HOME. If your co-workers don't know about it, they can't talk about it.
4. DO NOT LISTEN TO OR REPEAT RUMORS. Have the courage to say "That's none of our business and I don't want to hear it" and walk away.
5. ALWAYS BE HONEST. Do not hide the truth. Coming forward and taking responsibility for a mistake is always better than having you supervisor discover it.

Jeffrey Kennedy
Signature

8-7-15
Date

Jeffrey Kennedy
Printed Name

000122

1008

RICHLAND SCHOOL DISTRICT TWO
RECOMMENDATION FOR EMPLOYMENT

I would like to make the following recommendation for employment:

Name: Kennedy, Jeffery

SSN: [REDACTED]

Job Title: Patrol Supervisor- Lieutenant

Assignment: SSC

(Grade level, subject area, etc.)

☒ This is a replacement for Ryan Miller
who vacated the position by March 4, 2011

☒ Resignation

☐ Transfer

☐ Dismissal

☐ Retirement

☐ Disability leave

☐ Academic leave

☐ Other _____

☐ This is a new position authorized by _____
(District Administrator)

☐ This position is for certified employment:

☐ Full Time

☐ Part Time

☐ Limited to Current Year

Hours or teaching periods per day _____

☒ This position is for Classified employment:

☒ Full Time

☐ Part Time

☐ Temporary

☐ Limited to Current Year

Hours per Day 8

Hours per Day _____

Ending Date _____

Days per Year 262

Days per Year _____

Funding Source: _____

☒ General budget funds

☐ Special funds administered/authorized by: _____

The beginning date of employment will be established by the Director of Personnel. In compliance with district policy and federal law, the recommended employee MUST complete pre-employment paperwork PRIOR TO beginning work. Orientation to benefits will be scheduled by the Coordinator of Benefits.

Comments: 2nd shift (3 pm -11 pm, start date March 07, 2011)

February 28, 2011

(Date)

(Building Principal's Signature)

For Personnel Office Only:

Position Code _____

Certification Status _____

Contract Type _____

Permit Requested _____

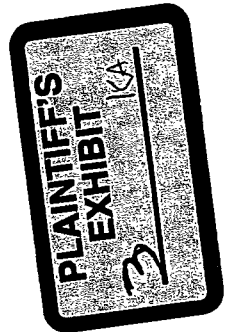
Beginning Date _____

White & Yellow Copies - Personnel Office

Pink Copy - School

000133

1009



CONFIDENTIAL

Wed, Jun 15, 2011 at 11:18 AM

Charles Earles <cearles@richland2.org>

To: Angelia Permenter <aperment@richland2.org>, Eric Barnes <ebarnes@richland2.org>, Gerome Young <gyoung@richland2.org>, Lelith Zerzycki <lzerzycki@richland2.org>, Rick Groves <rgroves@richland2.org>

Cc: Traci Batchelder <tbatch@richland2.org>

THE INFORMATION CONTAINED IN THIS E-MAIL IS CONFIDENTIAL AND WILL ONLY BE SHARED WITH OTHER DISTRICT SECURITY SUPERVISORS, AS NEEDED, WHEN THEY WILL BE SUPERVISING MR. KENNEDY.

Mr. Kennedy will be reporting to work tomorrow night (Thursday, June 16) to work on 3rd shift, weekdays. This will be his permanent assignment.

I have told him that he will be assigned to work the watch room answering phones and performing whatever other duties are necessary in the watch room.

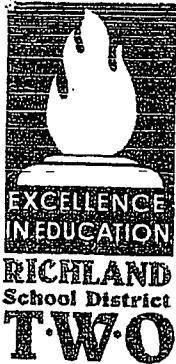
His is NOT to be given any assignment that involves having keys to any District facility.

Thank you.

Chuck Earles
Interim Manager
Emergency Services
Richland School District Two
124 Risdon Way
Columbia, SC 29223
Office - 803-736-3774
Cell - 803-518-2663



000218



Richland School District Two 6831 Brookfield Road Columbia, South Carolina 29206 (803) 787-1910
FAX # (803) 738-7393
www.richland2.org

ADMINISTRATIVE OFFICES

June 27, 2011

Mr. Jeffery W. Kennedy
356 Weddell Street
Columbia, SC 29223



Dear Mr. Kennedy:

This letter serves to follow up on the conferences that Chuck Earles, Traci Batchelder and I had with you on May 5 and June 15, 2011. During those meetings, we discussed several unusual occurrences that have transpired at Spring Valley High School (SVHS), where you have been assigned to work as a Security Officer. Those situations have involved several incidents in which checks, a diamond ring, and \$1,000 in cash have disappeared from the school. You have been questioned in this matter, given that in a review of the videotape evidence, you were observed in the general area for what appears to be excessive periods of time in these situations. You are also one of a limited number of individuals who would have had keys to all of the secured areas in which these thefts occurred.

During the meetings that were held, you have consistently denied having any knowledge of the missing items. You also pointed out that in many of these incidents, there were other individuals who were also present for sufficient periods of time, or who would have had access to the secured areas. I must inform you that I remain concerned that during our meeting on May 5, we discussed what appears to be some unusual behavior on your part. After reviewing the videotape from the SVHS administrative offices and main lobby, it appears that on the evening in which items disappeared from the administrative offices, you entered at the back door of the offices area, then exited from the same back door and came around to the front, then entered once again to turn off the lights. You did not seem to have a clear explanation for your actions on this date. Mr. Earles has further stated that on some of the evenings in which the thefts occurred, there appears to be some variance in your normal pattern for conducting your duties. Over the course of our May 5 meeting, you denied having engaged in unusual behavior, particularly on the evening in which items disappeared from the administrative offices. At that time, I agreed to review the evidence, once again, to confirm my understanding of your actions. During our meeting on June 15, you were informed that your May 5 description of your behavior was not consistent with your videotaped actions.

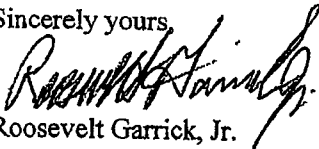
Based on my thorough review of this matter, I would like to acknowledge that during the timeframes of these incidents, I have found that other individuals did enter into many of these areas, with

some of them having keys to the appropriate secured areas. In an effort to provide you with the full benefit of the doubt, it is my decision to return you to your employment as a Security Officer in the District. During our meeting on June 15, you asked about a pending recommendation for your promotion to a Lieutenant position within your department. Given my conclusion that you did not provide me with accurate and consistent information in your securing of the SVHS administration building, I do not feel comfortable approving that promotion at this time.

Mr. Kennedy, I must emphasize that during my review of the videotape evidence, I was unable to draw conclusions about your whereabouts on several occasions, given that you visited some unnecessary areas, such as the SVHS break room, in an effort to pass the time. Please understand it is imperative that you refrain from any conduct that is not an effective or productive use of your working hours. In the future, if you feel that you do not have a sufficient workload or schedule, please discuss the situation with Eric Barnes or Chuck Earles. It is important that you are using all of your time productively, and remaining diligent in performing your work responsibilities throughout your working hours.

Please know that the district does reserve the right to take further action in this matter if we become aware of additional facts or circumstances that lead us to change our conclusions. You may contact me at 738-3219 if you have any questions or concerns.

Sincerely yours,



Roosevelt Garrick, Jr.
Chief Human Resources Officer

c: Mr. Chuck Earles, Emergency Services Manager ✓

South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

NOTICE OF ESTIMATED REFUND PAYMENT

JEFFERY W KENNEDY
356 WEDDELL ST
COLUMBIA SC 29223

SSN: XXX-XX-XXXX
Appl ID: XXXXX9061-1-7-2
System: SCRS
Type: Refund
Date: March 06, 2013

We have completed processing your request for a refund of contributions in your South Carolina Retirement System account. Your refund check(s) should be mailed 7 to 10 days **after** the Refund Eligibility Date shown below. Please review the following information carefully:

Gross Refund Amount: \$ 14,521.49
Refund Eligibility Date: 03/06/2013

Payment of Refund Claim:

1. Net Refund Check to Member	11,617.19
2. Federal Taxes	2,904.30

If you believe any of the above information is incorrect, please contact us without delay. Doing so will prevent unnecessary problems with your refund. Please note that unforeseen problems have, in the past, sometimes delayed the issuing of refund checks. **The Retirement Systems is therefore unable to guarantee that you will receive your refund check(s) on the date indicated above.**

Please notify the South Carolina Retirement Systems, in writing, of any address changes. **If you do not keep your address current, your refund payment will be delayed.** It is also important to keep your address current until you receive your IRS Form 1099R. These forms are mailed no later than January 31 of each year for refunds paid in the previous tax year.

Finally, please note that if you return to employment covered by the South Carolina Retirement Systems before your refund claim is paid, you will again become an active member and your refund request will be cancelled.

Please call SCRS Customer Service at 1-800-868-9002 or (803) 737-6800 if you have any questions about this notice or would like any additional information or assistance.



SC Public Employee Benefit Authority ♦ South Carolina Retirement Systems

202 Arbor Lake Drive ♦ Post Office Box 11960 ♦ Columbia, South Carolina 29211

803-737-6800 ♦ 800-868-9002



Date 1.7.2013

Bluebird Property Management
1817 Pickens Street
Columbia, SC 29201

Jeffrey Kennedy
7734 Exeter Lane
Columbia, SC 29223

Re: Unpaid charges

Dear Jeffrey Kennedy:

Your rent payment for the month of Jan. 2013 has not been recieved. Your account has been charged a late fee of 115.00 which is 10% of your rent. Please remit the total amount due of \$ 4290.00.

Please remember if rent and late fees is not paid by the 10th of the month eviction proceedings will begin and an additional \$100.00 will be charged to your account.

If you have any questions feel free to give us a call.

Regards,

Bluebird Property Management



0/12/12

Richland School District Two Mail - Fwd: Video



Jeffery Kennedy

Traci Batchelder <tbatch@richland2.org>

Fwd: Video

2 messages

Charles Earles <cearles@richland2.org>
To: Traci Batchelder <tbatch@richland2.org>

Thu, Oct 11, 2012 at 9:50 AM

----- Forwarded message -----

From: Rick Groves <rgroves@richland2.org>
Date: Wed, Oct 10, 2012 at 2:13 PM
Subject: Re: Video
To: Charles Earles <cearles@richland2.org>

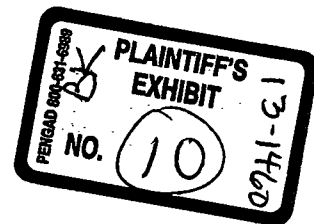
Officer Kennedy said he tried to show her the video but he could not pull it up.

On Fri, Oct 5, 2012 at 1:59 PM, Charles Earles <cearles@richland2.org> wrote:
Please let me know who allowed Kim Jones (a bus driver) to view a video from Roundtop Elem from Sept. 26.

Thanks.

—
Emergency Management = Knowing your responsibilities and knowing who to notify

Chuck Earles
Manager
Emergency Services
Richland School District Two
124 Risdon Way
Columbia, SC 29223
Office - 803-736-3774
Cell - 803-518-2663



—
Emergency Management = Knowing your responsibilities and knowing who to notify

Chuck Earles
Manager
Emergency Services
Richland School District Two
124 Risdon Way
Columbia, SC 29223
Office - 803-736-3774
Cell - 803-518-2663

Questions

1 + 2
= 3

Judge:

Good Morning ;)

We are a little confused;

Question 1

We are seeking clarity from you on terms "Actual", "Punitive" & "Malice"?

Question 2

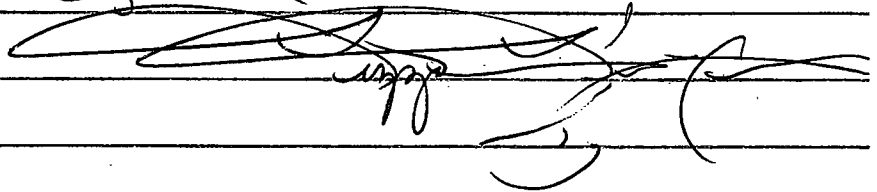
~~Do we~~ Upon deciding on an amount are we to break the total amount into Actual/Punitive for Plaintiff/Defendant

~~Should we derive at a percentage or just use our amount.~~

Question 3

Is there a percentage chart to use or do we break the amount into a rounded number to the best of our ability?

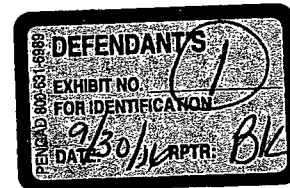
Signature



To: Eric Barnes
Security-Richland School District Two

Re: Statement regarding thefts

Date: March 24, 2011



On Feb. 14th of this year, Jo Ann Caviness, the principal's secretary, reported to me that someone had stolen \$50 in cash and a gold ring with three diamonds from her office in the main office. The ring which was found at a SV event years ago had been kept in her desk in case anyone ever reported it missing. She said the odd thing was that the money and the ring were hidden in two different inconspicuous areas of her desk and that whoever stole the items had to have had plenty of time to go through her desk and was not worried about anyone walking in on them. She said she was not sure when the thefts had occurred because she seldom went into the areas of the desk to check on these items because they were so well hidden.

On Feb. 25th of this year, Dorothy Loiodice reported that \$20 cash and a check for \$15 had been stolen from her desk. I examined the cameras for that evening and saw that Jeffery Kennedy entered the main office hall from the exterior door at 11:33:56 PM on Thursday, Fe. 24th presumably to check the main office area. He did not exit the building until 11:52:56 PM, nineteen minutes later. This was odd because it only takes less than a minute to check the main office and he only went into the restroom for 17 seconds after emerges from the front office area. I also checked the other cameras and Mr. Kennedy never left the main office area.

On March 2nd, Sandra Watts, our bookkeeper who also has an office in the main office area, reported that \$40 in cash had been stolen from her office. Like the theft in Mrs. Caviness' office, the money had been well hidden in papers located on her desk, so the individual who stole the money must have had time and was not in fear of anyone walking in on them. I checked the cameras and Mr. Kennedy again walked into the main office area at 11:23:58 PM on March 1st and exited the main office at 11:48:43 PM, approximately nineteen minutes later, well beyond the time he needed to be in the area.

On Thursday, March 3rd, our athletic director Tim Hunter who has an office in Bates Hall, had prepared the gate ticket money (\$1,000) for the events that were going to be held on Friday, March 4th. He normally stores the money in his safe in the office and prepares it the day of the event but he was not going to be on campus the next day so instead he set it out on the table so that Sonny Yeuker could get to it the next day for the games. I checked the cameras and noticed that Mr. Kennedy came into the lobby of the Bates Hall at 5:48:55 AM to presumably turn the motion alarm off which is his normal duty. It normally takes less than 30 seconds to do so. He however, left at 5:55:45 AM, seven minutes later. The AD's office is just across from the alarm and requires a master key to open. The trainer and baseball coach who came in the building on Thursday night after their games do not have a master key to get into the AD's office. On the cameras, the baseball coach only went momentarily by the AD office to cut off the alarm and the trainer only went into the training room. No one else could have gone into the AD office.

It is my strong belief that Mr. Kennedy is the one who is responsible for the thefts in all of the above listed incidents. He has access with his master key, he has time and he is the only one in the building during these times, which would explain how someone could rifle through the desks without worry of anyone walking in on him.

Jim Childers

SVHS Burglary in Admin

Two reported cases of desks being gone through and cash being taken in admin area, once over the night of 02/24-02/25/11 and once over the night of 03/01-03/02/11.

03/02/11

Eric Barnes and I went to SVHS to discuss these incidents. Met with the employees who had been victimized as well as SRO Fields and Dr. Owings. SRO Fields was completing a RCSD Incident Report.

I changed the angle on the Admin hall camera to look towards the offices that had been gone through. I placed a \$10.00 bill in a small red binder clip and placed it in an unmarked SVHS envelope after spraying both the bill and the envelope with green Sirchie Clue Spray. I marked the bill, using a black ball point pen, with a small black "C" on the left side of the front of the bill. I photographed the bill to record the serial number and the marking. S/N = JB33463695 A. This envelope was placed in Ms. Gio's desk at the location where the money had been previously taken.

03/03/11

Review of video shows Mr. Kennedy entering the admin hall from the side door and not exiting ANY admin door for 20+ minutes each night. Further review of the video over those nights shows no one else in the admin area for more than a very few minutes.

03/04/11

Received call from Jim Childers. Over \$750.00 cash was taken from his office overnight. Cash was in a cash box with the key in the lock (not in the safe) in his office. Review of the video shows Mr. Kennedy & Mr. Reid setting the alarm at 10:53:44 on 03/03 which took 23 seconds, no activity until Mr. Kennedy disarmed the alarm on 03/04 at 5:48:54 am, which took 5 min 53 seconds. No direct video view of Tim Hunter's door. I saved the video on my computer.

03/08/11

I copied the 03/03-03/04 video to the CD containing 02/24 and 03/01 videos. I made another copy for Traci Batchelder. One CD given to Eric Barnes to take to Inv. Joe Clark at RCSD.

05/05/11 - 1530 hrs

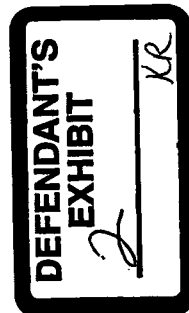
Met with Mr. Kennedy, Traci Batchelder, Roosevelt Garrick in Mr. Garrick's office. Mr. Garrick asked questions about the incidents. Mr. Kennedy lied about re-entering SVHS through the front door after exiting through the admin back door. Mr. Garrick asked to view the video that confirms this lie,

05/16/11 0830 hrs

Delivered CD with the above reference video to Mr. Garrick's secretary.

05/31/11 - 0900 hrs

Played the video CD for Mr. Garrick



000130

06/15/11 - 0900 hrs

I met with Mr. Kennedy, Traci Batchelder and Roosevelt Garrick. Mr. Garrick informed Mr. Kennedy that there "is some doubt and he is being given the benefit of that doubt" in being allowed to return to work in Security. I informed Mr. Kennedy that he is to report to 3rd shift on Thursday, June 16 at 11:00 pm. He will be assigned to answer phones and perform watch room duties.

I sent an e-mail to Eric Barnes, Rick Groves, Gerome Young, Angelia Permenter and Lileth Zerzycki (cc: Traci Batchelder) informing them of Mr. Kennedy's assignment and my requirement that he not be given an assignment that would involve him have a key to any District facility.

000131

1020

2/24/2011 4:15:06 PM



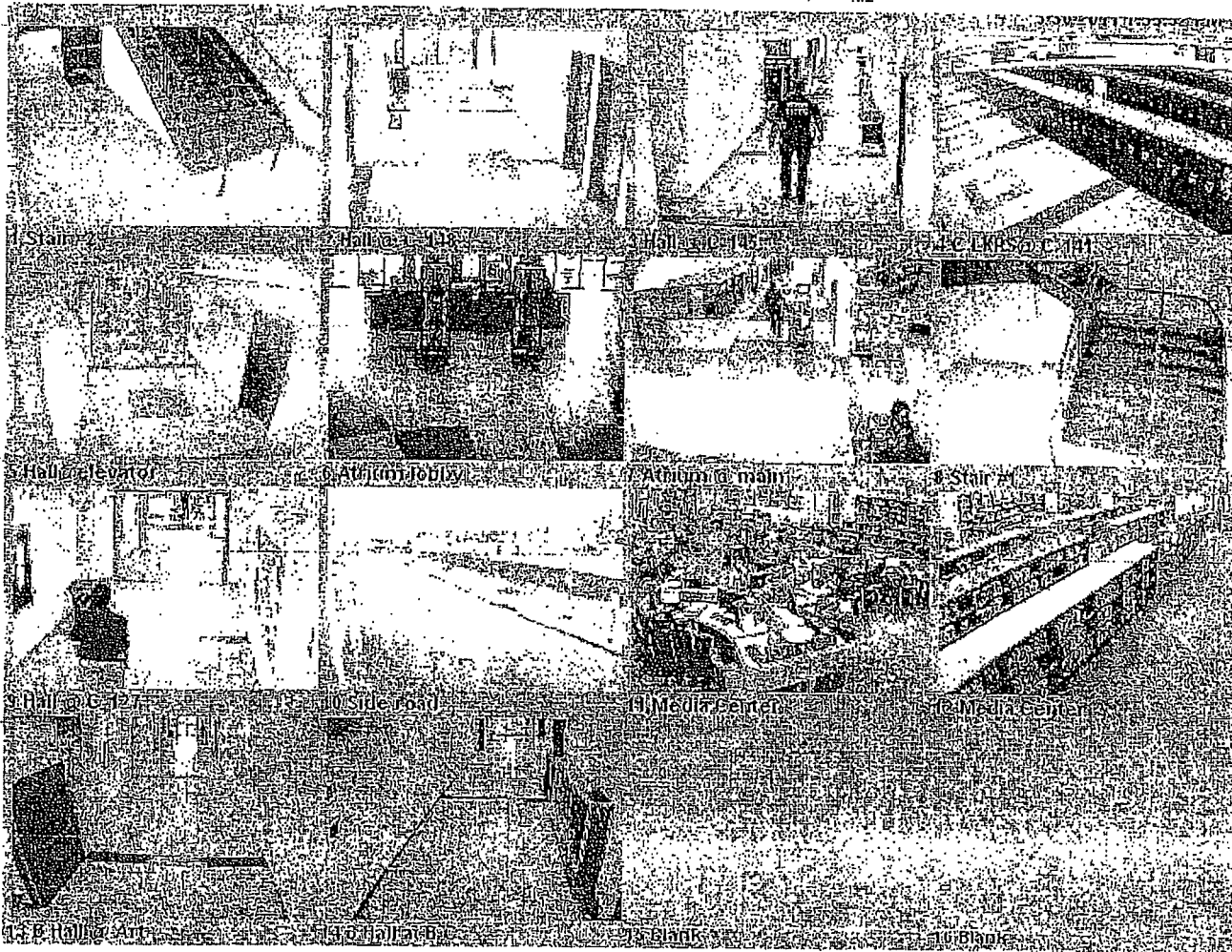
10

11/11/11

000311

8





Statement of Charles A. Earles in reference to Officer Jeffrey Kennedy

10/18/2012 1:00pm

I attended a meeting with Jeffrey Kennedy and Traci Batchelder in DO Conf. Rm 5 in reference to the inappropriate release of information contained in the District video surveillance system. Mr. Kennedy admitted being asked about this by Ms. Jones but denied viewing any recorded images. He said, repeatedly, that he did not know how to view any images other than the live images that he sees when working on his shift. He further stated that if he knew how to view recorded images, he would have allowed Ms. Jones to view the video because he was not aware that it was wrong to do so. He also repeatedly said that he asked Lt. Young if he could do it and Lt. Young told him that he had forgotten how. Mr. Kennedy repeatedly said that he told Ms. Jones that she should ask the principal about viewing the video. Mr. Kennedy, further, repeatedly said that he wrote down the time and date to see if Capt. Groves could retrieve the video for Ms. Jones. Mr. Kennedy said that he threw the information away and never gave it to Capt. Groves. Mr. Kennedy said that he never viewed the video or told Ms. Jones what was on any video. Ms. Batchelder and I each advised Mr. Kennedy that no Security Officer was authorized to allow anyone to view any video or describe what happened on any video.

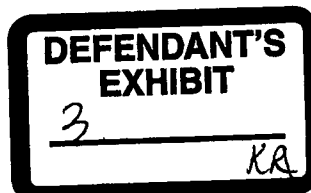
Ms. Batchelder acknowledged that it could be a case of mistaken identity and suggested that we all go meet with Ms. Jones to get a positive ID. Mr. Kennedy said that he had to go to his other job and could not make the trip to SSC because of this. Ms. Batchelder asked if I had pictures of Officers that I could show to Ms. Jones to positively identify the Officer who described the video to her. I told her that I did and proceeded to SSC for this purpose.

Upon arrival at SSC I had Ms. Jones come to my office. I told Ms. Jones that I needed for her to identify the Officer who told her what was on the recorded video. I showed her a copy of Mr. Kennedy's driver's license photo. She said that she could not be sure. I then showed her photos of each Officer who works 3rd shift because she had said that she spoke with the Officer at about 5:45 am on October 1 & 2, 2012. Ms. Jones ruled out all of the other Officers. I tried to view the surveillance video of the SSC lobby from Oct 1 & 2 but it had already been recorded over for several days.

As I continued to question Ms. Jones about the details of speaking to the Officer she became visibly upset. She told me that the Officer had called her this afternoon. Ms. Jones stated that he told her that if she identified him he was going to be fired and she "better not do it". Ms. Jones became more upset and was in fear of retaliation from Mr. Kennedy or other employees who she did not identify to me. Upon questioning about the call log in her phone, Ms. Jones pulled out her phone and read out to me that she had received a call "24 minutes ago" (this is how it appeared in her call log and the current time was 1:50 pm) from 803-261-0699. Ms. Batchelder and I each independently confirmed that we had that number in our records as belonging to Jeffrey Kennedy.

Ms. Batchelder asked that we arrange another meeting with Mr. Kennedy for 11:30 am Friday October 19 at the District Office. I had Eric Barnes make the arrangements.


10/18/12



000022

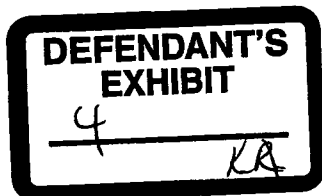


Spring Valley High School Athletic Department

Tim Hunter, Athletic Director

To: Whom it may concern
From: Tim Hunter
Date: 3/24/11
RE: Theft

I had \$1,000 taken from my office sometime between 10:30 pm on 3/3/11 and 8:00 am on 3/4/11. We were hosting the Taco Bell Viking Cup Soccer Tournament, I was feeling ill the night of Thursday 3/3 and did not know if I would be able to come to work on Friday 3/4. In preparation for getting the ticket boxes ready for Friday, I put the change money in 3 ticket boxes. \$500 in one and \$250 in each of the other 2 for a total of \$1,000. I put the boxes on the floor behind my desk so they would be kept out of site. I did this so my assistant, Sonny Youker, could get the boxes out to the gates on Friday in the event I could not come to work. When I came in Friday morning, the boxes were where I had them and the tickets were still in each box. However, all of the money was gone. When I reported the theft to Jim Childers, he immediately went to the security cameras.



Richland School District Two
124 Risdon Way
Columbia, South Carolina 29223

Subject: Letter of Counseling (08 September 2009)

Thru: Lelith Zerzycki
Security Services (Watch Commander)
Richland School District Two

To: Jeffery Kennedy
Security Services
Richland School District Two

This letter of counseling is based on the fact that you failed to support Richland School District Two on 04 September 2009. You were assigned to perform duties at the football games at Parone Stadium at Spring Valley High School every Friday until further notice.

On September 4th you failed to report to Spring Valley High School Stadium. I John W. Propst distribute copies of all Football Schedule in July 2009. I have also distribute a letter informing all Security Officers who fail to perform their assigned duties that it could result in a recommendation for termination.

Officer Kennedy we had the same problems with your performance last year and I will not have the same problem this year. This counseling statement is to inform you that if you miss any other requirements that you are assigned too, then I have no alternate but to recommend you for termination from Richland School District Two.

John W. Propst
Supervisor of Safety/Security
Richland School District Two



000123

Counseling statement

6th June 2008

Officer Kennedy you are been counseled on failure to follow proper procedure and instructions.

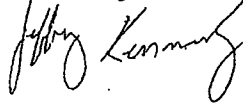
This reflects poor performance on your part, on the following dates June 4th and 5th you choose to leave your assigned post with out proper relief, which causes the mission to lapse. You were instructed by your Watch Commander (officer Zerzycki) not to leave your post until your relief was present for duty.

This type of action will not be tolerated and could be grounds for termination.



Lileth Zerzycki
Watch commander

Jeffery kennedy
Security officer

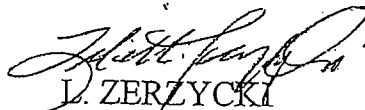


STATEMENT OF COUNSELING

11 NOV 08

OFFICER KENNEDY, THIS COUNSELING STATEMENT IS TO INFORM YOU OF YOUR UNEXCUSED ABSENTS AND NON-COMMUNICATIVE APPROACH FOR THE JOB IS PUTTING THE TEAM (3RD SHIFT) IN A CONSTANT LOSS FOR MANPOWER, WHICH IS GETTING MORE DIFFICULT WITH OUR ADDED DEMANDS.

NOTED, YOU CALLED ME AROUND 4PM WITH A SITUATION STATING THAT YOU WILL CALL BACK WITH AN UPDATE. THIS IS THE 3RD OR MORE TIMES INCIDENT OF THIS NATURE WITH THE SAME END RESULT (UNDEPENDABLE). THIS CANNOT CONTINUE AND WILL NO LONGER BE TOLERATED


L. ZERZYCKI
WATCH CDR.

J. KENNEDY
SECURITY OFFICER

Refuse to sign

KA

[REDACTED]

I don't go to school ~~any~~ unless you
got an alarm ring off

- Eric - he don't know
I was promoted to lieutenant & the job was
given to someone else.

- I've been in the bldg to cut the alarm off -
I went in the weight rm + walked @
out

000045

There was an altercation that night w/ the baseball coach. Nobody sd why abt the altercation. We had some words abt them open up all the doors - they are going to open up all those gates for no reason. He opened w/ Baseball coach had an altercation w/ me that night. They need him open - I had the gate open for the buses - it set off the alarm - they didn't make sure the doors were closed that night. They went into the double doors - 8 players + 3 coaches. They could have had access - the football coach had the key in the door. Coaches have keys to that office.

- I don't go in that front office on the date you'll say I was in here - there is a custodian guy in there on the 1st & the 3rd.

I go in there & I the battery in the alarm - I never went in nobody's office.

- Custodians - everybody has keys @ SV - people come into the band room - everybody has a key to everything. The alarm hasn't worked in a year - they ain't looked at nobody but me.

- I don't spray no spray - I don't smoke no cigarettes - that ain't me.

- They spray it in the back & leave the can in the seat in the security vehicle.

~~_____~~
~~_____~~ - it has it on he
can so they know where it can run.
- They say I was he only one who can
up the hall. That not true
abt 8-9 people come up that hall.
Capt Z will say I don't go in no
Schools - never have - I have been
Wkg 4 yrs - I am try to get promoted
& grow.

- The Supv can tell you abt my character.

Several hrs gone against me =

① why he spent so much x in his office
of you talk to all the other officers
they will say they take a break.

I went bk to sev days prior & tried to
look @ a common way you did your
business - it was common for you to be
- here that long.

It was unusual for that span of days -
Mitchell was x fed to WE - that
when I started say who he bldy
the 20 min has caused his problems -
he act of x spent to look through
offices - it doesn't neces have to
be me -

When that 1st x came up we would say

is this an abbreviation? Of he ~~the~~ incident -
you're the common denominator -

~~For~~

my reputation & character is being? I for nothing
• Several incidents where he is in there
If you compare he also as you have an
camera it was abnormal
I don't remember much about those days.

261-0699

Jeffrey Kennedy

5/5/11

Two what has come to me from Dan CTR

OF course you know me & I know B. I've read he
has no B has gathered from his history. B.Y. I make
a final decision I wanted to hear from you. From what
I've read upon what you had history to do up his
You don't know anything about the
No sir

On your work, you can in the block door to go in the
main office

I go in to a headbatter -

Is that what

Yes unless he's been down 2nd shift 8:15
B.Y. I get there.

How many 25 per wk

2-3 x per wk - same time every day

I go in there & sometimes get a date of H2O.

I can't leave until 12:30, I can just
wash & until we leave

How far do you go in there

65-70 min sometimes some 25 I can

Shout out I may use the palm

Tell me about the routine in the about
old

Normally I just check him down. I go in there
& turn the keypad off. Some 25 I go in

A core @ 10:00 ant,

I go to the keypad & put in the code only

I go into the weight room for 10-15 min

Just to work x

most officers go in here to wk out.
When you can in the blk of the man offer
to do the radio, is that your last stop
yes I may drink a little bottle of 1720
or look @ a magazine or smthg.

Mr Earls - what Mr K is explain - is
just pretty much how they are supposed
to operate?

They do have down x. The prob had case
on his sit hat - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

It seemed like a minor incident so I let
that go.

Then we had 8 missing. As he went
home missing Mr K went in the blk door
walked around to the front & set the alarm.
The night of the theft - it appeared
there was a variance from his path in
those were heavily into he avoided.

was it better to go in the blk door.

That route for all See officers -
I didn't have to arm the alarm - the
alarm went off at 2:40.

- You sd it was his route - you go in the blk
door & then you go out & that he end of
your duty.

you're telling me.

- 2 -

That's what you do every X

- Those days you say you never come b/c
around to see if he's out.

No sir

- Many old have been coming by
I came to UK - there were 12 people
in the office - w/ date & time - it
he admit office - my lawyer has
pictures.

- Those kids don't have keys to the office
Who says the offices were locked?

The custodians have keys.

- When it was okay - he always in the
conf room could go off.

I've been @ SV 4 yrs w/ no probs

What does the alarm have to do w/
this

I don't have no reason to go in those
offices

When do you go read magazine?
There's a kitchen in the bk area

On the athletic part you just mess
around w/ the weight

Every now & then. I just set the
alarm & leave.

Why not just do the key pad & leave?
I didn't know it's a prob. - other people

000031

go in here - Mr. Mitchell goes in here
I use his weight ^{How heavy is he?}
Mr. Mitchell ^{How heavy is he?} nobody's ever said
anything to him about using his weight on.

on 2/25 - When he comes out messy
you see in the back door - that was the day
you sat and I read magazine
If I stayed up here over 5 min -
you stayed in here 20 min.
That's when I was in the break room.

on 3/2 - When he was taken out of
the bookkeeper's office -

You were in here 25 min that day
Nobody ever said we didn't go in the
bldg to go to the break room - I've been
dog he save my for 4 yrs.

Other officers do that. ~~at~~

We aren't really about you sit. ^{one officer was really about}

I did put about \$ in here. Since Mr. K
left it's still here - since he left
it's still here.

I have never stolen nothing in my life.
I just got promoted to Lt. What would I look
like stealing. I'm a good man - I don't
steal. They are pretty much situational
on me - I've got too much too lose to take
chance from a drawer.

I've got 4 grandchildren, kids in college. I've got a mortgage -
my years salary means more to me than that.

-3-

I didn't do it. From the bottom of my
heart it wasn't me I didn't do that.

I will get black boys

approval from me.

LAW OFFICES OF
Franchot A. Brown
ATTORNEYS AT LAW

Jeffery Kennedy

1324 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 779-7060

E-MAIL FRANCHOTB@FABLAWFIRM.COM

MAILING ADDRESS:
POST OFFICE BOX 543
COLUMBIA, SC 29202-0543
FAX (803) 779-7786

January 13, 2012

RECEIVED JAN 17 2012

Mr. Roosevelt Garrick, Jr.
Chief Human Resources Officer
Richland School District Two
6831 Brookfield Road
Columbia, SC 29206

RE: Mr. Jeffery W. Kennedy

Dear Mr. Garrick:

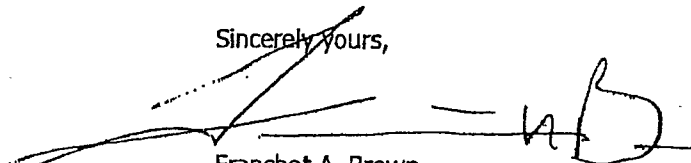
As you are aware, over six (6) months ago you sent a letter to Mr. Kennedy dated June 27, 2011 advising him of some concerns you had relative to \$1,000.00 and some property being missing from a building at Spring Valley High School. Your office turned the investigation of this matter over to the Richland County Sheriff's Department, who had Mr. Kennedy and I to visit with them on at least one (1) occasion and I followed up with several letters after which time, it is my understanding from talking to Investigator Clark of the Richland County Sheriff's Department they never listed my client as a suspect and have closed their file.

Since the commencement of this investigation and the allegations you seem to be leveling at Mr. Kennedy, he has been denied a promotion to Lieutenant, has been restricted to a desk job and is not allowed to enjoy any overtime employment in the desk job position he presently holds. We were under the impression that the Richland County Sheriff's Department had an outstanding file on Mr. Kennedy, however, Investigator Clark of the Richland County Sheriff's Department has assured us that they never listed him as a suspect, do not have a case file on the matter open and this case has been completely closed and never shall be opened.

This letter is, therefore, to demand that you place Mr. Kennedy back to his full-time position, elevate him to the position of Lieutenant and restore all of the rights and privileges due him as a 5-year employee with the security forces of Richland School District Two.

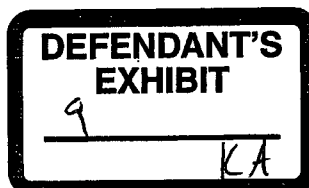
Hoping you consider time of the essence and notify me that same is being complied with immediately and thanking you in advance, I remain

Sincerely yours,


Franchot A. Brown
Attorney at Law

FAB:msa

cc: Mr. Jeffrey W. Kennedy



000013

1038



Richland School District Two 6831 Brookfield Road Columbia, South Carolina 29206 (803) 787-1910
FAX # (803) 738-7393
www.richland2.org

ADMINISTRATIVE OFFICES

February 8, 2012

Mr. Jeffrey Kennedy
356 Weddell Street
Columbia, South Carolina 29223

Dear Mr. Kennedy:

We are in receipt of a letter from your attorney, Franchot Brown, dated January 13, 2012.
In the letter, Mr. Brown stated:

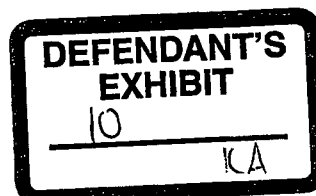
This letter is, therefore, to demand that you place Mr. Kennedy back to his full time position, elevate him to the position of Lieutenant and restore all the rights and privileges due him as a five year employee with the security forces of the Richland School District Two.

He stated that I sent you a letter dated June 27, 2011, advising you of concerns relative to the missing property from Spring Valley High School ("SVHS") and that the investigation of the matter was turned over to the Richland County Sheriff's Department. He further stated the investigation was closed.

While the Richland County Sheriff's Department was involved in investigating the missing property, my letter dated June 27, 2011, confirmed that you were being reinstated to your position as a security officer in the District. In my June 27 letter, I outlined my concerns with what appeared to be some unusual behavior on your part, as well as my concern that you did not provide me with accurate and consistent information in your security of the SVHS administration building. While there is not an open criminal investigation, we were not comfortable with your responses during our investigation.

As you know, you have not been demoted from your position as security officer. Instead, you remain employed in the same position to which you were assigned prior to being placed on administrative leave. However, while I have returned you to your position of security officer in the District, as a result of the concerns I have described in this letter, as well as my June 27 letter, I decided not to approve a recommendation that you be promoted to a position of Lieutenant at this time. Your job responsibilities as a security officer, and particularly a Lieutenant, require that we have the utmost trust and confidence in you. For these reasons, I am denying your

Mission Statement - Richland School District Two, in partnership with the Columbia Northeast community, guarantees each student a quality education by providing appropriate and challenging learning experiences to equip each individual for life-long learning, responsible citizenship, and productivity in an ever-changing world.



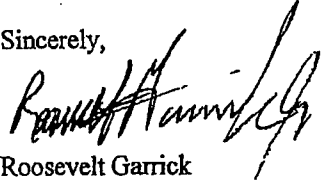
000108

1039

attorney's demand that you be promoted to a position of Lieutenant at this time. If you wish to be considered for promotions in the future, you will need to ensure that you exercise good judgment in the performance of your duties at all times, and conduct yourself in a manner which restores our trust and confidence in you.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Roosevelt Garrick". The signature is stylized with a large, sweeping initial "R" and a long, horizontal stroke extending to the right.

Roosevelt Garrick
Chief Human Resources Officer

RECEIVED

NOV 12 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

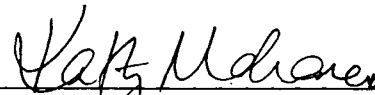
Jeffrey Kennedy Respondent,

v.

Richland County School District Two, Eric Barnes, and Chuck Earles Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record On appeal contains all material proposed to be included by any of the parties and not any other material.


CHILD & HALLIGAN, P.A.

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Attorneys for Appellants